Adèle GRIMAULT
April 2025

“Rethinking due diligence from the ground up”

Interview of Luca Tenreira, PhD researcher in Law at the European University Institute (EUI)

Luca Tenreira is a PhD researcher in the Department of Law at the European University Institute (EUI). His dissertation, “*The Troubled Dreams of Due Diligence in Entangled Global Value Chains*”, critically examines how regulators and corporations mobilize specific knowledge regimes to assess the environmental and social impacts of products, services, and activities. As regulatory paradigms increasingly adopt impact-based tools to incentivize accountability in global value chains (GVCs), Luca’s research investigates the epistemic challenges of framing environmental and social problems through particular indicators, metrics, and processes—highlighting their role in including or excluding certain narratives and stakeholders. By examining material practices and activist interventions, his ethnographic study will highlight the normative consequences of such regulation and advocate for rethinking governance approaches to incorporate care, decolonial perspectives, and a commitment to place-based justice in shaping GVCs.

This interview takes place in the broader context of the emergence of due diligence obligations in corporate law, following the global mobilizations after the collapse of the Rana Plaza textile factory in 2013. In response to mounting pressure to hold transnational corporations accountable for abuses across global value chains, France adopted in 2017 the Duty of Vigilance Law, which requires large companies to establish, publish, and effectively implement vigilance plans to prevent human rights violations and environmental harm throughout their activities, including those of subsidiaries, subcontractors, and suppliers. This law directly inspired the European Corporate Sustainability Due Diligence Directive (CS3D), recently adopted after intense political negotiations.

Since its entry into force, the French law has given rise to a growing body of litigation. Several emblematic cases have been brought before French courts by coalitions of NGOs and affected communities, including against companies in the extractive, agri-food, finance, and textile sectors. Among these are proceedings involving BNP Paribas for its financing of deforestation-linked projects, Yves Rocher for labor rights violations in Turkey, and McDonald’s France for failing to publish a vigilance plan. These cases illustrate both the strategic potential and structural limits of the law: while it offers a framework for contesting corporate impunity, its

effectiveness remains uneven and heavily dependent on civil society mobilization and judicial interpretation.

By following a case involving a transnational extractive project situated in a socially and ecologically sensitive region, Luca Tenreira investigates how legal obligations—such as those codified in national duty of care laws or in the EU Corporate Sustainability Due Diligence Directive—are interpreted and operationalized on the ground. The interview reflects on the gap between formal compliance mechanisms and the lived experiences of communities directly impacted by such projects. It also highlights how civil society actors, local knowledge holders, and affected populations engage with legal tools and contribute to redefining the meaning and application of due diligence across transnational corporate operations.

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Why did you decide to conduct fieldwork for your research on due diligence? And why did you choose a transnational extractive project as your case study? What makes this case relevant to how companies apply due diligence in practice?

From the start, I felt that studying due diligence only through legal texts and institutional discourses would miss something essential. This new legal obligation—enshrined in instruments like the EU's Corporate Sustainability Due Diligence Directive (CS3D)—is often presented as a bold response to corporate harm in global value chains. But these obligations are rarely applied straightforwardly, top-down. They're translated, interpreted, and even redefined as they move through different actors and settings.

That's why I chose to go into the field—to understand how this process plays out on the ground. The infrastructure project I focus on is a large-scale extractive operation implemented in a geographically sensitive and socially complex region. It stands out as a site where legal norms, ecological stakes, and transnational corporate interests collide. While the project is publicly framed as aligned with due diligence obligations—through environmental assessments, stakeholder dialogues, and risk management plans—its actual impacts tell a different story.

This paradox is exactly what drew me in. It's a clear example of what I call performative compliance: where companies appear to follow the rules but do so in ways that serve their own narratives and priorities. The project offers a revealing case of how transnational corporations increasingly shape the meaning of compliance through managerial instruments and technical expertise. Studying this case ethnographically allows me to capture that tension between what the law says, what companies claim, and what affected communities experience.

Based on your analysis, how does the company justify its compliance with the due diligence? What do you see as the main obstacles to make due diligence work as the law intends?

Compliance is generally justified through a wide array of technical and managerial tools: Environmental and Social Impact Assessments (ESIAs), sustainability audits, grievance mechanisms, and so on. On paper, it looks like everything is covered. But when you take a closer look, what you find is a system built around evidence-based indicators, self-reported policies, metrics, and protocols that say little about actual outcomes.

This is a key problem: due diligence is increasingly reduced to checking boxes, not preventing harm. This logic stems from the earlier era of soft law—think of the UN Guiding Principles on Business and Human Rights—which encouraged companies to "do their best" without setting clear boundaries. Even now, with legally binding texts like the CS3D, companies retain enormous discretion over how they interpret their obligations. And often, they translate legal requirements into managerial routines that prioritize reputational risk over real accountability.

So, the biggest obstacle isn't just weak enforcement—it's that the very definition of compliance has been colonized by corporate logic. When companies become the main interpreters of their legal duties, the spirit of the law gets lost along the way.

Is due diligence just about identifying and managing risks? Or does it actually require that companies avoid infringing on rights and harming the environment in the first place?

That's a crucial distinction. What we're seeing today is a troubling trend: companies are judged by whether they have the right procedures in place, not whether those procedures actually work.

True due diligence should mean more than just having a risk matrix or an internal policy. It should be about the effectiveness of measures taken. Are rights respected? Are ecosystems preserved? Have local communities been protected from harm? Unfortunately, most of the current frameworks don't ask these questions. They focus instead on formalistic indicators—things that are easy to document, but hard to verify or challenge.

A recent OECD report confirmed this: it showed that only a tiny fraction of ESG metrics used to assess compliance actually track real-world impacts. So, a company can look great on paper—and still do serious harm on the ground. That gap between appearance and substance is what I try to expose in my work.

What kind of alternative reading of due diligence do you suggest, to move beyond this stalemate? How can your approach help integrate the regulation more meaningfully into corporate practice?

I think we need to stop seeing due diligence as a fixed list of legal duties and start understanding it as a relational process, shaped by the people, tools, and institutions involved in applying it.

My approach draws on Science and Technology Studies (STS) and Actor-Network Theory (ANT). These fields teach us that law doesn't operate in a vacuum—it's always co-produced, interpreted, and adapted through interactions with other forms of knowledge: scientific expertise, managerial practices, community resistance, and more.

That's why I suggest rethinking due diligence as a regulatory ecology—an environment where law, business, and society meet and negotiate meaning. In this view, local actors and their situated knowledge are not just "stakeholders"—they are co-legislators. Their voices, experiences, and resistance must shape how due diligence is understood and applied.

This approach allows us to move from compliance as performance to compliance as accountability—a living, contested process that's open to transformation from the bottom up.

What new legal interpretations of due diligence would help ensure its effective application?

I advocate for an immanent, grounded interpretation of the law—one that's sensitive to context, conflict, and complexity. Instead of applying the same template everywhere, we need to develop interpretations that reflect the social and ecological realities of each case. That means:

- Taking seriously the knowledge and demands of affected communities.
- Recognizing power asymmetries in how compliance is negotiated.
- Valuing different ways of knowing—scientific, experiential, indigenous—when defining what "harm" or "impact" means.

This doesn't mean abandoning legal rigor. On the contrary, it's about expanding the law's capacity to mediate between conflicting truths, rather than narrowing it down to procedural checklists. If we want due diligence to be more than a legal fiction, we need to bring it back to life—as a practice, not just a rule.

Finally, in your view, what is the transformative potential of due diligence law, especially in your case study?

If used differently, due diligence law could become a powerful tool for redistributing voice and accountability in global value chains. But that requires moving beyond proceduralism and embracing conflict, contestation, and community knowledge.

In my case study, what's striking is that transformation didn't come from the company itself. It came from litigation, activism, and public pressure—from those who refused to let the

company define the terms of compliance alone. This shows that the law's power lies not in its static provisions, but in the ways, it can be reclaimed from below.

For me, the goal isn't just better enforcement—it's a rethinking of what legal responsibility means. Not as a defensive shield for corporations, but as a relational, open-ended, and genuinely transformative commitment to people and the planet.

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Due diligence tackles the problem of the deregulation of global value chains and attempts to resolve it by imposing a duty of care on parent companies, making them accountable for the environmental, social, and human harms that may arise from their transnational operations. For this ambition—regulating transnational corporate practices—to succeed, it must first acknowledge a twofold failure within transnational and international legal orders: First, the persistent denial of the diminished normative authority of states in responding to environmental and human rights violations; Second, the illusion that soft law mechanisms alone can effectively regulate business activity.

Starting from this observation, Luca Tenreira's analysis offers a pathway out of the impasse of a globalized, deregulated, and often ungovernable economic system. His research proposes a reconfiguration of legal thinking, whereby due diligence transitions from a soft law norm to a binding legal obligation—as recent legislative efforts, such as the French Duty of Vigilance Law and the EU Corporate Sustainability Due Diligence Directive, are beginning to institutionalize.

However, despite its legal codification, the application of due diligence still retains many features of soft law. It is often conceptualized, structured, and operationalized by corporations themselves, who adapt the framework according to their own risk priorities and technical vocabulary. In doing so, the duty of care is diverted from its original purpose: protecting human rights and the environment from the adverse consequences of transnational corporate activities. When the interpretation and scope of due diligence are left entirely to corporate actors, what emerges is a self-referential compliance model, shaped by corporate logics, and structurally incapable of ensuring full legal accountability.

Luca Tenreira's work urges a theoretical and practical rethinking of due diligence to overcome these limitations. His transdisciplinary approach—drawing from anthropology, ethnography, sociology of business, and legal theory—calls for a decolonial reorientation of legal reasoning. This involves not only judges and legislators but also those most affected by deregulation. It is from the field—from the lived experiences of impacted communities—that a more grounded, responsive, and legitimate interpretation of law must be shaped. Bottom-up

legal design offers a more embedded and durable form of regulation than norms imposed solely from above.

In this light, the notion of "EU Law Consciousness" emerges as a vital conceptual lens. As theorized by Loïc Azoulai, it addresses what he terms the "reality deficit" in EU law—the disjunction between European legal norms and the lived experiences of those subject to them. EU Law Consciousness aims to reconnect legal frameworks with the social and political worlds they intend to govern. It prompts us to listen to the contradictions, contestations, and forms of resistance that emerge around legal norms—not as anomalies, but as generative forces in the legal field.

Through this perspective, we begin to understand the critical role of NGOs, community members, and frontline activists in shaping and enforcing the law. When populations directly affected by environmental destruction or rights violations speak out, they perform a vital diagnostic function: testing the capacity of the law to meet its promises. Their testimonies challenge the law to evolve—not in abstraction, but in material proximity to harm.

These dynamics are especially visible in the growing number of legal actions challenging large-scale infrastructure projects with transboundary environmental and social consequences. Such cases reveal the structural limitations of due diligence as currently applied—particularly when it is used by companies to simulate compliance through elaborate impact assessments and managerial protocols, while real harms persist.

Even though due diligence has begun to appear in courtroom arguments—as in the landmark *Dooh v. Shell* case in the Netherlands—its legal effectiveness remains ambivalent. A company can easily appear compliant by producing a formal diligence plan yet still fail to prevent harm. This is why the true strength of due diligence lies in its preventative power: its ability to act *before* harm occurs. But too often, judges are asked to evaluate whether diligence plans were coherent only *after* the damage has been done. This reactive logic undermines the very aim of the duty of care.

Legal scholarship like Luca Tenreira's could play a decisive role in shifting this paradigm. By decentralizing and decolonizing how due diligence is interpreted and applied—by scrutinizing indicators, measures, and compliance plans from a grounded and critical perspective—his work outlines a transformative pathway. It is through such a shift that due diligence might be reimagined: not merely as a corporate checklist, but as a legally robust, socially responsive, and ecologically embedded tool for transnational justice.