

COMPANIES AND THE SUSTAINABILITY DUE DILIGENCE DIRECTIVE AND ITS IMPACT ON CREATIVE CITIES A regulatory Contribution

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ABSTRACT

The phenomenon of cities adapting to become healthier and more liveable places has forced the companies that are part of them to become sustainable places, ready to enable their employees to contribute to a better city.

Using a qualitative methodology based on documentary analysis, this research analyses existing regulations on sustainability due diligence and attempts to assess the degree of commitment of today's companies to becoming an active part of creative and prosperous cities.

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1. Introduction

The advent of the notion of Creative Cities (henceforth referred to as creative cities) has given rise, due to its originality and momentum, to a plethora of exogenous and interconnected phenomena, including the adaptation of the concept of sustainable enterprise and the evaluation of current legislative requirements driven by the rigorous European Directive on Due Diligence in matters of sustainability. The overarching objective of this research is to influence the manner in which individuals work and, more significantly, the way in which they interact with their environment. The focal point of this research is human beings, given their pivotal role in shaping creative cities. The conceptual framework underpinning this study is predicated on the human will to organise cities in a manner that diverges from their historical development. This concept is further informed by the actions of contemporary corporate leaders who, if they fail to adhere to legal obligations, could incur direct or indirect liability.

Consequently, we are preparing to analyse the hypothetical and as yet unknown influence of creative cities on the activity of companies and their workers. In addition, we will consider how existing legislation could be adapted to facilitate their correct implementation and development in the market. It is imperative to recognise that this is a nascent field, and as such, we must be cognizant of the challenges inherent in navigating an unknown landscape, where prevailing trends may dictate our approach, potentially overshadowing the need for academic rigor.

Preconceptions regarding heritage models persist, resisting the adoption of more innovative approaches. However, it is imperative that both perspectives – the traditional and the progressive – are presented objectively and meticulously planned. A period of coexistence between these two interpretations will be necessary. As previously outlined in the research group's extant work, it is imperative to incorporate an ethical dimension into the design of creative cities and the transformation of companies into sustainable entities. Consequently, the legal framework governing this emergent phenomenon must be given due consideration. The present study is concerned with the aforementioned ethical challenges, which have the potential to contribute to the enhancement of societal well-being, with the objective of safeguarding the rights of individuals affected by mental exhaustion and who may experience unease as a result (Paredes et al., 2021; Seligmann-Silva, 2014).

It is evident that workers and business organisations are exposed to the concept of creative cities, and as such, their level of well-being must be preserved, if not enhanced, through measures such as teleworking, the electrification of vehicles, and the adoption of novel energy consumption methods in companies. In this work, we seek to emphasise the issue of people's privacy with the intention of protecting it as much as possible. It is this private aspect that concerns us in our efforts to protect it. The present research endeavour involves the study and analysis of the potential influence of creative cities on the lives of individuals, both in their personal and professional spheres. It seeks to ascertain whether these cities could potentially transform individuals into entities devoid of decision-making capacity, subject to a trend that, while inevitable, should not compromise individual rights.

Conversely, it is evident that the creative cities model is evolving at a pace that the legal system is unable to adequately accommodate. However, it is imperative to acknowledge the legislator's fundamental responsibility to make the requisite decisions and implement measures to ensure the effective judicial protection of citizens' fundamental rights. This assertion is further substantiated by the following statement from another previous work by this research group: 'The legislative power is entrusted with the task of legislating adequately by adopting the necessary and appropriate measures that allow us an effective protection of our fundamental rights that depend on our Magna Carta specifically, not only through the implementing legislation that depends on article 18. 1 In addition to this, case law plays a fundamental role, carrying out an incessant interpretative effort of these legal texts precisely because of the dynamism of the networks, trying to respond to the novel problems that arise.'

It is acknowledged that there are legal limitations in place due to the challenge of adapting to the rapid evolution of the concept of creative cities. This, in turn, poses a risk of inadequate

protection for workers and business organisations (Trujillo Cabrera, 2024). In addition to these challenges, there is also the undeniable legislative requirement that comes to us from Europe, as Spain is a member state, and the difficulties faced by our Spanish legislators in transposing the Due Diligence Directive on Sustainability into our reality, when our Spanish reality has its own idiosyncrasies. Nevertheless, this should not hinder the present research from setting itself the ambitious but attainable objective of providing solutions to Spanish society, which is dynamic, even dizzying, but deserves rights and the maintenance of the current levels of well-being to which we are all committed.

2. Design and method

The changes in the environment and understanding of heritage are of such magnitude and so rapid, and the normative evolution that awaits us following European requirements is such that, in the opinion of these researchers, it can be no other than documentary analysis and therefore qualitative analysis that concerns us. The proposals made will come from the analysis of the legal system in terms of urban planning. The objective of this research is to assess the near future of our legal system in relation to the strict compliance of companies and their actions in the context of creative cities following the enactment of the recent Due Diligence Directive on sustainability, approved on 24th April 2024. The contribution is structured as follows:

- a) An analysis of the concept of Creative Cities in relation to the activities that companies are obliged to carry out in terms of their direct and indirect interaction at a comprehensive level in order to contribute to sustainability within the framework of expectations.
- b) A study This will include an analysis of how the obligations of companies have changed following recently approved European legislation on the subject, and its influence on the way companies relate to society and, therefore, on the existence of creative cities to the extent that they wish to form an active part of them, insofar as they have become a new environment for workers and, therefore, citizens.

This is a piece of research that analyses a new reality in cities and their relationship with companies. The research method employed is the qualitative method of documentary analysis, with a particular focus on existing and forthcoming legislation, in relation to the human relationships that are affected. The inherent challenges of this research are evident, as they are present in any field of research in the social sciences, particularly as it becomes more and more immersed in novel areas such as the one under investigation. It is evident that our analysis is influenced by a social experience, at least in its incipient stage, and as such, it is suitable for expeditious analysis.

The question of the capacity of qualitative research and documentary analysis to address issues concerning human relations is a long-standing one, and in this case, it is understood to be applicable insofar as creative cities and the companies within them will clearly influence the human relations of the people who live in them. It appears that, once again, quantification is deemed essential in academic circles, particularly for researchers (Galeano, 2018). Consequently, excluding areas of significant importance, such as the study of societal changes resulting from evolution, from the scope of research could potentially lead to a positive outcome, despite the absence of irrefutable evidence. Indeed, it is precisely this evolution that pertains to the concept of creative cities and the legislation that must be established for the purpose of fostering better coexistence and development. The failure to consider these factors could result in a partial representation of scientific knowledge, as certain outcomes and proposals may not be amenable to quantification. In light of the aforementioned considerations, it becomes imperative to adapt the scope of study to align with the prevailing social context. The present study will adopt a hermeneutic approach, eschewing quantification in favour of a more interpretative stance. Rather than seeking to measure everything, the focus will be on presenting circumstances and interpreting them in order to formulate proposals that will contribute to the progress of society towards a more equitable and inclusive future.

The proposed qualitative technique will involve interpreting the facts and studying existing

legislation to propose improvements and advances that are undoubtedly necessary. The behaviour of companies and leaders of cities that self-identify as creative cities, in which their headquarters are located, will also be studied. We acknowledge the inherent subjectivity of this endeavour and approach it with an open mind, recognising its potential to foster collaboration and analysis. The study's primary objective is to unravel the intricate dynamics inherent in the concept of creative cities, perceiving it as a disruptive and innovative force. (Galeano, 2018).

The documentary analysis to which we refer is divided into three different areas. Firstly, it focuses on the concept of creative cities. Secondly, it conceptualises the term diligent and sustainable enterprise. And thirdly and finally, the most substantial area of focus is The European advances enacted to oblige companies – as agents of change in a society that actively promotes the existence of creative cities – to show due diligence in their work in terms of sustainability with respect precisely to those social demands that are promoted today by creative cities. The documentary observation of the aforementioned three areas is the subject of our concern. While it is logical, it should be noted that the documentary analysis under discussion pertains to published writings and not to other forms of expression such as icons or sounds. Image is an important area in creative cities and the companies that inhabit them, but it goes beyond the present research work and the objectives described.

3. Fieldwork and data analysis

As stated, the present research study is predicated on a tripartite framework comprising: (1) a documentary analysis of extant publications pertaining to the concept of creative cities; (2) a review of the notion of sustainable business; and (3) a legal study of prevailing legislation, with a view to proposing legislative improvements in this regard. The three constituent parts of the fieldwork presented below are therefore as follows.

3.1. Creative cities concept

The notion of the creative city emerged in the early years of this century as a consequence of the so-called creative economy. Since then, there have been numerous studies on the subject, both by advocates and by many other detractors (Herrera-Medina et al., 2013). As previously stated, the human component, an unavoidable element in any social sciences study, is also present in this research article. The concept of creative cities originates from human creativity, insofar as it is written that this is also a source of economic wealth and a driving force for urban transformations that aim to end social inequality in cities (Scott, 2007).

The role of cities as places where culture, social inclusion and economic development are present on a daily basis is undeniable. Catalysts are required to nurture the necessary creativity that will drive cities forward. An urban environment that considers itself sustainable must provide its citizens with the facilities necessary for their individual development and that of society as a whole (Olmedo-Barchello et al., 2020). A more detailed examination of this concept reveals that creative activities encompass a wide range of disciplines, including crafts, various forms of art, cinema, gastronomy, literature, and music. The United Nations Educational, Scientific and Cultural Organization (UNESCO) asserts that these activities should serve as the primary focus of urban creative and developmental initiatives (Calderero et al., 2006).

Since the term's inception, researchers and analysts have converged on the pivotal relationship between the economy and creativity. This relationship is deemed essential for achieving the optimal and balanced development of cities, transcending both business organisations and the individuals within them. Some authors, seemingly disregarded, posit the elimination of technological bias in urban evolution as a prerequisite for creativity (Méndez et al., 2012). However, a cursory examination reveals that technology is increasingly pervasive in our daily lives and appears to be a permanent feature of our existence.

Conversely, others emphasise the role of creative industries as a fundamental pillar in the creation of employment and well-being for contemporary society (Olmedo-Barchello et al., 2020). This convergence of business and creative culture within the creative industries is pivotal in

ensuring the survival of both functions (Olmedo-Barchello, et al., 2020).

A further factor to complement the analysis of the concept of creative cities in the present research study is their spatial distribution. It is evident that the transformation of the means of work, known as teleworking, has greatly influenced the distribution of space in cities, given that it is no longer necessary (Martin Buitrago, 2020). Consequently, the conventional trend of physical concentration is undergoing a transformation (Felton et al., 2010). In the contemporary context, this concentration manifests in a manner reminiscent of the guilds of the Middle Ages. In certain nations, the potential creative index of cities has been quantified in terms of their population and geographical location (Favaretto and Da Silva, 2004).

In Spain, a synthetic indicator, termed the index of potential of cultural and creative industries, has been developed. This study focuses on smaller cities, which, despite their smaller size, are not isolated from the evolutionary process of creativity in cities. The study identified no less than fifty-six predictive indicators of creativity and possibilities for balanced development (Castro-Higueras, De Aguilera Moyano, 2016).

The concept of creative cities, albeit briefly discussed, is inherently linked to the inexhaustible source of creativity embodied by cities and their inhabitants. One consequence of population density is the accumulation of talent, which, when shared, significantly enriches cities. This phenomenon is also a critical factor in the retention of human capital, that is, individuals who are both eager to work and to accumulate wealth in a conducive environment (Iglesias Mendizábal, 2023). The present study posits that the time is opportune for a shift in focus to the other two pillars of the tripod upon which it is founded. These are the imperative transformation of companies into organisations that are subject to the requirement of due diligence in terms of sustainability, and the adaptation of European regulations to the Spanish legal system.

3.2. Sustainability-diligent companies

The concept of competency-based management in companies entails the consideration of both an individual's aptitude and their attitude. Talent is sought and retained not only for the actions an individual undertakes, but also for the manner in which these actions are executed. A review of the extant literature indicates that companies that demonstrate due diligence in terms of sustainability are often more effective from an economic perspective and better positioned to retain the talent they welcome. The provision of a superior and more varied quality of life, in addition to greater opportunities for creativity, has been demonstrated to engender a more positive perception of these organisations among their stakeholders (Roffé, 2024).

However, it should be noted that some observers have expressed concerns that certain companies may merely pay lip service to sustainability, despite their claims of genuine commitment. Nonetheless, it is becoming increasingly challenging to disregard this issue, as it appears to be rapidly losing credibility (Whittingham et al., 2023). In the contemporary business landscape, there is a growing cognisance among organisations of the imperative and the desirability of contributing to the establishment of creative cities, thereby facilitating the professional growth of their employees beyond the confines of the workplace. Consequently, the sponsorship of cultural and creative activities has become an integral component of their operational framework.

The Sustainable Development Goals (SDGs), which are to be achieved by 2030 according to the agreement of the world's top leaders, include the protection of workers' rights and the promotion of collateral activities that contribute to personal growth in a comprehensive way. However, it is a fact of life that there are organisations which, in the misguided pursuit of profit optimisation, neglect their employees, causing them unnecessary discomfort and making them counterproductive in every sense. Achieving satisfaction in professional activities and personal life should be a fundamental objective, as it is widely acknowledged that it can contribute to enhanced and more sustainable financial growth (Gismera et al., 2019).

The European Survey on Working Conditions in the European Union highlights the necessity to continue advancing in the applicable legislation, the third point of this research article, and to

advance in the application of the concept of creative cities. This survey, conducted throughout the European Union, involves thousands of workers who are asked about their working conditions, the length of the working day, relationships between collaborators in organisations, and healthy working habits. The survey's findings contribute to the existing body of knowledge on the subject, as almost half of the respondents advocate for enhanced balance between economic and personal benefits. (Puig-Barrachina, et. al., 2014). Consequently, there is an imperative to address the legislation affecting companies that are obligated to adhere to due diligence in terms of sustainability in any action relating to creative cities and to propose the necessary improvements.

3.3. Legall Analysis; Companies with sustainability due diligence in the reality of creative cities

The recent Directive of 24 April 2024 on Sustainability Due Diligence represents a regulatory approach whose primary objective is to encourage sustainable and responsible business engagement among companies. Consequently, Europe is once again establishing a significant milestone on the road to sustainability, with the inevitable repercussions for the creative cities' scenario.

This commitment, once enacted, will serve to reinforce Europe's position as a global leader in the areas of corporate sustainability and human rights.

The regulation is unambiguous in its intent, which is to ensure that companies and organisations evaluate and manage the social and environmental impacts of all their activities. In essence, the regulation fosters corporate responsibility, mandating that companies must identify, prevent, mitigate, eliminate and repair adverse effects related to human rights and the environment in their operations and supply chains, as well as in the activities of their subsidiaries and value chains.

The fundamental objective of this regulatory framework is to promote more sustainable and ethical practices, ensuring that companies operating within creative cities are not solely focused on their own economic gain, but also on their societal and planetary impact.

Furthermore, the Directive obliges large companies to identify, prevent and design measures with regard to the negative effects of their activities on the environment and on human rights, and also includes provisions to support all organisations, including SMEs, that may be indirectly affected.

The Due Diligence policy will fulfil the following objectives by focusing on the obligations of companies in the following obligations: they must integrate due diligence into their strategies, identify current or potential negative effects on human rights and the environment, prevent or mitigate possible adverse effects, adopt the necessary measures to end or minimise the negative effects caused, ensure and The policy will also include a complaints procedure for victims, trade unions and civil organisations, as well as a periodic assessment of the effectiveness of the measures established. The policy will be updated as appropriate, in accordance with the assessment results. Furthermore, the policy will be published on the company website on an annual basis, accompanied by a report on the due diligence process, the actual and potential negative effects, and the actions taken.

It is imperative to emphasise that the Directive places a significant responsibility on Member States, particularly in the context of companies operating within creative cities.

The Directive underscores the necessity for Member States to ensure that companies adhere to the principles of good conduct. In instances where prevention is not feasible, or has not been immediately possible, or has failed, Member States must take measures to ensure that companies take appropriate action to mitigate potential adverse effects on human rights and the environment.

In this sense, companies involved in the creative cities scenario will be required to adopt appropriate measures, including the following where relevant:

1. In circumstances where the nature or complexity of the necessary prevention measures so dictate, companies should develop and implement a preventive action plan, with a reasonable and clearly defined timeframe for the implementation of appropriate measures and actions

and qualitative and quantitative indicators to measure improvements.

The prevention action plan will be applicable and will be precisely adapted to the context of the companies' operations and the value chain.

2. Companies are advised to consider establishing, in collaboration with partners with whom they have a commercial relationship, contractual provisions that guarantee their compliance with the company's code of conduct and, where appropriate, the preventive action plan.

Partners with whom the company has a commercial relationship could be requested to establish the corresponding reasonable, non-discriminatory and fair contractual provisions with their own partners, insofar as their activities form part of the companies' value chain.

3. The company should then make the necessary changes, improvements, deletions or investments in its own activities, for example, in management, production or other operational processes, facilities, products and product traceability, projects, services and capacities.

The company should adapt business models and strategies, including purchasing practices, including those that contribute to living wages and incomes for its suppliers, in order to avoid potential adverse impacts, and develop and use purchasing policies that do not encourage potential adverse impacts on human rights or the environment.

4. Financial and administrative support should be provided to SMEs with which the enterprise has a business relationship, and this support should be targeted and proportionate.

A business relationship should be entered into on the company's expectations regarding the prevention and mitigation of potential adverse impacts, in particular by providing or allowing access to capacity building, guidance, administrative and financial support, such as loans or funding. The resources, knowledge and limitations of the business partner should be taken into account.

5. Collaborations with other entities should be pursued with the aim of increasing the company's capacity to eliminate adverse effects, especially when no other action is adequate or effective.

The contractual provisions shall be accompanied by measures to facilitate the execution of due diligence. When establishing provisions, including contractual provisions, or entering into a contract with a business relationship, the clauses used shall be fair, reasonable and non-discriminatory.

Furthermore, when compliance verification measures are applied in relation to SMEs, the company will bear the cost of verification by independent third parties. This verification is for information purposes only and does not constitute legal advice of any kind.

In instances where the potential adverse impacts that an enterprise has caused or to which it has contributed cannot be prevented or adequately mitigated, and where there is no reasonable prospect of change, the enterprise will be required to refrain from entering into new relationships or expanding existing ones with the partner in relation to whose value chain or in whose value chain such impacts have arisen and, where permitted by the legislation governing their relationships will take the following measures, as a last resort, in line with responsible disengagement:

- The temporary suspension of commercial relations with the partner in question while prevention and mitigation measures are being applied.
- The termination of the commercial relationship with respect to the activities in question because of the seriousness of the potential adverse effects or if the conditions for temporary suspension are not met.

Conversely, as part of the transparency obligations, provisions are made for the supervisory authorities to publish and regularly update the list of companies subject to the directive under their jurisdiction, with links to access, where appropriate, the companies' due diligence declarations.

Finally, to conclude this legal analysis, it is essential to emphasise that the law would not achieve its intended objective of enforcing the regulations if it were not truly loaded with its necessary ingredient, which is coercion. In order to ensure faithful compliance with the Due Diligence Directive, sanctions of a financial, criminal and civil liability nature are imposed.

However, within the criteria for the imposition of sanctions, the company's efforts to apply coercive measures will be taken into account, such as: investments made, collaboration with other entities to address adverse effects, the severity and duration of the adverse effects that have occurred, sanctions imposed in other Member States, etc.

In any case, as a regulatory close, the Directive states that the maximum limit of the financial sanctions shall not be less than 5% of the company's net global turnover.

4. Results and conclusions

We are facing a new paradigm that has come to stay, Society is proclaiming the ever more incessant construction of Creative Cities that are the scenario of a greater well-being of citizens where human rights are respected, culture, social inclusion and economic development are present on a daily basis.

Creative cities, which has been around since the beginning of this century, comes hand in hand with the Creative Economy, under which creative industries are seen as a fundamental pillar in the creation of employment and welfare for today's society.

There is no doubt that there is a need to make companies and creative culture converge in the very activity to which they are dedicated and put it at the service of the other functions they need to survive, and it is precisely from this premise that the European legislator has activated mechanisms of obligatory compliance for companies through the recent approval of the 24 April 2024 of the Sustainability Due Diligence Directive.

The Directive focuses on the fact that it is precisely companies that are the real drivers of change, and therefore they should be responsible for the duty of care in a broad preventive dimension, assessing and managing the social and environmental impacts of all their activities.

Ultimately, corporate responsibility is promoted by requiring companies to identify, prevent, mitigate, eliminate and remedy adverse human rights and environmental impacts in their operations and supply chains of their own activities, those of their subsidiaries or those of their value chains.

States undertake to ensure that companies take appropriate measures to prevent or, where prevention is not possible or not immediately possible or has failed, to sufficiently mitigate potential adverse human rights and environmental impacts that have been or should have been.

To close our conclusions, it should be noted that the European Directive designs a complex regime for the determination of sanctions in cases of corporate non-compliance, considering the company's efforts to implement corrective measures, such as: investments made, collaboration with other entities to address the adverse effects, and the severity and duration adverse effects that have occurred.

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