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FROM CORPORATE SOCIAL RESPONSIBILITY TO SUPPLY CHAIN LIABILITY: DO WE SEE A CHANGE IN LIABILITY OF CORPORATIONS?

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Abstract

Purpose – the purpose of this abstract is to provide conceptual viewpoint on the current legal changes in the liability of the corporations for the so called – environmental and/or human rights abuses (hereinafter – ESG liability). This is particularly relevant because we face social transformations forcing classic corporate legal liability rules to change. More precisely, according to the author, the emerging trend of corporate social responsibility is moving to the direction where it can radically change the way we tend to understand fundamental corporate law principles and, in particular - liability of corporations.

Design/methodology/approach – the analysis is based on comparative and teleological methods. Comparison is two-fold. First, the author investigates different legal systems – UK, France and Germany and compare how they generally tackle corporate liability for the torts, related to ESG matters. Then, once the "classical" approach to corporate tortious liability is identified, the author compares this "classical" approach to new, emerging "modern" approach (author's definition) based on newly presented due-diligence obligations. Based on this comparative analysis, author moves to teleological analysis of these changes in the application of corporate liability and what are the legal grounds of such changes.

Finding – the author argues that current changes in the application of liability of corporations for the ESG matters present a change in the fundamental understanding of cornerstone principles of corporate law. To be precise, while under "traditional" understanding of tortious liability of corporations, they are liable only when they intervene into the activities of its subsidiaries (since they are legally prohibited to manage subsidiaries), under "modern" approach, based on so-called due diligence obligations, corporations are obliged to intervene.

Research limitations/implications – the analysis focuses on tortious liability of corporations (precisely – the one of parent companies) at the level of corporate group/supply chain.

Practical implications – the practical implications of the topic are self-evident, especially looking at the recent case law – corporations are facing liability for the matters that could be considered distant from the perspective of classic "separability" principal. At the same time, by these new due-diligence obligations, corporations are being obliged to manage and oversee the operation of the whole supply chain.

Originality/Value – even though there are many scholars who investigate the topic of corporate liability for ESG matters in general, the author provides a wider viewpoint on the possible changes in corporate liability i.e. the topic is not isolated on particular aspects ESG liability but rather looking at as changing the whole fundamental principles of corporate liability (legal separability and limited liability).

Keywords: *corporate group*, *parent company*, *tort*, *ESG*, *due diligence*

Research type: viewpoint.

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Introduction

Traditionally, corporate law stands on two cornerstone principles: legal separability and limited liability. The former implies that each company, even within the corporate group, is legally separate and manages its own activities (Winner, 2016). The latter presupposes that generally shareholders do not risk more than their contribution and they cannot be held liable for their corporations' or subsidiaries' debts (Vanderkerckhove, 2007). In fact, according to traditional division of powers between corporate organs, shareholders are prohibited from managing their subsidiaries *i.e.* taking over management function. That being said, the general rule would seem relatively clear – companies, as separate legal entities, are not responsible for anything that is beyond its own interests. However, especially within corporate groups, it is generally admitted that when parent companies influence their subsidiaries to a certain extent, it could be considered that they are liable in tort if damage is done to third parties. Under legal systems analysed in this article – UK, France and Germany (UK has the most extensive list of precedents), parent companies may be held liable in tort for the actions at the level of subsidiaries, relying on well-established tort law principles *i.e.* – breach of its own "duty of care." Such notion of the parent's own breach, even though the harm may have been done at the level of the subsidiary, was welcomed as a safe option not to break the principle of legal separability *i.e.*, not to make the parent company liable for the actions of another company (Bergkamp, 2019).

However, the boundaries of these general rules of corporate law tend to become unclear when liability for environmental and/or human rights (ESG) abuses comes into play. Currently, Germany, France and United Kingdom, witness increased attention to the issues of sustainability, human rights and climate change. Attention to ESG *per se* is not a new phenomenon, and litigation concerning the latter already attracted a lot of attention both from legal scholars and the public. To understand the possible tension between legal rules and social pressure, we shall consider the relationship between corporate law and tort law. While corporate law still stands firmly on the principles of legal separation and limited liability, meaning that parent companies do not (and legally – cannot) manage their subsidiaries and are not responsible for their actions, tort law eagers to provide an effective remedy to victims. Recent UK cases – *Vedanta* (in 2019), and *Okpabi* (in 2020), following by other paradigmatic cases such as *Maran* (in 2021) confirmed that companies can be held liable not only for their subsidiaries but for the whole supply chain *i.e.* business partners or suppliers. The main condition of such liability – operational control of another company (subsidiary, business partner). Therefore, companies may be considered to have breached their own duty of care if they intervened in the other company and that intervention resulted in harm. Even though being in line with general corporate principles, those cases attracted a lot of criticism as possibly creating adverse incentives to corporations – not to intervene in their supply chain's health and safety issues in order not to expose itself to liability.

Thus, the question arises – whether the tort law standard of the duty of care is the appropriate mechanism to tackle reckless corporate behaviour? In this regard, one could see the most evident shift in the topic. Following this, the most recent legal development is the establishment of supply chain due diligence duty. While recent paradigmatic cases hold companies liable for their active intervention, stressing that companies do not have such duty (and actually – cannot do that), due diligence legislation, on the contrary, creates a duty to manage and intervene the whole supply chain. France and Germany already established statutory due diligence obligations (in 2017 and 2020 respectively). This was followed by the EU – in 2022 EU Commission presented a draft Corporate Sustainability Due Diligence directive (CSDDD) that was adopted in 2024. Breach of due diligence obligation could lead to liability, *i.e.*

companies shall answer for ESG violations of the companies in their supply chains. Therefore, due diligence obligations show a substantial shift in the understanding of corporate obligations in terms of ESG and create a duty to manage. In 2021, the Dutch first instance court of the Hague ordered oil giant Shell to reduce its CO2 emissions radically by 2030. What is the most striking – relying on the general tort law, the court established a specific duty not to cause harm to the environment. Therefore, the court basically transformed the standard of care from tort law (negligence) into a duty to behave in a particular way.

This is just a single precedent, however, already showing the substantial change in the understanding of corporate liability for ESG matters. Analysed examples of both case law and statutory law suggest that we witness a change in the way tort law is used to hold companies liable for the reckless behaviour in their supply chains that trigger environmental or human rights questions. In this regard, it is crucial to understand the boundaries of such changes and whether such developments are in line with other principles of corporate law.

Traditional liability in tort renewed by latest precedents

As it was established in the introduction, in this article the analysis is focused on three main jurisdictions – France, Germany and UK as they generally present the most advanced approach on the topic of corporate liability and set the example for other jurisdictions.

The starting premise of this analysis is based on the condition that in all of these jurisdictions, principles of legal separability and limited liability are generally admitted as main principles of corporate law (Winner, 2016). However, for the scope of this article, the author focuses on the extraordinary cases *i.e.* when parent companies may be liable for the actions at the level of subsidiaries/business partners.

In all of these jurisdictions, the first major exception to limited liability is so called „piercing of the corporate veil“ (Blumberg, 2006; Vanderkerckhove, 2007; Chao, 2021). Generally, the doctrine presupposes that the shareholder may be held liable for its subsidiary's debts despite the rules of limited liability and separate personality (Vanderkerckhove, 2007). UK case law, namely the cornerstone *Salomon v. Salomon* and *Adams v. Cape Industries* shaped the universal understanding of the doctrine and, relying on further precedents such as *Smith, Stone & Knight v. Birmingham Corp*., *DHN Food Distributors v. Tower Hamlets LBC,* it can be concluded that the main exceptions to limited liability, where UK courts tend to "lift the corporate veil" and disregard limited liability of the parent company are sham, fraud and agency (Wright, 2017). However, the doctrine of "piercing the corporate veil" falls out of the scope of this article due to its specific conditions and both limited and vague applicability. As Thompson points out, „piercing of the corporate veil“ is"[t]he most litigated issue in corporate law and remains uncommon in practice" (Thompson, 1991).

Thus, we shall turn to the other common exception of the limited liability of the parent company, namely – tortious liability. In this regard, it is crucial to understand that legal rationale for making parent company tortiously liable relies on very general principles of tort law. Hereto, UK has the most advanced precedents. Under UK law, to apply tortious liability, it shall be established that the person, to whom such liability is initiated, has an existing duty of care towards other persons, the breach of which would lead to the emergence of liability (van Dam, 2006). In this regard, duty of care implies the existence of a relationship between the claimant and the defendant before the infliction of the harm. According to the famous *Donoghue v Stevenson* precedent, the relevant relationship is the one of the "neighbour's" where a person owes a duty of care to everyone (as neighbour), who, by negligent conduct, can suffer foreseeable damage (van Dam, 2006). Taking this into consideration, it could be asked, how this proximity of "neighbour" could be applied to corporate relationship. One of the first landmark

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UK cases where such question was raised is *Connelly v. RTZ Corp plc*., where an employee of the subsidiary company who worked in a mine in Africa sued parent company for failing to fulfil its' duty of care and causing the illness. Therefore, the argument is clear and challenging at the same time – parent company shall have supervised its' subsidiary more diligently when it was *de facto* influencing it. Therefore, it could be argued that this case opened the way to the argument that a parent company might owe a duty of care to subsidiary's employees (Witting, 2018). In *Lubbe & Others v. Cape Plc,* based on very similar facts, and on the same reasoning e.g. that the parent company negligently exercised control of the health and safety of its subsidiaries' operations, the court highlighted that parent's actual intervention into the subsidiary is the decisive factor in evaluating whether the duty of care exists and if the latter was breached. Most famous precedent at the time – *Chandler v. Cape plc.,* clarified when parent companies can be tortiously liable for the actions at the level of its subsidiaries, relevant criteria being: (i) overlapping business operation, (ii) fact that parent company have or ought to have superior knowledge about relevant aspects of health and safety in that particular industry, (iii) fact that subsidiary's system of work is unsafe as the parent company knows or ought to know, (iv) fact that parent company knows or ought to foresee that subsidiary or its employees rely on it to use that superior knowledge for the employee's protection (Witting, 2018).

The logic that stems from *Chandler v. Cape plc* is that the parent company is considered to own a duty of care for the actions at the level of the subsidiary when it directly or indirectly intervenes, at least to a certain extent, into the relevant activities of the subsidiary. Therefore, the starting point for the tortious liability of the parent under so-called classic model is its intervention into the activities of its subsidiary. Even though that might sound as a logical implication, especially if we investigate it from a corporate law perspective where legal separability is the key element, such conclusion may propose some adverse effects. More precisely, if it is concluded that parent's intervention into the health and safety matters of its subsidiary creates a risk of exposure for the former, this would discourage parent companies from supervision of subsidiaries (Witting, 2018).

However, what can be taken from landmark UK precedents *Salomon v. Salomon* and *Adams v. Cape* and cases where parent company's duty of care was implied - *Connelly v. RTZ Corp plc, Lubbe & Others v. Cape Plc, Chandler v. Cape plc* etc. is that parent company's liability in tort, based on its duty of care towards limited group of stakeholders (in mentioned cases – employees of subsidiaries) is a rare exception. To apply such liability and consider that parent company had a duty of care that is breached, it should be in principle shown that parent company intervened into the activities of subsidiary (especially – in the field of health and safety requirements of the latter) and such intervention created a relevant proximity for the parent to be liable if certain harm occurs. Even though such cases, usually covering multiple corporate layers and including several legal entities, are more sophisticated than a typical tort case where a natural person is harmed by a brick falling from the building, it could be concluded that in terms of legal reasoning, UK courts practically used the same logic as in *Donoghue v Stevenson.*

An important reflection one may see from looking at all these landmark cases discussed above is that it includes employees of subsidiaries as third parties to which the parent company has or does not have a duty of care. Therefore, it is clear that courts traditionally tried to combine corporate law and tort law principles especially, considering that under UK law, a person does not have a general duty to ensure that third parties do not harm others. Seeing subsidiaries not as distant as unrelated companies (i.e. suppliers) provided enough comfort for UK courts to apply tortious liability based on breach of the duty of care. However, as it will be shown below, growing attention to ESG and so-called supply chain liability (SCL) led to some landmark precedents both in the UK, as well as other countries.

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On a theoretical level, parent companies under French law could be held liable based on general tort norms as well. According to Article 1240 French Civil Code (French CC), "[a]ny human action whatsoever which causes harm to another creates an obligation in the person by whose fault it occurred to make reparation for it". Article 1241 provides the same notion for negligence causing damage. As in UK, fault traditionally understood as a violation of (i) statutory law or (ii) general duty of care (Malinvaud, 2012). However, French legal system is not traditionally supportive on the notion of making parent companies liable for the alleged breach of the duty of care (Bergkamp, 2018). Some voices presuppose that on some occasions, for example when a parent company has made a statement concerning corporate social responsibility, the parent exposes some implications of duty of care (Demeyere, 2015). However, no such relevant precedents exist to this date. Germany, on the other hand, has a very strict approach on parent company's ability to be tortiously liable for the harmful actions at the level of subsidiaries. Wagner states that under German law, the liability of parent companies for damage caused by their subsidiaries is inconceivable as German tort law only recognizes duties of care (*Sorgfaltspflichten*) in relation to one's own behaviour (Wagner, 2021).

Therefore, as it was established above, few conclusions could be made. Corporate law traditionally stands firmly on the principles of legal separability and limited liability. Following this, parent companies generally are prohibited from managing the subsidiaries since they are separate legal entities as well. However, limited liability of the parent company could be disregarded, including but not limited to situations, when parent company intervenes the activities of the subsidiaries to the extent that it implies a duty of care. In such cases, as UK precedents showed, especially in situations where employees of subsidiaries are being harmed, that parent companies occasionally are held liable in tort.

Supply chain liability – something new?

In the opinion of the author, landmark UK cases described above present few apparent paradoxes. First, it is evident that from a corporate law perspective, any implication of liability of the parent company for the actions at the level of subsidiary may be understood as denial of legal separability and limited liability, especially considering that parent companies are generally prohibited from managing the subsidiaries (as they are legally separate and independent). At the same time, it would be impossible to avoid that *de facto* parent companies usually intervene into the activities of subsidiaries – thus, in order to defend the interests of tort victims, and without, in principle, denying corporate separability, the notion of duty of care looked like a "safe harbour" for courts to manoeuvre between corporate law and tort law.

However, increasing power of multinational corporations started to heat the debate on whether the traditional liability exposure that corporations may face (which, as was established, is extraordinary as corporations are generally defended my limited liability) suffice tort victims enough (Ward, 2001). Hereto, the notion of corporate social responsibility (CSR) comes into play. Zerk defines corporate social responsibility as "[…] notion that each business enterprise, as a member of society, has a responsibility to operate ethically and in accordance with its legal obligations and to strive to minimise any adverse effects of its operations and activities on the environment, society and human health." (Zerk, 2006). Therefore, the logic here is that corporations should address all the harmful deficiencies that are covered by their corporate structure. However, the debate is not definite here, as with regards to scope of application, the notion of supply chain responsibility emerged. Supply chain responsibility could be considered as wider form of CSR i.e. company's responsibility across its *entire supply chain*, for social, ecological, and economic consequences of the chain's activities.

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Initiatives of supply chain responsibility/liability were raised by various international documents e.g. UN Sustainable Development Goals[1], OECD Guidelines for Multinational Enterprises[2] and UN Guiding Principles on Business and Human Rights[3] – which oblige companies to ensure respect of human rights "within their sphere of influence" to name a few.

On a theoretical level, the idea of corporate social responsibility/liability or supply chain responsibility/liability is rather straightforward *i.e.* corporations should be held liable for their poor management of their sphere of influence (be it subsidiaries or even contractors) (Bergkamp, 2018). At the same time, apparent tension that could be spotted here is the one that parent companies are generally not required to manage the activity of other separate companies and even further – they are in principle forbidden to do so – in most countries, the legal existence of the parent's instructions is not recognized, as traditional concepts of legal autonomy of the subsidiary prevail (Conac, 2016). Therefore, corporate social liability traditionally is used to quite comfortably manoeuvre as so-called "primary" or direct liability. The theory of primary liability presupposes that parent company is liable not for the actions of the subsidiary, but for its own actions (Petrin, 2018). Here, the decisive legal rationale is that in some circumstances, parent company owes a direct duty of care to third parties even for the actions that happened at the level of, for instance, subsidiaries. Following this, where it can be proved that the parent company has a duty to exercise with a particular level of care, for example, provide supervision of its subsidiary, but failed to do the following and due to this omission, people or the environment was harmed, it may be found tortiously liable. In this case, it would be considered that the parent *itself* breached its duty of care (Giliker, S. Beckwith, 2011). What are the practical situations where such duty of care is evident? Zerk concludes that it is the case when parent company knows the activities of the subsidiary and is aware of health and safety risks it may pose and, thus, exercises control over those activities (Zerk, 2006). Therefore, (i) actual intervention and (ii) control over the relevant activities of the subsidiary (health and safety requirements) are criteria for primary liability.

Following the topic of supply chain liability, UK and Dutch case law recently provided some valuable precedents on company's duty of care. So far, almost all the landmark court judgments in cases relating to parental liability (or more broadly – supply chain liability) have been decided under common law, implying duty of care (Bergkamp, 2018).

The first landmark case is *Vedanta*.[4] In this UK case, the claim was brought by a group of Zambian citizens who claimed that both their health and their farming activities have been damaged by repeated discharges of toxic matter from the copper mine into those watercourses. The mine was operated by a local subsidiary of UK parent company – Vedanta plc. UK Supreme Court in Vedanta provided few relatively important arguments. First of all, the liability of parent companies in relation to the activities of their subsidiaries is not, of itself, a distinct or novel category of liability in common law negligence.[5] Second, whether or not it could be considered that the parent company owns a duty of care depends on "[…] the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary."[6] Finally, court explains that as such, duty of care is not specifically attributed to parent-subsidiary relationship, as the legal principles are the same as would apply in relation

[1]United Nations, *Sustainable Development Goals (SDGs)*, 2015.
[2] OECD, *OECD Guidelines for Multinational Enterprises, OECD Publishing*, 2011, http://dx.doi.org/10.1787/9789264115415-en.
[3] United Nations, *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework*, 2011.
[4] *Lungowe v Vedanta Resources plc* [2019] UKSC 20 at 1.
[5] *Lungowe v Vedanta Resources plc* [2019] UKSC 20 at 49.
[6] *Ibid.*

to the question whether any third party (such as a consultant giving advice to the subsidiary) was subject to a duty of care in tort.[7] Therefore, few conclusions are evident here – company's duty of care is grounded on its intervention into the activities of subsidiary – in *Vedanta* – such intervention was tried to be proven by group-wide policies and other sources of alleged intervention (service agreement etc.). In this regard, *Vedanta* formed a principle that if companies make public statements about health and safety standards (for instance, in public websites etc), they can be held liable for harm that arises from the failure to implement those promises (van Dam, 2021). Sadly, parties settled, and case could not be tried on merits. In *Okpabi*[8], several thousand Nigerian locals sued UK parent company Royal Dutch Shell Plc for oil pipeline leaks that poisoned local environment. Not surprisingly, after important reflections in *Vedanta*, the same dicta were tried in *Okpabi*, while trying to establish that UK parent company exercised significant control over the substantial aspects of Nigerian subsidiary's management. Supreme Court hereto fully approved *Vedanta's* precedent, by affirming that there is no special test applicable to the tortious responsibility of the parent company for the activities at the level of its subsidiary. In addition, Supreme Court as well clarified that that control (or ability to control) as it is considered according to corporate law is not *per se* decisive and is a "starting point" – legally relevant issue being the extent to which the parent did take over the management of the relevant activity of the subsidiary.[9] Therefore, both *Vedanta* and *Okpabi* re-surfaced the topic on the tortious liability of multinational corporations for the externalities happening at the level of subsidiaries. Up until this point, it may have looked clear that such liability is *de facto* possible in parent-subsidiary (corporate group) situation.

However, with *Maran*,[10] Court of Appeal went even forward. In *Maran*, the claimant (widow of deceased), sued Maran Ltd., company that, through various contractual arrangements, *de facto* controlled the sale of the ship, which was finally placed for demolition, where the claimant died due to unsafe working conditions.[11] Therefore, court was faced with situation where sued company and the one on which supervision the fatal accident occur, were completely legally independent. As mentioned, Maran Ltd sold ship to an intermediary company that later re-sold the ship to be demolished, therefore, defendant did not even have contractual relationship with the final owner of the ship. However, it was not a blocker for the court to consider that duty of care may exist even in such kind of situation. In constituting that, court relied on so called "creation of danger" doctrine, established in few notorious UK precedents – *AG of the BVI v Hartwell,*[12] *Mitchell and Another v Glasgow City Council,*[13] *Michael and Another v Chief Constable of South Wales Police,*[14] *Robinson v Chief Constable of West Yorkshire Police,*[15] *Poole Borough Council v G N and Another.*[16] In claimant's view, Maran created the danger by choosing that the vessel should be demolished in Bangladesh, known for unsafe working conditions and in these circumstances, that death was *"not a mere possibility but a probability."*[17] Therefore, in terms of relevant proximity, *Maran* may be seen as ground-breaking case, in fact fully approving supply chain liability as such.

[7] *Ibid*., at 36.
[8] *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC
[9] *Ibid*, at 147.
[10] *Hamida Begum v. Maran LTD* [2021] EWCA Civ 326
[11] Ibid., 6-7.
[12] *AG of the BVI v Hartwell* [2004] UKPC 12.
[13] *Mitchell and Another v Glasgow City Council* [2009] UKHL 11.
[14] *Michael and Another v Chief Constable of South Wales Police* [2015] UKSC 2.
[15] *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4; [2018] AC 736.
[16] *Poole Borough Council v G N and Another* [2019] UKSC 25.
[17] *Supra note*, 278, at 62.

Vedanta, *Okpabi* and *Maran* could be understood as clear indication that supply chain liability is not a mere theory especially in terms of parties triggered – while *Vedanta* and *Okpabi* basically carefully limited the application to parent-subsidiary relationship, *Maran* concluded that established tort law precedents fit to such sophisticated relationships. However, even though mentioned cases were highly discussed as some kind of pioneering examples of the possible change in supply chain liability, in terms of legal grounds – those cases do not in fact constitute any new rules or principles of tortious liability, based on the imposition of duty of care. Therefore, duty of care can be considered the main legal „instrument" used to establish liability (van Dam, 2021). This being said, what rule do these cases form? According to the author, this could be summarised as follows: *parent company or non-parent business partner may owe the duty of care only if they intervene in the relevant activities of another company (being the subsidiary or business partner.* Therefore – while according to general principles of corporate law, parent companies cannot intervene into the activities of subsidiaries, but they intentionally do so – they, depending on circumstances, may be liable in tort. However, some scholars argue that such situation can even create an adverse effect *i.e.* parent companies are disincentivised from controlling their supply chains to avoid liability for doing so (Wagner, 2021; Witting, 2018). Thus, the relevant question here is whether tortious liability, based on company's intervention in the activities of other companies is not too vague? As established below, possible turn in the approach of tackling human rights and environmental abuses may be seen from latest developments of so-called corporate due-diligence duties.

From liability for intervention to the actual duty to intervene

While tortious liability tackles the abuses happening in supply chains retrospectively, making parent companies liable for the actual harm already occurred, recent trends both at national as well as international levels present a shift in the approach. France presented its Duty of Vigilance Act in 2017[18] while German Supply Chain Act was adopted in 2021.[19] Both acts are unique in a sense that they impose a due diligence obligations on large companies *i.e.* to prevent serious violations of human rights and serious environmental damage in their whole supply chains. The scope of obligations is to some extent different in both acts, however, the general idea is common *i.e.* to force parent companies to oversee and manage both their subsidiaries and suppliers in a way that human rights and environmental abuses are prevented or mitigated as early as possible. Therefore, from a legal standpoint, both French and German due-diligence laws create an obligation for parent company to intervene into the particular aspects of other company's activity in order to avoid potential environmental or human-rights abuse. If we look into this in the perspective of the traditional application of liability that discussed above, one might argue that it presents a substantial change in parent's role across its supply chain. While discussed landmark precedents show that parent companies may be liable in the cases they intervened into the activities of another company within the supply chain, due-diligence laws actually *oblige* them to intervene. Even more importantly, liability is foreseen for insufficient intervention. French due-diligence act expressly provides a legal basis for civil liability and enables the victim to sue the company for the harm that due diligence could have prevented (Platise, 2023), while German alternative routes for more limited – administrative liability, based on fines/removal from public tenders (Barsan, 2023).

[18] Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (Loi de Vigilance) JORF n° 0074, adopted on 21 February 2017, entered into force on 28 March 2017.
[19] Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lie- ferketten (Lieferkettensorgfaltspflichtengesetz – LkSG)

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French and German due diligence acts showed an example by establishing positive duties for companies *vis-à-vis* their supply chain members. Being influenced by the latter, European Commission proposed a directive with the same main objective – to force companies undertake mandatory human rights and environmental due diligence across their supply (value) chains (Directive on Corporate Sustainability Due Diligence, CSDDD)[20] that was adopted in 2024. CSDDD triggers the whole supply chain – obligations therein are applicable both to parent company's operation, as well as the one of subsidiaries and business partners within the supply chain (Ciacchi, Barge, 2022). The same as French due diligence act, CSDDD provides that parent company shall be liable for damages caused to legal or natural persons if it (intentionally or negligently) failed to comply with its obligations (Barsan, 2023).

Tension between traditional corporate law and tort law is evident evaluating the above. Even from the single perspective tort law, it could be seen that the standard of parent company's intervention into the activities of another company is transformed – *i.e.* the standard of care from tort law (negligence) is moving into a duty to behave in a particular way (*i.e.* from negative to positive duty). This discussion may also be sparkled by the recent Dutch precedent versus Shell.[21] The court, relying on general tort norms and UN Guiding Principles (soft law) ruled that parent company's influence over the whole Shell group justified an obligation of result to reduce the group's emissions by 45% net by 2030, covering suppliers and end users as well (whole supply chain) (van Dam, 2021). Therefore, the decisive issue here is that, relying on general tort norm, traditionally working retrospectively (once damage is done), court obliged parent company to cease from harmful actions in the future.

Even though it is yet to be seen how most recent statutory law and case law examples will adjust to traditional corporate law and tort law principles, according to the opinion of the author, we witness a change in the way tort law is used to hold companies liable for the reckless behaviour in their supply chains. The most apparent shift is moving from tortious liability for intervention into the activities of supply chain (*Vedanta*, *Okpabi* etc.) to positive duties to intervene into the activity of supply chain (French, German due-diligence law, CSDDD), foreseeing liability for non-intervention or where it is insufficient.

Conclusions

In most legal systems, as well as UK, Germany and France analysed in detail in the article, corporate law stands on two main corner-stone principles of legal separability and limited liability. Legal separability implies that each company manages its own activities and generally cannot intervene into the activities of another company (e.g. subsidiary). Legal liability presupposes that company generally cannot be responsible for the actions of another company.

Two main exceptions to limited liability in all the analysed jurisdictions are piercing of the corporate veil (out of the scope of the article) and liability in tort. The notion of the tortious liability for the negative externalities at the level of its subsidiaries is generally based on establishment of the "duty of care". While French and German legal systems in theory do not prohibit such liability, UK has the most developed precedents in this regard. According to UK precedents, parent company could be liable for the breach of its "duty of care" towards the third parties even if the harm was done by the subsidiary. Recent landmark precedents such as *Vedanta*, *Okpabi* and others revived the topic of parent company's tortious liability for the actions at the level of subsidiaries while *Maran* enabled it even for indirect third parties.

[20] On 24 April 2024, CSDDD proposal passed the European Parliament

[21] District Court The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337 (Milieudefensie e.a./Royal Dutch Shell).

After Vedanta and following cases, the rule for parent company tortious liability, according to the opinion of the author, could be formed as follows: *parent company or non-parent business partner may owe the duty of care only if they intervene in the relevant activities of another company (being the subsidiary or business partner).*

Newly developed concepts of supply chain due-diligence obligations, established both at national (French, German due-diligence act) as well as EU level (CSDDD) present a possible shift into the understanding of parent company's intervention into the activities of another companies within supply chain – from traditional tortious liability for intervention into the activities of another separate companies, to positive duties to intervene, foreseeing liability for non-intervention or insufficient one.

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