

2024 KLRI E.S.G. Global Symposium

“ *Global Perspectives on the Institutionalization
and Implementation of EU CS 3D:
Legal Framework and Future Directions* ”

September 20th (Fri), 2024
15:00 ~ 19:00(KST) / 08:00 ~ 12:00(CET)

2024 KLRI E.S.G. Global Symposium

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Global Perspectives on the Institutionalization and Implementation of EU CS 3D:
Legal Framework and Future Directions



Global Perspectives on the Institutionalization and Implementation of EU CS 3D: Legal Framework and Future Directions

Co-Moderators : *Dr. Yukyong Jung Yun Choe*, Senior Research Fellow of KLRI (ROK)
Prof. Mauro Zamboni, Professor of Stockholm University (Sweden)

PART 1. Korean Perspectives

Opening & Welcoming Remarks

Dr. Yukyong Jung Yun Choe, Senior Research Fellow, KLRI (ROK)

Keynote Speech

EU Sustainability – Should It Matter to Asia? EU ESG (and DDD) in Context

Mr. Walter VAN HATTUM, Minister Counsellor, Head of Trade and Economic - EU Delegation to the Republic of Korea (Netherlands)

15:00~16:00
(60')

Presentations

An mHREDD Initiative from Asia: Challenges and Discontents

Dr. Pilkyu Hwang, Executive Director, Transnational Human Rights Institute, GongGam Human Rights Law Foundation (ROK)

Reactive Policies Are Not Enough: Examining Korea's BHR Policies and Corporate Practices;
The Case for mHREDD Legislation

Ms. Yujung Shin, Partner/Attorney at Law, Jihyang Law (ROK)

Challenges and Practical Difficulties Faced by Korean Companies

Mr. Changwan Han, Attorney at Law, BAE, KIM & LEE LLC (ROK)

PART 2. European Perspectives

Presentations

Safeguarding Biodiversity: Unveiling Corporate Governance's Silent Challenge

Prof. Dr. Marco Corradi, Professor, ESSEC Business School (France) & *Prof. Dr. Silvia Grandi*, Adjunct Professor, University of Bologna (Italy)

Transforming the CSDDD into National Law. (How) Can/Must the German Lawmaker Modify the Scope of the LkSG?

Prof. Dr. Anne-Christin Mittwoch, Professor, Martin Luther University Halle Wittenberg (Germany)

16:00~18:00
(120')

Break Time (20')

EU Supply Chain Due Diligence - Questions on the Practical Implementation from a German Point of View

Dr. Michael Burian & Dr. Marc Ruttloff, Partners, Gleiss Lutz (Germany)

Italian Corporate Law's Unreadiness to Implement EU CS3D (Despite Its Regulatory Lightness)

Prof. Carlo Amatucci, Professor, University of Naples Federico II (Italy)

PART 3. International Organization's + Asian Perspectives

Presentations

Key Messages on Responsible Business in International Instruments:

What Can the International Frameworks Provide in the Context of Emerging Supply Chain Regulations?

Ms. Kate Wilson, Project Manager-Asia, Center for Responsible Business Conduct (OECD)

ILO's Approach to Responsible Business Conduct and Human Rights Due Diligence

Ms. Emily Sims, Senior Specialist and Manager, ILO Helpdesk for Business (ILO)

18:00~19:00
(60')

Discussions

Prof. Dr. Florian Möslein, Professor, Philipps-Universität Marburg (Germany)

Dr. Hwa Ryung LEE, Director, Korea Fair Trade Commission (ROK)

Prof. Björn Lundqvist, Professor, Stockholm University (Sweden)

Dr. June Namgoong, Senior Research Fellow, Korea Labor Institute (ROK)

Ms. Hyunyoung Jee, Deputy Director, Attorney at Law, Institute of Green Transformation (ROK)

Ms. Youngah Park, Attorney at Law, GongGam Human Rights Law Foundation (ROK)

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Co-Moderators



Dr. Yukyong Jung Yun Choe
Senior Research Fellow of KLRI (ROK)

Yukyong Jung Yun Choe is a Senior Research Fellow of the Korea Legislation Research Institute (KLRI). She received her LL.M. & JSD degrees from the UC Berkeley Law. Before she went to Berkeley, she got her Master in International Law and was a Ph.D. candidate at Seoul National University after getting her B.A. in Law from Ewha Womans University.

Yukyong has been leading the E.S.G. Legislative Team and the Research Group on E.S.G. under the National Research Council (NRC) since 2019 and her deepest interest encompasses judicial politics, legal reform and legal professional training system while her most recent works are more focused on Sustainability, E.S.G. Regulation & Artificial Intelligence Regulation.

Her most recent publication is "E.S.G. Legislative Basic Study (III): How to Improve Domestic Legislation to Ensure Alignment with Global Sustainability Disclosure (2023)" and "Research on AI Regulation for Enhancing Competitiveness in the Age of Artificial Intelligence (2024)." She is currently involved in diverse International projects including "Owning the Metrics: The Application of SDGs to Mondragon", "Korean Nature Futures", "Future Earth Korea" and "Democratic governance and non-majoritarian institutions"



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Prof. Mauro Zamboni
University of Stockholm (Sweden)

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PART 1. Korean Perspectives

Keynote Speech

EU Sustainability - Should It Matter to Asia? EU ESG (and DDD) in Context



Mr. Walter VAN HATTUM

Minister Counsellor, Head of Trade and
Economic - EU Delegation to the Republic of Korea (Netherlands)

Following my studies in political economy, development and business administration, I worked on trade, industry and development policies, among others for the International Labour Organisation in Nigeria; as a career diplomat for the Dutch Foreign Service; Oxfam Novib; and the European Union.

For the EU, I helped establish a joint undertaking in Barcelona for nuclear fusion development. I worked on humanitarian aid and health policies and more recently on EU trade policy.

I was posted in Thailand, Indonesia, the Philippines and Hong Kong where I served as head of the trade section of the EU Delegation, engaging government, business and stakeholders on free trade agreements, sustainability and market access.

In August 2024, I was appointed head of the trade and economic section of the EU Delegation to the Republic of Korea, also covering digital, science & technology; and partnership.



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PART 1. Korean Perspectives

An mHREDD Initiative from Asia: Challenges and Discontents



Dr. Philkyu Hwang

GongGam Human Rights Law Foundation (ROK)

Philkyu Hwang is Executive Director of the Transnational Human Rights Institute at Gonggam Human Rights Law Foundation and a former adjunct professor at Seoul National University Law School and Ewha Law School. He is the vice-chair of the LAWASIA Human Rights Committee, the vice-chair of the Human Rights Law Society of South Korea, the chair of the Committee on Disaster and Human Rights of the Korean Bar Association and has served as an advisory board member of the Fortify Rights since 2015 and an editorial team member of the Business and Human Rights Journal since 2019.

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PART 1. Korean Perspectives

Reactive Policies Are not Enough: Examining Korea's BHR Policies and Corporate Practices: The Case for mHREDD Legislation



Ms. Yujung Shin

Partner Attorney at Law, Jihyang Law (ROK)

Yujung Shin is a legal expert specializing in corporate responsibility and human rights. She previously served in the Korean government, focusing on the domestic implementation of international human rights laws, including the UNGPs, and contributing to the establishment of the National Action Plan for Human Rights. As a lawyer, her practice focuses on advising corporations and public institutions on ESG strategies. She also participated in drafting and advocating for the mHREDD bill proposed in Korea in 2023.



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PART 1. Korean Perspectives

Challenges and Practical Difficulties Faced by Korean Companies



Mr. Changwan Han
Attorney at Law, BAE, KIM & LEE LLC (ROK)

Changwan Han is a partner at Bae, Kim & Lee LLC, one of the largest law firms in Korea. He provides a range of legal services in the fields of international regulations, including ESG, trade, and international disputes. Before joining the firm in 2023, he served as the directors of the International Legal Affairs Division and the International Dispute Settlement Division at the Ministry of Justice in Korea. He was admitted to the Illinois Bar in 2017 and the Korean Bar in 2006. He also holds a Ph.D. in International Law.

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PART 2. European Perspectives

Safeguarding Biodiversity: Unveiling Corporate Governance's Silent Challenge



Prof. Dr. Marco Corradi
Professor, ESSEC Business School
(France)

Marco Corradi is an Assistant Professor at ESSEC Business School in Paris and Singapore. He holds an MJur, an MPhil in Law, and a DPhil (PhD) in European and Comparative Corporate Law from the University of Oxford. Marco has extensive experience in policy research and consultancy across Europe and Asia, focusing on trade, competition, and corporate law. He is qualified as an attorney, mediator, and international commercial arbitrator. He has published articles in English, French, and Italian, and books with Hart (Oxford) and Cambridge University Press.



Prof. Dr. Silvia Grandi
Adjunct Professor, University of
Bologna (Italy)

Silvia Grandi, PhD in geoeconomic sciences and National scientific qualification as a Full Professor. She is Adj. Prof. at the University of Bologna, board member of the Global Research Network on financial geography and board member of the J. of Finance & Space. With over 20 years of experience in sustainable development, she serves as tenure director of the Public Administration where she worked in the Italian Green Bond working group, the Committee for Sustainable Finance under the Ministry of Economy and Finance, and in EU regulatory negotiations.

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PART 2. European Perspectives

Transforming the CSDDD into National Law. (How) Can/Must the German Lawmaker Modify the Scope of the LkSG



Prof. Dr. Anne-Christin Mittwoch

Professor, Martin Luther University Halle Wittenberg (Germany)

Anne-Christin Mittwoch holds the chair of Private Law, European and International Business Law and is the Executive Director of the Institute of Economic Law at the faculty of Law, Economics and Business at Martin Luther University Halle-Wittenberg. She is also founder and Director of the Research Institute of Sustainable Economic Law (RISE) at the same University and author of the monograph 'Nachhaltigkeit und Unternehmensrecht' ('Sustainability and Company Law'), that has been published in 2022.



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Transforming the CSDDD into national law: (How) can/must the German Lawmaker modify the scope of the LkSG?

Prof. Dr. Anne-Christin Mittwoch

Lehrstuhl für Bürgerliches Recht, Europäisches und Internationales Wirtschaftsrecht



Schafft Wissen. Seit 1502.

MARTIN-LUTHER-UNIVERSITÄT
HALLE-WITTENBERG

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of the European Union

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L series

2024/1760

5.7.2024

DIRECTIVE (EU) 2024/1760 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 June 2024

on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859

Aim of this Directive: foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains

Instruments: companies in scope must identify and address adverse human rights and environmental impacts of their actions inside and outside Europe – in their own operations and in their chain of activities.

Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021

The Bundestag has passed the following Act:

Lieferkettensorgfaltspflichtengesetz = LkSG

Bundesgesetzblatt
Herabgegeben vom Bundesministerium der Justiz
Online-Archiv 1949 - 2022

Bundesgesetzblatt Jahrgang 2021 Teil I Nr. 46, ausgegeben zu Bonn am 22. Juli 2021 **2959**

**Gesetz
über die unternehmerischen Sorgfaltspflichten in Lieferketten**

Vom 16. Juli 2021

English version available at:
https://www.bafa.de/DE/Lieferketten/Multilinguales_Angebot/multilinguales_angebot_node.html

Fact Sheets also in French and Spanish:
https://www.bafa.de/DE/Lieferketten/Ueberblick/ueberblick_node.html

Scope of the German LkSG, sec. 1 LkSG

From 1 January 2023	From 1 January 2024
> 3000 employees	> 1000 employees
Central admin, principal base of business, admin headquarters or statutory seat in Germany or	Central admin, principal base of business, admin headquarters or statutory seat in Germany or
Domestic branch office in Germany	Domestic branch office in Germany

no criteria:

- annual turnover
- certain legal forms

Consequence:

- LkSG includes more companies than CSDDD

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Scope of the CSDDD, Art. 2, 37 CSDDD

3 years from entry into force	4 years from entry into force	5 years from entry into force
> 5000 employees	> 3000 employees	> 1000 employees
> 1,5 billion net turnover	> 900 million net turnover	> 450 million net turnover

Art. 3 Nr. 1 a (i): Company = legal forms listed in Annex 1 Transparency Directive (AG, KGaG, GmbH, oHG, KG)

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2 Questions for the German legislator

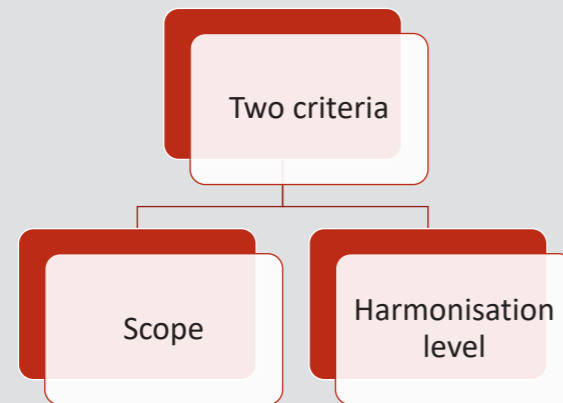
1. Must Germany adopt the thresholds of the CSDDD (employee numbers, turnover rates, specific legal forms) or can sec. 1 LkSG be maintained as it is?
2. Does Art. 1 para. 2 CSDDD prevent the German lawmaker from aligning the LkSG with the CSDDD – must sec. 1 LkSG be maintained as it is?

Question 1: Can § 1 LkSG be maintained as it is?

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How much flexibility do national legislators have when implementing the CSDDD?

- Outside of the scope, national legislators are sovereign
- No harmonisation effect
- Primary law sets the frame



- Full harmonisation: 1:1 transformation is needed
- Minimum harmonisation: Stricter national rules are possible
- Art. 4 CSDDD: Art. 2, 37 = Minimum harmonisation

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Answer to Question 1:

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- I. Must Germany adopt the thresholds of the CSDDD (employee numbers, turnover rates, specific legal forms) or can sec. 1 LkSG be maintained as it is?

→ The German legislator can maintain sec. 1 LkSG as it is. It does not need to be aligned with Art. 2, 37 CSDDD due to minimum harmonization of these provisions (Art. 4 para. 2 CSDDD)

Mixed harmonisation level of the CSDDD:

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Article 4 CSDDD
Level of harmonisation

1. Without prejudice to Article 1(2) and (3), Member States shall not introduce, in their national law, provisions within the field covered by this Directive laying down human rights and environmental due diligence obligations diverging from those laid down in Article 8(1) and (2), Article 10(1) and Article 11(1).
2. Notwithstanding paragraph 1, this Directive shall not preclude Member States from introducing, in their national law, more stringent provisions diverging from those laid down in provisions other than Article 8(1) and (2), Article 10(1) and Article 11(1), or provisions that are more specific in terms of the objective or the field covered, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate.

Full harmonisation

Minimum harmonisation

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Question 2: must sec. 1 LkSG be maintained as it is?

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Article 1 CSDDD
Subject matter

1. (...)
2. This Directive shall not constitute grounds for reducing the level of protection of human, employment and social rights, or of protection of the environment or of protection of the climate provided for by the national law of the Member States or by the collective agreements applicable at the time of the adoption of this Directive.

Rule of no deterioration / deterioration ban

Does this apply to provisions that model the scope?

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Does the deterioration ban cover sec. 1 LksG?

- Aim of the CSDDD: protection of human rights and the environment
- This aim is more important than creating a level playing field
- Recital 31
- Recital 17
- Advance effect of directives / prohibition on frustrating EU law

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Recital 17 CSDDD

This Directive is without prejudice to obligations in the areas of human, employment and social rights, protection of the environment and climate change under other Union legislative acts. If the provisions of this Directive conflict with provisions of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act should prevail to the extent of the conflict and should apply to those specific obligations.

Examples of such obligations in Union legislative acts include the obligations set out in Regulation (EU) 2017/821 of the European Parliament and of the Council, Regulation (EU) 2023/1542 of the European Parliament and of the Council and Regulation (EU) 2023/1115 of the European Parliament and of the Council.

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Recital 31 CSDDD

It is essential to establish a Union framework (...). The emergence of binding law in several Member States has given rise to the need for a level playing field for companies in order to avoid fragmentation and to provide legal certainty for businesses operating in the internal market.

Nonetheless, this Directive should not preclude Member States from introducing more stringent provisions of national law diverging from those laid down in Articles other than Article 8(1) and (2), Article 10(1) and Article 11(1), including where such provisions may indirectly raise the level of protection of Article 8(1) and (2), Article 10(1) and Article 11(1), such as the provisions on the scope, on the definitions, on the appropriate measures for the remediation of actual adverse impacts, on the carrying out of meaningful engagement with stakeholders and on civil liability; or from introducing provisions of national law that are more specific (...).

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Advance effect of directives / prohibition on frustrating EU law

During the implementation period of an EU directive, member states may not adopt any regulations that seriously jeopardize or call into question the regulatory objectives of the directive

Established case law of the ECJ

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PART 2. European Perspectives

EU Supply Chain Due Diligence - Questions on the Practical Implementation from a German Point of View



Dr. Michael Burian
Partners at Gleiss Lutz (Germany)

Dr. Michael Burian, is a partner of Gleiss Lutz and based in the Frankfurt office. He co-heads the firms Korea Practice. As a corporate/M&A lawyer, he has more than 15 years of experience advising Korean companies on their business activities in Germany and other parts of Europe.



Dr. Marc Lutloff
Partners at Gleiss Lutz (Germany)

Dr. Marc Lutloff, lawyer, is a partner at Gleiss Lutz's Stuttgart and Berlin offices. He advises in the areas of regulatory, public commercial law and regulated industries. His practice focuses in particular on advising on ESG compliance and product compliance issues. He is also a lecturer for European Sustainability Law and Product Compliance at the Julius-Maximilians-University of Würzburg.

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PART 2. European Perspectives

Italian Corporate Law's Unreadiness to Implement EU CS3D (Despite Its Regulatory Lightness)



Prof. Carlo Amattucci

Professor, University of Naples Federico II (Italy)

Carlo Amattucci is professor of Commercial Law at the University of Naples Federico II. His primary research interests deal with Corporate Governance, CSR and Insolvency Law.

He has been member of the PhD Board in Commercial Law of the State University of Milan.

He is the coordinator of several Erasmus programs - Complutense de Madrid, Vilnius, Latvia, Cote d'Azur, Panteion of Athens - within which he often gives lectures, and is responsible for the cooperation agreements with Saint Petersburg University and People's University of China, where he was a summer school visiting scholar in 2014.

He's lawyer and his practice covers the whole range of corporate law, contracts and insolvency proceedings.



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PART 3. International Organization`s + Asian Perspectives

Key Messages on Responsible Business in International Instruments: What Can the International Frameworks Provide in the Context of Emerging Supply Chain Regulations



Ms. Kate Wilson

Project Manager-Asia, Center for Responsible Business Conduct (OECD)

Kate Wilson is the Project Manager for Asia in the OECD Centre for Responsible Business Conduct.

Before joining the OECD Secretariat in 2023, Kate worked for the Australian National Contact Point for Responsible Business Conduct. Prior to that, Kate worked for the Australian Department of Foreign Affairs and Trade, managing capacity-building projects, conducting human rights reporting, and liaising with Australian companies entering new markets in Southeast Asia. Kate has also worked for the Australian Department of Treasury advising on Australia's engagement with multilateral finance institutions.

Kate is an Australian national. She holds a Bachelor's degree in public policy and international development, and a Master's degree in Asia-Pacific Policy Studies from the University of British Columbia.



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PART 3. International Organization`s + Asian Perspectives

‘ILO’s Approach to Responsible Business Conduct and
Human Rights Due Diligence



Ms. Emily Sims

Senior Specialist and Manager of the ILO Helpdesk for Business (ILO)

Emily Sims is a Senior Specialist in the ILO Programme on Multinational Enterprises and Social Policy and manager of the ILO Helpdesk for Business. She provides technical assistance to a range of industry and multi-stakeholder initiatives, GRI, and individual companies. Her work also focuses on promotion of sustainable and responsible investment. She has published numerous articles and books on the linkages between respect for workers’ rights and productivity improvement and competitiveness.

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PART 3. International Organization`s + Asian Perspectives

Discussions





Prof. Dr. Florian Möslein
Philipps-Universität Marburg (Germany)

Florian Möslein is Director of the Institute for Law and Regulation of Digitalisation (www.irdi.institute) and Professor of Law at the Philipps-University Marburg, where he teaches Contract Law, Company Law and Capital Markets Law. He previously held academic positions at the Universities of Berlin, St. Gallen, and Bremen, and visiting fellowships in Italy (Florence, European University Institute), the US (NYU, Stanford and Berkeley), Australia (University of Sydney), Spain (CEU San Pablo, Madrid) and Denmark (Aarhus). Having graduated from the Faculty of Law in Munich, he also holds academic degrees from the University of Paris-Assas (licence en droit) and London (LL.M. in International Business Law). Florian Möslein published three monographs and over 80 articles and book contributions, and has edited seven books. His current research focus is on regulatory theory, corporate sustainability and the legal challenges of the digital age.



Dr. Hwa Ryung LEE
Director of Korea Fair Trade Commission (ROK)

Hwa Ryung Lee is the director of the economic analysis division at KFTC. She holds a Ph.D. in economics from UC Berkeley and previously worked as a research fellow at the Korea Development Institute before joining KFTC in December 2022. In her position, she contributes to competition cases by analyzing markets and providing insights into the competitive landscape.



Prof. Björn Lundqvist
Professor, Stockholm University (Sweden)

Björn Lundqvist is Professor of Law at Stockholm University. He is the Chair of the Swedish Network of European Legal Studies, Director of the European Law Institute and Director of Ascola Nordic. Björn is a well-renowned European Competition Law scholar and has published extensively, both books and articles, on Competition, Data, and IP Law and Policy related issues. His latest book is available since April 2023, titled *Regulating Access and Transfer of Data* by Cambridge University Press.



Dr. June Namgoong
Senior Research Fellow, Korea Labor Institute (KLI)

Dr. June Namgoong is a Research Fellow and Director of the International Cooperation and Information Office at the Korea Labour Institute (KLI). He holds a PhD in Law (University College London), an LLM (Vanderbilt University) and an LLB (Korea University). His main research interests are the interaction between labour regulation and trade/investment at the global level and new forms of work arrangements arising from technological developments. He serves as a labour judge on a regional labour relations commission (Chungbuk) and as a public interest member of the Domestic Advisory Group and the Civil Society Forum under the EU-Korea FTA and the UK-Korea FTA.



Ms. Hyunyoung Jee

Deputy Director, Attorney at Law, Institute of Green Transformation (ROK)

Ms. Hyun young Jee, lawyer, is a deputy director at Institute of Green Transformation which is a nonprofit climate policy think tank. She focuses on policies such as climate due diligence and climate disclosure to impose climate responsibilities on corporations. She is a member of the Seoul Green Policy Advisory Council and the National Assembly Speaker’s Climate Advisory Committee



Ms. Youngah Park

Attorney at Law, GongGam Human Rights Law Foundation (ROK)

Youngah Park works as a lawyer at the GongGam Human Rights Law Foundation where her work focuses on the rights of migrants and refugees, the right to social security and business and human rights.

Jointly with other members of Korean Transnational Corporations Watch, she has actively participated in monitoring and addressing human rights violations occurring in the course of overseas operations of Korean companies.

MEMO

Horizontal lines for taking notes.

