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Focus on Compliance



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In today's enforcement environment, written policies do not protect organizations. Regulators, including the U.S. Department of Justice, the Office of Foreign Assets Control, and the Bureau of Industry and Security, evaluate compliance programs based on whether organizations operationalize, test, and embed controls into business systems and decision-making processes. This article provides a practical roadmap for operationalizing compliance so decisions are governed by design and outcomes are consistent, documented, and defensible.

10 • Compliance Frameworks for the Extraterritorial Application of National Laws

This article provides (1) a survey of the foundational principles of jurisdiction under public international law; (2) an assessment of how major contemporary regulatory regimes strain, and in some cases exceed, those traditional limits; (3) an analysis of the compliance architecture that multinational enterprises have developed in response; and (4) an evaluation of emerging mechanisms for intergovernmental coordination and soft-law convergence, asking whether they offer a realistic path toward greater predictability and reduced conflict. The article's conclusion offers practical guidance for practitioners navigating this environment.

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As global connectivity increases, cross-border investments fuel growth, innovation, and competitiveness. However, these transactions are subject to rigorous regulatory scrutiny, particularly by the Committee on Foreign Investment in the United States (CFIUS). CFIUS reviews foreign investments that may impact national security, including those involving critical infrastructure, technology, or sensitive data. Given rising geopolitical tensions and evolving economic policies, this article addresses the need for international businesses to understand CFIUS processes and their connection to tariffs.

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The European Union (EU), which one commentator argues "sees itself as the world's regulatory leader," has no single, dedicated statute specifically regulating the offer, sale, or existence of franchises. Instead, international practitioners looking to set up a franchise system in the EU find themselves subjected to a patchwork of obligations. This article describes how regulation at the EU level, along with specific legislation at the member state level, regulates franchises in the EU.

18 • Cross-Border AI Regulation and Global Compliance

This article describes the three dominant approaches to regulating AI that have emerged among the world's leading digital powers: (1) a rights-based model led by the European Union; (2) a state-centered model developed by China; and (3) a market-oriented model reflected in the United States, as well as Canada's hybrid approach—combining administrative directives, provincial legislation, and alignment with international soft law standards.

20 • Seeking Asylum From Noncitizens: Do Current U.S. Protections Against Refoulement Comply With International Law?

This article examines tensions between black letter law and the implementation of protections against refoulement, including the formal legality versus the practical denial of protection. It argues that the Trump administration's conduct, as implemented through a multilayered maze of nuance, is arguably compliant with conventional international law. Functionally, however, it is an egregious violation that undermines non-refoulement protections.

22 • Extreme Vetting – The New Normal at USCIS and Consulates: A Guide in Preparing Clients and Cases

Since President Trump issued Executive Order 14161, "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats" on 20 January 2025, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and the U.S. Department of State have implemented a number of measures in accordance with the mandate contained in the EO. This article discusses the impact of these measures, as well as guides practitioners on how to prepare and counsel their clients under the current landscape.

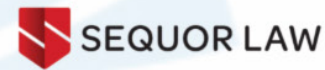


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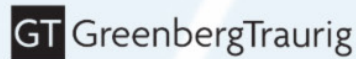
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From the Chair . . .



CRISTINA VICENS BEARD

It is my pleasure to introduce this issue of the *International Law Quarterly*, the International Law Section's flagship publication and one of the most important ways our section contributes to the discussion and development of international law in Florida and beyond.

The *ILQ* reflects the depth, sophistication, and

generosity of our members, bringing together practitioners, academics, and thought leaders to examine the issues shaping our field. This issue, focused on compliance and international law, is especially timely.

Cross-border compliance has never been more important. As companies, individuals, and institutions operate across jurisdictions, lawyers must help clients navigate overlapping regulatory regimes, sanctions, anti-corruption laws, data privacy obligations, supply-chain requirements, tariffs, investment restrictions, immigration rules, and emerging technologies. International lawyers are increasingly called upon not only to respond to problems after they arise, but to help clients identify risk, build strong compliance frameworks, and operate responsibly in a complex global marketplace.

This issue offers practical and thoughtful insight into that landscape. Alex Lima examines compliance frameworks for the extraterritorial application of national laws. Patricia Cuba-Sichler addresses the CSRD and CSDDD after the Omnibus Package, asking whether recent developments represent a retreat or recalibration of EU sustainability law. Lena Halasa explores the shift from policy binders to embedded controls in operationalizing compliance in a high-risk regulatory era. Chiara Troiano analyzes cross-border AI regulation and global compliance. Jillian Cash and Richard Montes de Oca discuss the strategic impact of CFIUS and tariffs in the modern economy. Richard Junnier considers whether current U.S. protections against refolement comply with international law. And Larry S. Rifkin provides guidance on preparing clients and cases in an era of extreme vetting at USCIS and consulates. Together, these articles show the many ways compliance

intersects with international business, litigation, arbitration, investigations, enforcement, immigration, technology, and client counseling.

I also want to highlight our section's incredible work since the last issue of the *ILQ* was published: Our annual iLaw conference was a tremendous success, with sold-out attendance and more than 250 lawyers from 20 countries. We also hosted the Richard DeWitt Memorial Vis Pre-Moot, which brought together more than twelve schools from around the world, participating both in person and remotely, and gave students a meaningful opportunity to prepare for the Vis Moot while connecting with our international law community.

We have also continued to focus on growing the section and creating opportunities for engagement throughout the year. Our membership drive cocktail brought together students, young lawyers, and existing members, helping introduce new faces to the section and encouraging the next generation of international lawyers to get involved. We also hosted a terrific lunch and learn featuring Emilio García Silvero, chief legal and compliance officer of FIFA, who shared insights from his remarkable career and from the legal and compliance challenges of advising one of the world's most global organizations. And we look forward to continuing that momentum in Orlando with an upcoming lunch and learn featuring James Bacchus, whose career and contributions to international trade law and global dispute resolution speak for themselves.

The strength of the *ILQ* and the success of our programs reflect what makes the International Law Section special: our members. Thank you to our authors, editors, sponsors, volunteers, and members for continuing to make the section a dynamic and welcoming home for Florida's international law community. It has been a true pleasure to serve as chair of the section, and I look forward to continuing to read and learn from the wonderful future issues of the *International Law Quarterly*.

Un abrazo,

Cristina Vicens Beard
Chair, International Law Section of The Florida Bar



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From the Editor . . .



JENNIFER MOSQUERA

An ounce of prevention is worth a pound of cure. This maxim, attributed to Benjamin Franklin while discussing fire prevention in 1735, embodies the ethos of one area of law—Compliance.

The Spring 2026 edition of the *International Law Quarterly*

features articles that discuss a wide array of topics that concern the policies, responses, and enforcement needed to prevent legal problems from occurring in the first place. The authors on this edition provide practical advice and guidance that can be applied to many practice areas.

Our first article, “From Policy Binders to Embedded Controls: Operationalizing Compliance in a High-Risk Regulatory Era” written by **Lena Halasa**, provides practical guidance on the operationalization of compliance programs. Next, the article “Compliance Frameworks for the Extraterritorial Application of National Laws” written by **Alex Lima** delves into the complex question of how entities are addressing extraterritoriality within the compliance context.

“Navigating Global Business Challenges: The Strategic Impact of CFIUS and Tariffs in the Modern Economy” written by **Richard Montes de Oca** and **Jillian Cash** explores the connection between the Committee on Foreign Investment in the United States (CFIUS) and tariffs as well as providing key takeaways on how international practitioners should proceed in this area.

The next two articles home in on compliance in the context of the European Union. Specifically, **Patricia Cuba-Sichler’s** “CSRD and CSDDD After the Omnibus Package: Retreat or Recalibration of EU Sustainability Law?” assesses changes made by the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) while **Victoria M. Pabon’s** “Franchising in

the EU: An Introduction to Compliance for the International Practitioner” focuses on the relevant legal framework surrounding franchising in the European Union.

This edition further covers discussions of artificial intelligence and immigration. “Cross-Border AI Regulation and Global Compliance” written by **Chiara Troiano** discusses the major regulatory frameworks that have surged from the advent of artificial intelligence. Meanwhile on immigration, **Richard Junnier’s** “Seeking Asylum From Noncitizens: Do Current U.S. Protections Against Refoulement Comply With International Law?” discusses the current status of protection against refoulement in the United States, and **Larry S. Rifkin’s** “Extreme Vetting – The New Normal at USCIS and Consulates: A Guide in Preparing Clients and Cases” guides practitioners on best practices in light of President Trump’s 20 January 2025 executive order.

As usual, we present the ILS Section Scene, which in this edition features photos and summaries from fantastic ILS programming over the last several months, including another extremely successful iLaw conference. Also, always included is the World Roundup, providing summaries of important legal updates in different countries and regions.

We hope that after reading this edition of the *ILQ* you will find practical tips to make your practice fireproof. Please enjoy reading this edition of the *ILQ*; we look forward to continuing to publish novel and substantive international law perspectives in the next one.

Best regards,

Jennifer Mosquera
Editor-in-Chief
Sequor Law



From Policy Binders to Embedded Controls: Operationalizing Compliance in a High-Risk Regulatory Era

By Lena Halasa, Lake Worth



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Compliance does not fail in policy; it fails at the point of decision-making.

The Illusion of the Policy Binder

In today's enforcement environment, written policies do not protect organizations. Regulators, including the U.S. Department of Justice (DOJ), the Office of Foreign Assets Control (OFAC), and the Bureau of Industry and Security (BIS), evaluate compliance programs based on whether organizations operationalize, test, and embed controls into business systems and decision-making processes.¹

Across these frameworks, regulators apply a consistent standard: compliance controls must function in practice, not merely exist on paper. The "control illusion" occurs when policies do not match real-world execution. That gap creates enforcement risk. Organizations create this illusion when they rely on documented policies as evidence of compliance without ensuring those policies govern real-time decisions.

Effective programs translate policy requirements into embedded controls: decision trees, approval gates, and system-based workflows that guide behavior at the point of decision. When policies are disconnected from systems, training, and

accountability, they create the appearance of control without influencing outcomes.

Risk materializes at the point of decision-making, not in documentation. Organizations reduce exposure by integrating compliance into how the business operates through cross-functional coordination, practical training, and systems designed to anticipate risk. Organizations do not fail for lack of policies; they fail when controls do not govern real-time decisions.

Regulators' Expectations Versus Programs' Reality

Across DOJ, OFAC, BIS, and auditing frameworks, regulators assess compliance programs not only on design, risk-based structure, and resourcing, but on whether controls function in practice and produce reliable evidence. Programs must demonstrate continuous improvement through testing, investigations, root cause analysis, and remediation embedded within operations.²

Compliance risk is created at the point of decision. For businesses conducting international trade, this is evident in export classification and licensing of intangible technology transfers, where risk is less visible but equally significant.

Organizations often implement system-based tools to guide decisions, including classifications, destinations, and licensing requirements, but under operational pressure or when training is unclear, employees bypass these controls. These breakdowns rarely surface in controlled conditions. They emerge under time pressure, where unclear ownership, inconsistent training, or system gaps force employees to rely on judgment rather than defined controls.

This same breakdown appears in third-party relationships. Organizations rarely fail because due diligence policies are absent; they fail because those policies are not executed consistently. A distributor may be properly vetted and contractually bound, yet risk persists when those obligations are not operationalized. Contractual terms do not translate into daily behavior without targeted training and reinforcement.

Effective programs close this gap by aligning due diligence, contract terms, training, and transaction monitoring. They embed these requirements into workflows that enforce approvals and capture decision data. Without this integration, contractual safeguards remain static and do not function as effective controls.

Risk becomes most acute in low-frequency, high-risk environments, such as those involving sensitive items or third-party logistics. Under time pressure and uncertainty, employees rely on judgment rather than structured processes. These failures are often attributed to human error. However, in reality, they reflect breakdowns in control design, ownership, and reinforcement.

Effective programs are designed to operate under these conditions. They embed decision pathways with hard stops, incorporate scenario-based training, and define ownership and escalation protocols that cannot be bypassed under pressure. Accountability must also extend across all levels of the organization, including management, to ensure controls are applied consistently in practice.

Across these scenarios, the pattern is consistent: compliance failures occur when controls do not govern decisions in practice. When compliant behavior depends on discretion rather than system design, outcomes become inconsistent, and risk becomes inevitable.

Voluntary Self-Disclosure as Evidence of Program Effectiveness

In mature programs, voluntary self-disclosure (VSD) is not merely a moment of crisis. It is an operational output of a system designed to surface risk early, and maintain control over how that risk is managed. It is one of the clearest indicators that a compliance program can detect, escalate, and remediate issues in practice.

Regulators evaluate not only whether misconduct occurred but how the organization responded. Within this framework, VSD reflects operational capability and control over risk as it emerges. VSD is a real-time test of whether a compliance program operates as designed under pressure.

Organizations that hesitate to disclose often reveal a deeper weakness: not legal risk, but a lack of operational control over how potential violations are identified and assessed. By contrast, effective programs rely on structured investigative processes and defined escalation pathways to evaluate issues and act from a position of control. They use investigations to identify root causes and implement corrective actions that strengthen controls and prevent recurrence.

This principle extends beyond export controls. In customs compliance, prior disclosure serves a similar function, signaling that an organization can identify errors, quantify exposure, and implement corrective actions before issues escalate. Like VSD, prior disclosure reflects not just the existence of controls, but the ability of a compliance program to detect, escalate, and remediate risk in practice. In customs, prior disclosure can mitigate penalties where importers demonstrate reasonable care through timely identification and correction of errors.³

BIS enforcement guidance confirms that voluntary self-disclosure, cooperation, and remediation are central to enforcement outcomes and may result in reduced penalties or other favorable resolutions.⁴ BIS has further noted that, in practice, most VSDs are resolved through no-action letters or warning letters rather than civil penalties, reinforcing the role of disclosure as an indicator of program maturity.⁵

The VSD process tests the compliance program end-to-end. It requires coordinated investigations, root cause analysis, and corrective action that translate into sustainable system improvements. Ultimately, a well-designed VSD process tests whether controls function in practice under pressure, not whether policies exist.

When Policies Create Liability

Paradoxically, policies increase exposure when they are not operationalized. Regulators evaluating compliance programs focus not only on whether policies exist, but whether they are implemented effectively in practice.⁶ When written procedures do not reflect actual practice, they create a measurable gap between stated controls and operational reality. In operational settings, organizations often recognize this gap only after escalation, when policies fail to guide real-time decisions and internal inconsistencies become visible through investigations or a regulator's inquiry.

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Compliance Frameworks for the Extraterritorial Application of National Laws

By Alexander Lima, Miami



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Sovereignty, in the classical Westphalian sense, promised that each state would govern within its borders and refrain from interfering in the affairs of others. That promise has eroded considerably. Today, a manufacturing subsidiary in Shenzhen, a financial institution in Frankfurt, and a technology platform incorporated in Dublin may each find themselves subject to the regulatory commands of Washington, Brussels, London, and Beijing simultaneously, not because they operate there, but because a regulator in one of those capitals has concluded that their conduct, wherever it occurs, touches interests that warrant protection.¹ The extraterritorial application of national laws has become one of the defining structural features of the contemporary international legal order, and compliance with that body of law has become one of the defining operational challenges for multinational enterprises.

The scope of the problem is difficult to overstate. The U.S. Foreign Corrupt Practices Act (FCPA) reaches bribery of

foreign officials by non-U.S. companies listed on American exchanges and by any person using the U.S. financial system.² The European Union's General Data Protection Regulation (GDPR) applies to any organization worldwide that processes the personal data of EU residents, regardless of where the organization is established.³ Sanctions administered by the U.S. Office of Foreign Assets Control (OFAC) extend to foreign subsidiaries of U.S. entities and, in certain secondary sanctions regimes, to wholly foreign transactions that merely touch the U.S. financial system.⁴ The UK Bribery Act 2010 applies to any commercial organization that carries on a business, or part of a business, in the United Kingdom, wherever incorporated.⁵ These regimes do not operate in isolation; they overlap, conflict, and occasionally contradict one another, confronting the compliance officer and international counsel with a genuinely novel legal environment.

This article proceeds in four parts:

1. A survey of the foundational principles of jurisdiction under public international law, examining both the accepted bases for the assertion of prescriptive jurisdiction and the doctrinal limits that international law has traditionally imposed on those assertions
2. An assessment of how major contemporary regulatory regimes strain, and in some cases exceed, those traditional limits, with particular attention to anti-corruption enforcement, sanctions, data protection, and export controls
3. An analysis of the compliance architecture that multinational enterprises have developed in response, considering both the structural design of compliance programs and the legal risk-management strategies that in-house and external counsel deploy
4. An evaluation of emerging mechanisms for intergovernmental coordination and soft-law convergence, asking whether they offer a realistic path toward greater predictability and reduced conflict
5. The conclusion draws together practical guidance for practitioners navigating this environment.

Jurisdictional Foundations and Their Limits Under International Law

International law recognizes several accepted bases upon which a state may lawfully assert prescriptive jurisdiction, meaning the authority to make its laws applicable to persons, property, or conduct.⁶ The principle of territoriality, the most fundamental of them, permits a state to regulate conduct occurring within its territory. Most states also assert what is called subjective territoriality over conduct that begins within their borders, and objective territoriality, or the “effects doctrine,” over conduct that originates abroad but produces substantial effects domestically.⁷

The nationality principle permits them to regulate the conduct of their nationals wherever they may be in the world.⁸

This principle is uncontroversial when applied to natural persons; its extension to corporations, through the concept of nationality by place of incorporation or principal place of business, is equally well established, though its application to the foreign subsidiaries of national corporations has generated more friction.⁹ The protective principle permits states to regulate foreign conduct that threatens their essential security interests or the integrity of their governmental functions, justifying, for instance, the criminalization of foreign bribery of domestic officials.¹⁰ The universality principle, historically confined to crimes that the international community recognizes as subject to universal condemnation, such as

piracy, slavery, and genocide, has expanded in practice, most controversially in the context of international terrorism and, more recently, human rights violations.¹¹

A critical constraint on these jurisdictional bases is the requirement of reasonableness, which the Restatement (Third) of the Foreign Relations Law of the United States elevated to a balancing principle and the Restatement (Fourth) more cautiously treated as a matter of customary international law still in formation.¹² Whatever its precise doctrinal status, the principle counsels that a state should refrain from exercising jurisdiction when doing so would be unreasonable in light of the strength of other territories’ interests, the degree of conflict with their law or policy, and the extent to which the regulated party has relied on the law of the other state.¹³ Courts in the United States, the United Kingdom, and the European Union have on occasion applied this principle to temper extraterritorial assertions, though their willingness to do so has been inconsistent, and the doctrine affords ample room for aggressive regulatory postures.¹⁴

The practical consequence is a set of permissive principles that authorize broad jurisdictional assertions without any effective enforcement mechanism to prevent their abuse. No international tribunal holds general jurisdiction to rule on jurisdictional excesses by states against private actors, and bilateral diplomatic protests are an imperfect remedy. States are therefore free, as a practical matter, to reach as far as their political will and enforcement machinery permit, constrained principally by the reactions of their trading partners and the limits of their own courts’ willingness to assert authority.¹⁵

Modern Regulatory Regimes and the Strain on Doctrinal Limits

The principal theatres in which the tensions between jurisdictional doctrine and regulatory practice play out most acutely are anti-corruption enforcement, sanctions law, data protection, and export controls. Each merits a brief examination.

Anti-Corruption Law. The multilateral foundation for anti-corruption regulation is the United Nations Convention Against Corruption (UNCAC), the only legally binding universal anti-corruption instrument, which was adopted by the UN General Assembly on 31 October 2003 and entered into force on 14 December 2005.¹⁶ With 192 state parties as of October 2025, UNCAC achieves near-universal adherence and, critically, mandates the criminalization of active bribery of foreign public officials under Article 16, as well as money laundering, obstruction of justice, and corporate liability for

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Navigating Global Business Challenges: The Strategic Impact of CFIUS and Tariffs in the Modern Economy

By Jillian Cash, Tampa, and Richard Montes de Oca, Miami



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As global connectivity increases, cross-border investments fuel growth, innovation, and competitiveness. However, these transactions are subject to rigorous regulatory scrutiny, particularly by the Committee on Foreign Investment in the United States (CFIUS). CFIUS reviews foreign investments that may impact national security, including those involving critical infrastructure, technology, or sensitive data. Given rising geopolitical tensions and evolving economic policies, international businesses must understand CFIUS processes and their connection to tariffs.

The CFIUS Framework: Protecting National Security

CFIUS serves as a gatekeeper, evaluating mergers, acquisitions, and investments in U.S. assets that could result in foreign control. Although CFIUS review is largely voluntary, non-compliance can result in significant consequences, including transaction delays, substantial fines, or reversal of completed deals for certain transactions involving U.S. businesses dealing with critical technology, infrastructure, or sensitive personal data. The agency's

authority to block transactions that pose security risks highlights its increasing relevance in today's geopolitical climate.

When companies submit a voluntary joint notice, they can receive a "safe harbor" letter from CFIUS, which restricts the agency from initiating a review of the transaction later, except under specific conditions.

The review process begins when a transaction raises concerns. Parties may submit either a voluntary joint notice or a streamlined declaration, each with distinct strategic and timing implications. Once filed, CFIUS conducts a forty-five-day assessment, examining ownership structures, backgrounds, and the assets involved.¹ If risks are identified, mitigation strategies such as technology access restrictions may be recommended, or the transaction may be blocked.

CFIUS filing fees are based on transaction size, from no fee for deals under US\$500,000 to US\$300,000 for transactions over US\$750 million.² These fees support the review process, which becomes more rigorous for larger transactions.

CFIUS maintains strict confidentiality of filings to encourage companies to submit them.³

Implications for U.S. Business Sellers

For U.S. companies considering sales to foreign buyers, CFIUS review is essential, especially for sensitive technology or infrastructure. Early engagement with CFIUS helps identify risks, supports negotiations, and enables necessary safeguards. Failing to notify or engage with CFIUS can result in sanctions, reversal of deals, and reputational harm if national security concerns arise.

Proactively addressing CFIUS requirements can shape deal structure, help sellers avoid unexpected costs, and ensure compliance. This approach is increasingly important as scrutiny of foreign investments grows in sectors such as semiconductors, telecommunications, and energy.

Incorporating CFIUS Into M&A Agreements

Given its importance, CFIUS considerations should be clearly addressed in merger and acquisition agreements. Contracts should specify which party is responsible for filing costs, mitigation measures, and potential delays. Agreements must also outline responsibilities if a transaction is blocked, including due diligence, legal fees, and penalties. Clear terms help minimize disputes and financial uncertainty.

Broader Effects on International Business Relations

The CFIUS review process influences not only individual transactions but also international economic relations. Increased scrutiny can lead to more cautious investment strategies, delays, or rejection of promising deals. These factors may affect diplomatic relations and future cooperation. For businesses, compliance and transparency are essential for maintaining a strong international presence and managing geopolitical risks.

The Evolving Role of Tariffs and Their Intersection With CFIUS

Recent tariff developments, particularly those under the International Emergency Economic Powers Act (IEEPA), have increased complexity. Although the U.S. Supreme Court recently ruled against certain tariffs, their prior use and removal have affected trade flows and supply chains. In *Learning Resources, Inc. v. Trump*, the Court found that IEEPA does not authorize the president to impose tariffs unilaterally and that imposing 20%–145% duties on Chinese goods exceeded executive authority.⁴

Changes in tariff policies can alter the landscape of foreign investment. For example, the revocation or imposition

of tariffs on strategic goods can shift the perceived risks of foreign acquisitions, influencing CFIUS evaluations. Companies must therefore develop integrated compliance strategies that consider both trade restrictions and investment screening to safeguard U.S. interests.

CFIUS Impact on Real Estate Transactions

Recent amendments to CFIUS regulations significantly affected U.S. real estate transactions involving foreign persons by expanding review authority near sensitive government sites. The Final Rule, effective 26 December 2024, broadened CFIUS jurisdiction to include real estate within specified proximities, adding 40 military installations (within a 1 mile radius) and 19 others (within a 100-mile radius), and re-designating 8 sites to a higher-risk 100-mile radius.⁵ This expansion reflects increased national security concerns, as proximity to these sites can trigger a CFIUS review of foreign property transactions. The rule clarifies that transactions completed before the effective date are generally not subject to review and introduces technical updates to better identify relevant sites. These changes signal heightened scrutiny of foreign real estate investments near critical U.S. government facilities.

Considerations in Emergence of U.S.-Iran Conflict

Amid the ongoing U.S.-Iran conflict, CFIUS considerations have become increasingly important for foreign investment in the United States, especially in sectors critical to national security such as energy, telecommunications, and advanced technology. Heightened tensions have led CFIUS to adopt a more cautious approach to transactions involving entities from countries of concern, particularly Iran. While direct Iranian investments are heavily restricted by sanctions, the U.S. government closely monitors indirect ownership, subsidiaries, or entities with Iranian ties that may pose security risks or enable illicit technology transfers. The conflict highlights the need for foreign investors and U.S. companies to conduct thorough national security reviews, comply with evolving regulations, and consider mitigation strategies to avoid transaction delays, legal issues, or enforcement actions by CFIUS. Overall, the U.S.-Iran conflict reinforces the critical role CFIUS plays in protecting U.S. strategic assets amid complex geopolitical challenges.

Interagency Involvement and Oversight

Beyond the CFIUS review process, several interagency bodies within the U.S. government oversee foreign investments and help ensure national security.

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CSRD and CSDDD After the Omnibus Package: Retreat or Recalibration of EU Sustainability Law?

By Patricia Cuba-Sichler, Paris, France



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The Corporate Sustainability Reporting Directive (CSRD),¹ adopted in 2022 by the twenty-seven member states of the European Union, has been widely perceived by companies as a significant step forward in expanding their responsibilities—and associated costs—in relation to environmental, social, and governance (ESG) reporting. A complementary instrument, the Corporate Sustainability Due Diligence Directive (CSDDD)², was subsequently adopted in 2024, requiring large companies to establish due diligence processes covering their own operations, subsidiaries, and value chains, including supply chain partners.

These directives are neither isolated measures nor entirely new obligations for European companies. Rather, they form part of the broader policy framework initiated by the European Commission through the EU Green Deal in 2019, which aims to advance climate neutrality, decarbonization, biodiversity protection, and the promotion of ESG standards by 2030, in line with the objectives of the Paris Agreement. In this context, the EU has sought to position itself as a leading global regulatory actor in sustainable finance and corporate accountability.

Nevertheless, in 2025, concerns regarding the competitiveness of European companies led the European Parliament to reconsider the scope and requirements of both the CSRD and the CSDDD. The adoption of the Omnibus package in February 2025, including the Omnibus I “Content” Directive in February 2026, introduced significant revisions, reducing the breadth and intensity of the original obligations.

This article outlines the initial scope and objectives of the CSRD and the CSDDD frameworks before examining the changes introduced by the Omnibus I Directive in 2026, while briefly recalling the regulatory context across EU member states, with particular attention to France regarding corporate reporting and due diligence obligations. It assesses whether these revisions undermine the original ambitions of the EU Green Deal. The article ultimately advances an optimistic view of the continued effectiveness of the CSRD and the CSDDD frameworks, within a broader international regulatory landscape, in driving large companies toward enhanced sustainability, strengthened due diligence, and deeper ESG integration.

The Origin and Context of the CSRD and the CSDDD

The CSRD, adopted by the European Parliament in November 2022, is an EU regulation requiring companies to disclose their environmental and social impacts. It was designed to increase transparency and hold businesses accountable for their sustainability efforts. The directive represents a major evolution of the European regulatory framework for non-financial reporting, replacing the Non-Financial Reporting Directive (NFRD) of 2014, which was the first European regulation establishing reporting obligations for the largest companies. The obligations under the CSRD were originally scheduled to take effect in January 2025 for the largest companies, including large corporations, mid-cap companies, and listed small and medium enterprises (SMEs)—affecting more than 50,000 European companies.³

The CSDDD was adopted by the European Parliament on 13 June 2024 (EU Directive 2024/1760). Pursuant to the directive, EU member states were required to transpose it into national law by 26 July 2026. EU companies with more than 500 employees and a global turnover exceeding €150 million must establish monitoring systems to identify and manage ESG risks, including those related to their supply chain partners, and publicly disclose these mechanisms. The directive also imposed a strict obligation to implement climate transition plans aimed at limiting global warming to 1.5°C. Its implementation was designed to be progressive, rolled out in waves, initially starting in 2027.

The CSDDD and the CSRD use different tools and mechanisms but are complementary in their shared objective: improving the ESG accountability of large companies to achieve the climate goals established by the European Green Deal. NGOs, environmental and human rights organizations, and civil society at large were optimistic about this new approach and the recognition of strong corporate social responsibility, reinforced by sustainability and ESG criteria. Lawyers, sustainability departments, and compliance officers mobilized to prepare companies for these new challenges, ensuring they were ready and well-positioned to comply on time.

The Omnibus Package: Prioritizing Competitiveness Over Sustainability?

As part of the EU's competitiveness strategy, the Omnibus package was presented by the European Commission on 26 February 2025. It aims to reduce administrative burdens for companies by 25% in general, and by 35% for SMEs. Overall, the stated objective of the Omnibus package was to simplify regulation without abandoning the EU's climate and social ambitions.⁴ Nevertheless, the debate surrounding this reform highlights the ongoing tension between economic

competitiveness and the environmental and social goals of the European Union.

Indeed, these proposals have elicited mixed reactions. Some economic and political stakeholders have welcomed them as a “positive step to facilitate business in Europe,” while others—particularly NGOs and civil society organizations—have criticized them as a “massive deregulation” that could undermine the EU's environmental and social objectives.

As part of the Omnibus package, the “Stop the Clock” Directive (EU Directive 2025/794),⁵ published in the Official Journal of the European Union on 16 April 2025 and entering into force on 17 April 2025, represents the first step toward simplification. It postpones the application dates of certain corporate sustainability reporting and due diligence requirements, as well as the transposition deadline for the due diligence provisions. Specifically, it delays the second and third reporting waves under the CSRD by two years and shifts the CSDDD's transposition deadline and first application phase forward by one year, to 26 July 2027 and 26 July 2028, respectively. The directive aims to “avoid unnecessary and avoidable costs” and to give companies “more time to prepare . . . and to take into account the guidelines to be issued by the Commission on how they should fulfil their due diligence obligations in a practical manner.”

The Omnibus I “Content” Directive, published in the EU Official Journal on 26 February 2026, is part of the Omnibus package and focuses on reducing the number of data points to be reported and narrowing the scope of corporate due diligence requirements.⁶ Among other changes, it modifies the CSRD (EU 2022/2464) and the CSDDD (EU 2024/1760) with respect to certain sustainability reporting requirements for companies and certain corporate sustainability due diligence obligations. EU member states are required to transpose the directive into national law by 19 March 2027.

CSRD Reporting: The scope is now limited to companies with more than 1,000 employees and a net annual turnover exceeding €450 million, with corresponding rules for certain non-EU groups. Companies subject to the CSRD must report in accordance with the European Sustainability Reporting Standards (ESRS), with finalization expected by mid-2026. The estimated effect of the revised thresholds is that 80% to 90% of companies are removed from scope.

CSDDD Due Diligence:

The directive now applies only to “very large” companies with more than 5,000 employees and a net annual turnover exceeding €1.5 billion (US\$1.75 billion), with application

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Franchising in the EU: An Introduction to Compliance for the International Practitioner

By Victoria A. Moreno Pabón, Miami



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The convenience store down the street, the gym you committed to on New Year's Day, the insurance agency your neighbor frequents, and the chicken nuggets for which your child clamors: a common thread runs across businesses we encounter in our daily lives, and that thread is called franchising. While the largest concentration of franchises calls the United States home,¹ Europe is no stranger to this successful business model. It is estimated that there are roughly 24,600 active franchise brands operating across Europe, which employ approximately 2,600,000 individuals² and which collectively generate over €300 billion annually.³

It can come as a shock to some, then, to find out that the European Union (EU), which one commentator argues "sees itself as the world's regulatory leader,"⁴ has no single, dedicated statute specifically regulating the offer, sale, or existence of franchises. Instead, international practitioners looking to set up a franchise system in the EU find themselves subjected to a patchwork of obligations⁵ that stem, at the EU level, from the Treaty on the Functioning of the European

Union, the EU regulations and guidelines regarding vertical arrangements, the General Data Protection Regulation and the Digital Services Act, and, at the member state level, from specific legislation that regulates franchises (or at least some aspect of them).

EU Laws Affecting Franchises

Competition Law

The Treaty on the Functioning of the European Union (TFEU) is one of the two principal treaties of the EU,⁶ and it sets out the organizational and functional details of the EU. Of the seven parts to the TFEU,⁷ the part that affects franchises is Part 3 (*Union policies and internal actions*); more specifically, its Title VII concerns, in relevant part, EU competition law.⁸

Article 101(1) of the TFEU⁹ prohibits—and Article 101(2) voids, unless otherwise exempted—agreements among companies that prevent, restrict, or distort competition in the EU and that may affect trade among member states.

Anti-competitive agreements are “prohibited regardless of whether they are concluded between companies that operate at the same level of the supply chain (horizontal agreements) or at different levels (vertical agreements).”¹⁰ Given that a franchise agreement “links two undertakings operating at different levels of the production or distribution chain,”¹¹ it is a vertical agreement under EU competition law and is subject to regulation under Article 101 of the TFEU.

It would seem, then, that franchises by their very nature may violate Article 101. However, all rules have exceptions (or exemptions from their application), and the same is true of Article 101. Article 101(3) of the TFEU stipulates as follows:

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
- any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,
 - which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.¹²

Exemptions from the application of Article 101(1) are not managed on a case-by-case basis, but rather they are governed by the Block Exemption Regulations, which include the Vertical Block Exemption Regulation (Commission’s Regulation (EU) 2022/720¹³ and the Guidelines on Vertical Restraints¹⁴) and the Horizontal Block Exemption Regulation.¹⁵

Seen through this multilayered regulatory lens, we find there are certain “permitted clauses,” which are clauses that are necessary for the existence and preservation of a business; and certain “hardcore restrictions,” which are severe restraints that are either likely to restrict competition and harm consumers or that are not indispensable to the attainment of efficiency-enhancing effects.¹⁶

In the context of franchising in the EU, non-compete clauses,¹⁷ confidentiality obligations that protect a franchisor’s secrets and processes, or franchisor approvals for franchisee transfers or the grant of sub-franchises, fall within the permitted clauses classification. Per contra, clauses setting price minimums, establishing bans on online sales, or setting restraints on distributor sales, will fall under the hardcore restrictions classification. International practitioners looking to set up

franchise systems in the EU must become intimately familiar with these EU regulations and should secure the help of local counsel to navigate other clauses that may not clearly fall within one classification or the other.

Data Protection Law

Another regulatory behemoth applicable to franchises in the EU is the General Data Protection Regulation (GDPR), which is arguably “the toughest privacy and security law in the world”¹⁸ and applies if the data controller,¹⁹ processor,²⁰ or the subject of the data is based in the EU. The GDPR outlines specific rights and protections for the collection of personal data, which it defines as:

any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The GDPR also specifies additional requirements for sensitive personal data,²¹ which, in turn, includes “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs; trade-union membership; genetic data, biometric data processed solely to identify a human being; health-related data; and data concerning a person’s sex life or sexual orientation.”²²

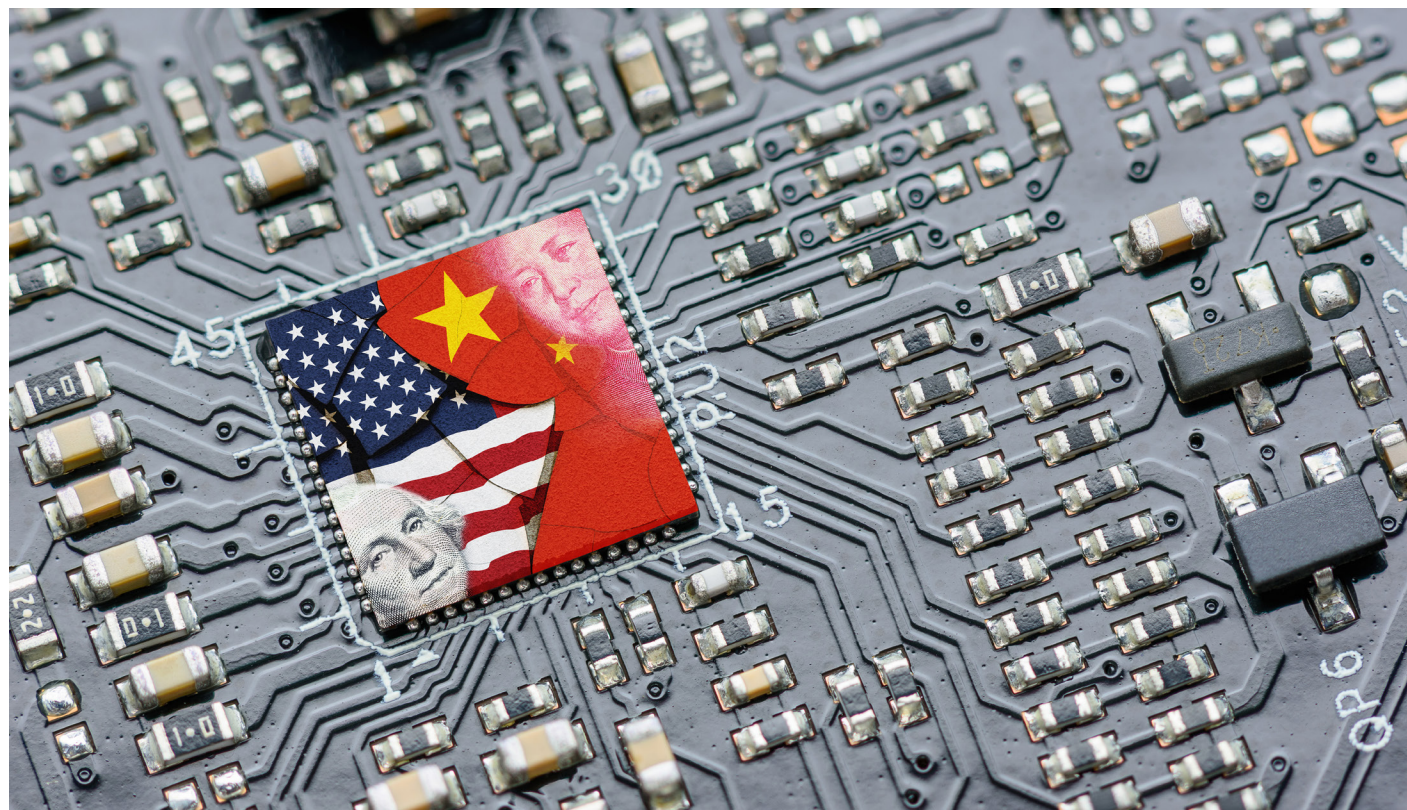
Article 5 of the GDPR requires that personal data be:

1. processed lawfully, fairly and in a transparent manner in relation to the data subject (“lawfulness, fairness and transparency”);
2. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (“purpose limitation”);
3. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”);
4. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (“accuracy”);

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Cross-Border AI Regulation and Global Compliance

By Chiara Troiano, Miami



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Artificial intelligence (AI) is no longer an emerging technology. It is a present force shaping commerce, governance, and litigation across jurisdictions. Businesses now deploy AI in core operations—decision-making, compliance, and customer interaction. That reality raises a practical question for lawyers and companies alike: how should AI be governed across borders?

AI cannot be confined within national boundaries. Unlike conventional technologies, AI systems operate through global data flows, distributed infrastructures, and transnational markets. They are developed in one jurisdiction, trained on datasets aggregated across multiple jurisdictions, and deployed in markets that may bear no geographic relationship to their origin. A company operating in Florida may face regulatory obligations arising from the European Union, China, or Canada simply because its systems reach users in those jurisdictions. As a result, the regulation of AI has become inherently cross-border.¹

Scholarly analysis has long recognized that data itself is not territorially fixed. Rather, it moves fluidly across jurisdictions,

often without any meaningful connection to a single physical location.² This phenomenon—sometimes described as the “un-territoriality” of data—applies with even greater force to AI systems, which depend on continuous data processing and iterative learning. The legal consequence is that regulatory authority is increasingly triggered by the effects of AI systems rather than by the location of their developers.

In response, jurisdictions have adopted distinct regulatory models. Three dominant approaches have emerged among the world’s leading digital powers: (1) a rights-based model led by the European Union through Regulation (EU) 2024/1689 (the AI Act), which establishes comprehensive, binding obligations structured around a risk-based hierarchy; (2) a state-centered model developed by China through a series of targeted regulatory instruments, in which AI governance is closely aligned with national values, social stability, and centralized oversight; and (3) a market-oriented model reflected in the United States, which favors innovation and relies primarily on sector-specific agency action, litigation, and executive policy rather than comprehensive legislation.³

Beyond these three dominant models, Canada's hybrid approach—combining administrative directives, provincial legislation, and alignment with international soft law standards—illustrates how jurisdictions outside the major digital powers are constructing meaningful governance frameworks in the absence of comprehensive federal AI statutes.⁴ At the international level, soft law instruments such as the OECD AI Principles and the UNESCO Recommendation on the Ethics of Artificial Intelligence, together with the Council of Europe's Framework Convention on Artificial Intelligence as the first binding multilateral AI treaty, provide the normative infrastructure that increasingly connects these otherwise distinct national approaches.⁵ These models do not operate independently. Instead, they interact to create a layered system of global compliance obligations that increasingly shapes corporate conduct and legal risk.

Before turning to those frameworks, it is worth pausing on the question of why AI regulation is necessary at all—a question whose answer is less obvious than it appears. Proponents of minimal intervention argue that AI is a productivity multiplier whose benefits to individuals, businesses, and society far outweigh its risks.⁶ Critics respond that those benefits are unevenly distributed, while the harms—algorithmic bias, erosion of privacy, automated discrimination, manipulation of democratic discourse—tend to fall disproportionately on those least able to seek legal redress.⁷ Both observations are accurate, and the tension between them is precisely what makes AI governance a genuinely difficult legal problem rather than a purely technical one. The challenge for lawmakers is not whether to regulate, but how to do so in a way that does not suppress beneficial innovation while ensuring that fundamental rights are not treated as an acceptable casualty of technological progress. It is this underlying tension that Recital 2 of the EU AI Act explicitly acknowledges, and that runs, in different forms, through every major regulatory framework examined in this article.⁸

The European Union: Regulatory Architecture and Substantive Obligations

The AI Act constitutes the first comprehensive and horizontally applicable regulatory framework for artificial intelligence. Its objectives, set out in Article 1 and Recital 2, are twofold: to ensure the proper functioning of the internal market and to guarantee a high level of protection of fundamental rights, including human dignity, democracy, and the rule of law.⁹

A critical feature of the AI Act is its choice of legal instrument. As a regulation, it is directly applicable in all member states without the need for national transposition.¹⁰ This ensures uniformity across the EU and avoids the fragmentation that would result from divergent national implementations, a

concern expressly acknowledged in Recitals 3 through 9.¹¹

The Act structures obligations around the AI value chain by distinguishing among providers, deployers, importers, distributors, and authorized representatives. Each category is assigned specific responsibilities, thereby creating a comprehensive compliance ecosystem that extends beyond the initial developer of the system.

The core of the AI Act is its risk-based classification. Article 5 prohibits certain practices outright, including manipulative AI systems, social scoring mechanisms, and certain forms of biometric identification.¹² These prohibitions reflect a normative judgment that certain uses of AI are incompatible with fundamental rights.

Article 6 and Annex III define high-risk systems, including those used in employment, creditworthiness, law enforcement, migration, and access to essential services.¹³ These systems are subject to extensive obligations under Articles 8 through 15. Providers must implement lifecycle risk management systems, ensure the quality and representativeness of training datasets, maintain detailed technical documentation, and design systems to enable effective human oversight.¹⁴

The Act also imposes obligations on deployers, including the requirement to conduct a Fundamental Rights Impact Assessment in certain contexts. This requirement aligns AI governance with existing data protection frameworks, particularly the GDPR's Data Protection Impact Assessment.

Transparency obligations under Article 50 apply to systems presenting limited risk, including those generating synthetic content. These provisions require clear disclosure that content has been generated or manipulated by AI, thereby addressing concerns relating to misinformation and deception.¹⁵

General-purpose AI models are regulated under Chapter V, which introduces baseline obligations for all such models and enhanced obligations for those posing systemic risk. These include requirements relating to technical documentation, copyright compliance, and risk mitigation.

Enforcement is governed by Article 99, which establishes a tiered system of administrative fines. Violations of prohibited practices may result in penalties of up to €35 million or 7% of global annual turnover.¹⁶

Beyond procedural compliance, the AI Act introduces substantive individual rights that extend and reinforce existing protections under EU law. Most notably, where a decision is based primarily on the output of a high-risk AI system and produces legal or similarly significant effects on an individual, the affected person acquires a right to a

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Seeking Asylum From Noncitizens: Do Current U.S. Protections Against Refoulement Comply With International Law?

By Richard Junnier, Tallahassee



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“You have arrived in hell.” — director of CECOT¹

The United States is prohibited from removing individuals who are outside their country of nationality or habitual residence where they have a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion,² or where there are substantial grounds for believing they would be subject to torture.³ This obligation derives from the principal of non-refoulement—that a state may not return a person to a country where they would encounter persecution, torture, or other serious harm.⁴ This obligation flows from both treaty-based conventional international law and customary international law that is derived from consistent state practice and is accepted as legally binding.⁵

The Trump 47 administration has taken a decidedly hardline approach to immigration. Seemingly flouting customary international law, treaties, statutes, and court orders, through a series of proclamations, policies, and directives, it has

dramatically reduced due process rights thereby increasing the risk of returning individuals to countries that persecute and torture. There have been but slipshod attempts to deny that these abrupt changes are punitive, implemented to deter the undocumented from seeking refuge within the borders of the United States, and depending upon the circumstances, its own violation of international law.⁶

Amongst this inarguable chaos, the question has invariably arisen whether this conduct comports with international law.

This article examines tensions between blackletter law versus its implementation and formal legality versus its practical denial of protection. It argues that the administration’s conduct, as implemented through a multilayered maze of nuance, is arguably compliant with conventional international law. Functionally, it is an egregious violation that undermines non-refoulement protections. As to customary international law, the answer is straightforward: No.

Legal Framework: Non-Refoulement in Treaties and U.S. Law

This section first outlines the treaties that establish the prohibition on non-refoulement. It then examines the convention-based exceptions often invoked by the current administration, followed by the effect of U.S. reservations, understandings, and declarations (RUDs) adopted during ratification. Because these treaty obligations were treated as non-self-executing in the United States, the section concludes by turning to the implementing statutes, regulations, and judicial interpretations that shape contemporary non-refoulement policy.

The Conventions

The United States is a party to the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol)—which incorporates the substantive provisions of the 1951 Refugee Convention (Refugee Convention)—as well as to the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).⁷

The protections derived from these treaties operate at different levels of generality. The Refugee Convention is status-based, protecting individuals who qualify as refugees, with core safeguards extending to asylum seekers pending status determination.⁸ By contrast, CAT and ICCPR are status-neutral, protecting all individuals subject to a state's jurisdiction, regardless of immigration status.⁹

Core to these protections is non-refoulement. It is explicitly prohibited by Article 33 of the Refugee Convention, which provides “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁰ It is also explicitly prohibited by CAT Article 3, which states “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹¹ In assessing that risk, the state must consider whether there is a “consistent pattern of gross, flagrant or mass violations of human rights.”¹²

ICCPR is less explicit, but Articles 2, 6, and 7 have been interpreted to prohibit removal where there is a real risk of irreparable harm, including torture or cruel, inhuman, or degrading treatment or punishment.¹³ In this respect, ICCPR complements CAT by extending protection beyond torture to other serious forms of harm.¹⁴

Explicit Treaty Exceptions

CAT has no exceptions to its prohibition on non-refoulement to a country where there are substantial grounds for believing that a person would be subjected to torture.¹⁵ The convention makes clear that: “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”¹⁶

However, the Refugee Convention and ICCPR do recognize limited exceptions, with the ICCPR's being the narrower of the two. Under the Refugee Convention, contracting states may expel a refugee on grounds of national security or public order or deny non-refoulement protection where there are reasonable grounds to believe the person is a danger to the security of the country or they are considered a danger to the community because they have been convicted of a serious crime.¹⁷ This definition has been codified in 8 U.S.C. § 1231(b)(3)(B).

The ICCPR permits derogation from certain obligations only “[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,” and only to the extent strictly required by the exigencies of the situation.¹⁸ However, no derogation is permitted from Articles 6 and 7,¹⁹ which have been interpreted to prohibit removal where there is a real risk of irreparable harm, including torture or cruel, inhuman, or degrading treatment or punishment.²⁰

As discussed further below, the Trump 47 administration has frequently invoked the Refugee Convention's national security, public order, and criminal conduct exceptions in shaping its non-refoulement policies.

Reservations, Understandings, and Declarations

Beyond these explicit exceptions, the United States narrows its non-refoulement commitments through significant reservations, understandings, and declarations (RUDs). Specifically, ICCPR RUDs limit the domestic enforceability of any non-refoulement obligations by subordinating treaty provisions to constitutional standards and by declaring the treaty non-self-executing.²¹ It does this by ensuring that all non-refoulement obligations arise through domestic law.²² A prime example is that the United States interprets Article 7 of the ICCPR's prohibition on cruel, inhuman, or degrading treatment as coextensive with the narrower protections afforded by the Fifth, Eighth, and Fourteenth Amendments.²³

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Extreme Vetting – The New Normal at USCIS and Consulates: A Guide in Preparing Clients and Cases

By Larry S. Rifkin, Miami



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On 20 January 2025, right after taking office, President Trump issued Executive Order (EO) 14161, “Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats.”¹ In this EO, the president mandated that the attorney general, secretary of homeland security, and director of national intelligence “identify all resources that may be used to ensure that all aliens seeking admission to the United States, or who are already in the United States are vetted and screened to the maximum degree possible”; “re-establish a uniform baseline for screening and vetting standards and procedures”; and “vet and screen to the maximum degree possible all aliens who intend to be admitted, enter, or are already inside the United States, particularly those aliens coming from regions, or nations with identified security risks.”² Since that date, U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and the U.S. Department of State (DOS) have implemented a number of measures in accordance with the mandate contained in the EO. These measures range from

expanding biometrics requirements to imposing travel bans to amending the requirements for naturalization. This article will discuss the impact of these measures, as well as guide practitioners on how to prepare and counsel their clients under the current landscape.

Expanded Biometrics

Individuals applying for immigration benefits and immigrant visas must comply with government-imposed strict vetting standards and criteria that have been in place for decades. Previously, this included the collection of biometrics, criminal background checks, and FBI name checks. At a biometrics appointment, USCIS has the general authority to require and collect the fingerprints, digital photograph, and signature “from any applicant, petitioner, sponsor, beneficiary, or other individual residing in the United States for any immigration and naturalization benefit.”³ The Department of Homeland Security (DHS) also has authority to require an individual

to submit biometric information to conduct background and security checks and perform other functions related to administering and enforcing immigration laws.⁴

For immigrant visas issued at U.S. Embassies and Consulates abroad, the government's right to collect biometrics is mandated by the Enhanced Border Security and Visa Entry Reform Act of 2002, which mandates the use of biometrics in U.S. visas.⁵ This law requires that U.S. Embassies and Consulates must issue to international visitors "only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers."⁶ Additionally, the "Homeland Security Council decided that the U.S. standard for biometric screening is ten fingerprint scans collected at all U.S. Embassies and Consulates for visa applicants seeking to come to the United States."⁷

On 3 November 2025, DHS published a proposed rule, "Collection and Use of Biometrics by U.S. Citizenship and Immigration Services."⁸ The rule would expressly define "biometrics" to include a wider range of modalities than just fingerprints, photographs, and signatures. Under the proposed rule, DHS would define the term "biometrics" to mean "measurable biological (anatomical, physiological or molecular structure) or behavioral characteristics of an individual," to authorize USCIS to collect not only fingerprints, but also iris and retina scans, palm prints, DNA (even from U.S. citizens), and voice prints from applicants for benefits.⁹ The rule would also remove all age limitations or restrictions on biometrics collection and authorize USCIS to engage in "continuous vetting," subjecting all noncitizens to continued and subsequent biometric-based screening and vetting until they are granted U.S. citizenship.¹⁰ The proposed rule would also expand DHS's regulatory authority to require biometric submission from individuals associated with all USCIS forms, instead of the twenty-six current immigration-related forms that require biometrics.¹¹ Under this proposed rule, about 1.12 million more biometrics submissions would be collected annually, and the resulting biometrics-submitting population would increase from a current baseline of 2.07 million to 3.19 million.¹²

Effective 26 December 2025, DHS regulations authorize CBP to collect facial biometrics from all noncitizens upon entry and exit at airports, land ports, seaports, and other authorized points of departure.¹³ According to DHS, this regulation advances the department's "efforts to implement a comprehensive biometric entry/exit program, enhancing national security and streamlining identity verification processes for foreign visitors traveling to and from the United States."¹⁴ In the event of a mismatch, false match, or no match, CBP may use alternative means to verify the traveler's identity and to ensure the traveler is not unduly delayed.

Biometrics are a necessary requirement for individuals applying for immigration benefits. Practitioners should counsel their clients regarding the new biometrics requirements when they enter and depart the United States. Regarding the proposed rule, which is still in the rulemaking process, we will have to wait for the final regulation to properly counsel clients.

Searches at Ports of Entry

CBP is responsible for protecting the nation's borders and enforcing its laws at U.S. ports of entry.¹⁵ All travelers crossing the U.S. border are subject to CBP inspection. On rare occasions, CBP officers may conduct a *basic search* of a traveler's mobile phone, computer, camera, or other electronic devices during the inspection process. A basic search entails an officer reviewing or analyzing the contents of the device manually without the assistance of external equipment.¹⁶ These searches do not require a warrant, probable cause, or even individualized suspicion, and can be conducted as part of routine screening at any U.S. port of entry. CBP's authority extends to both incoming and outgoing travelers at any U.S. port of entry.

An *advanced search* is any search in which an officer connects equipment, wired or wireless, to copy and/or analyze the contents of an electronic device.¹⁷ Under CBP policy, advanced searches "require reasonable suspicion of a violation of law enforced or administered by CBP or a national security concern and require the approval of a senior manager (at a Grade 14 level or higher, or a manager with comparable responsibilities) prior to conducting the search."¹⁸ According to its website: "CBP conducts border searches of electronic devices in accordance with statutory and regulatory authorities, as well as applicable judicial precedent, including United States Supreme Court precedent recognizing the authority of the government to conduct border searches."¹⁹ CBP justifies its border security and counterterrorism responsibilities under Title 6 of the U.S. Code, enforcement of laws relating to customs and international trade under Title 19 of the U.S. Code, and enforcement of the immigration laws under Title 8 of the U.S. Code.²⁰

If a foreign national refuses to present their electronic devices and the information resident on the device in a condition that allows for the examination of the device and its contents, CBP may consider the foreign national's noncompliance and the inability to inspect the device when making admissibility decisions and may take appropriate law enforcement actions.²¹ If the traveler is a U.S. citizen, the traveler will not be denied entry to the United States, but the device(s) "may be subject to exclusion, detention, or other appropriate action or disposition."²²

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ILS Lunch & Learn With Mike Tessitore

28 January 2026 • Orlando

Greenberg Traurig hosted the second ILS Lunch & Learn in Orlando at their downtown office. Mike Tessitore, of counsel with Moran Kidd Lyons Johnson Garcia, PA, shared his experience in his practice areas of bankruptcy and creditor rights, commercial litigation, construction law, and corporate and business law. Working out of the firm's Miami and Orlando offices, Tessitore represents clients involved in international commercial disputes where his proficiency in Spanish often serves as a key asset.

Tessitore is a Florida Supreme Court Certified Circuit Civil Mediator who has successfully mediated hundreds of commercial disputes to consensual resolutions. He serves as

a member of the American Arbitration Association Roster of Mediators and Arbitrators and as a Florida Supreme Court Qualified Arbitrator. He also has served as an adjunct professor at Stetson University College of Law, teaching courses in international litigation and arbitration. His expertise also is informed by years of active service to the Business Law, International Law, and Alternative Dispute Resolution sections of The Florida Bar.

Thank you to Adrian Nuñez and Greenberg Traurig for hosting and to Brock McClane for serving as moderator.



Adrian Nuñez welcomes the ILS Lunch & Learn participants.



Mike Tessitore displays a souvenir from one of his cases.



Adrian Nuñez, Brock McClane, Penelope Perez-Kelly, Cindy Duque Bonilla, Mike Tessitore, and Laura Reich



ILS Lunch & Learn participants

ILS Meeting With Law Society of England and Wales • 9 February 2026 • Miami

On 9 February 2026, past and present leadership of the International Law Section met with leaders of the Law Society of England and Wales at the offices of Harper Meyer LLP. We discussed current issues facing attorneys in both jurisdictions and how we can build relationships between the groups.



Jim Meyer, Richard Montes de Oca, Jeff Hagen, Cristina Vicens Beard, Mark Evans, Laura Reich, Marco Cillario, Michael Padua, Carlos Osorio, Grant Smith, and Bob Becerra

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ILS Asia Committee Happy Hour 11 February 2026 • Coral Gables

The ILS Asia Committee Happy Hour, held 11 February 2026 at Loews Americana Kitchen in Coral Gables, brought members together ahead of iLaw, offering a timely opportunity to connect with colleagues already in the area for the conference.



Bob Becerra, Rahul Ranadive, Frederic Rocafort, Neha Dagley, Alan Lederman, and Wai Lee



Asia committee members enjoy a social hour ahead of iLaw.



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- ▣ Domestic and International Judgment and Arbitral Award Collection

Miami, Florida • Washington, D. C.

iLaw 2026 • 13 February 2026 JW Marriott Marquis, Miami

The iLaw conference is the International Law Section’s annual flagship event. iLaw 2026 featured an opening panel on risk management in Latin American markets and a closing panel on Miami’s role in innovation and international law; a luncheon keynote address by Robert Mahari, associate director, Stanford CodeX Center; and three parallel tracks on (1) international arbitration (sponsored by AAA-ICDR), (2) international litigation, and (3) international business transactions. The conference is the premiere international law conference in Florida and is attended by legal practitioners from the United States, Canada, Europe, and Latin America.

The day before iLaw, on 12 February 2026, the International Law Section conducted its executive council meeting at the offices of Greenberg Traurig PA, which included a celebration of this year’s winner of the ILS Fantasy Football League. Later that evening, iLaw attendees enjoyed an opening cocktail reception sponsored by at Boulud Sud, a Mediterranean restaurant in Downtown Miami.



With business concluded, ILS members pose for a group photo after the ILS executive council meeting held the evening before iLaw.



Robert Q. Lee, Neha Dagley, Susanne Leone, Peter Quinter, and Kim Radcliffe



Pamella Seay, one of the editors, displays the International Law Deskbook 2026, now in its second edition.



Jeff Hagen (aka Luxury Tax Legends) snagged the Fantasy Football trophy this year.



Cindy Duque Bonilla, Jeff Hagen, and Laura Reich



Patricia Cuba Sichler, Alain Acanda, Matt Akiba, and Jennifer Mosquera



Opening panel – One Region, Many Rules: Risk Management Strategies in LatAm Markets, with Michael Fernandez (moderator), Frank LaFontaine, Violeta Longino, Eve Perez Torres, and Juliana Jaccoud Molina



Adrian Nuñez, Ed Davis, Giovanni Angles, and Laura Reich



Thanks to Carlos Osorio and Osorio Internacional for sponsoring our coffee break.



Clarissa Rodriguez and Arnie Lacayo Staff the merch table.



It takes a small army of volunteers to keep iLaw running smoothly!



Laura Reich and Chelsea Nuñez network during the coffee break.



AAA-ICDR International Arbitration Track – Innovation, Integrity, and Reform: Investment Arbitration at a Turning Point, with Alina Fernandez Portela, Carlos Ramos-Mrosovsky, Manuel Gomez (moderator), and Anna Toubiana



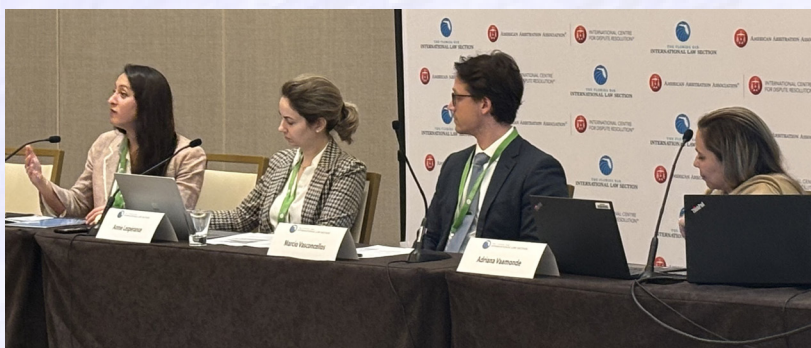
Francisco Martinez Diaz-Granados, Juan Andrade, Nicole Baudini, Jeff Hagen, Laura Reich, Jim Meyer, Blake Bierman, Victoria Moreno Pabon, Clarissa Rodriguez, and Otavio Carneiro



International Litigation Track – Parallel Proceedings and Forum Battles in the Age of Extraterritorial Enforcement, with Arnaldo Lacayo (moderator), Lorell Guerrero, Fabio Trevisan, Alexia Adda, and Malcolm Arthurs



International Business Transactions Track – International Private Wealth: A Global View on Banking and Financial Services, with Justin Carlson, Renata Wolfe-Schlesinger, Jeffrey Hagen (moderator), Richard Fogarty, and Jorge De Hoyos Waiter



AAA-ICDR International Arbitration Track – Inside the Strategy Room: Institutional, Corporate, and Counsel Perspectives on International Arbitration, with Katie Gonzalez, Annie Lespérance, Marcio Vasconcellos, and Adriana Vaamonde (moderator)



Closing Plenary Session – Tech Meets Tropics: Miami at the Intersection of Innovation and International Law, with Giuseppe De Palo (moderator), Jessica Lynne Furr, Jaret L. Davis, and Robert Hacker



International Business Transactions Track – Geopolitics and Supply Chain 2.0: Legal Strategies in an Era of Realignment, with Olga Torres, Peter Quinter (moderator), Andrea De Lima, Robert Becerra, and Fernando Rivadeneyra



iLaw 2026 Closing Cocktail Reception



International Litigation Track – Hot Topics in International Litigation, with Ed Mullins (moderator), Jocelyne A. Macelloni, Frederico Singarajah, Rodolfo Rivera, and Stuart Cullen

ILS Pre-Moot Competition 14 February 2026 • Miami

The ILS Richard DeWitt Memorial Vis Pre-Moot Competition was held the day after iLaw 2026 in JAMS’s Miami, Florida offices, with a cocktail reception that followed. This dynamic educational program bridges the gap between theory and practice, preparing students for the prestigious 33rd Willem C. Vis International Commercial Arbitration Moot in Vienna.

The ILS continued its tradition of offering an innovative, hybrid competition by combining in-person and virtual oral arguments, all with the goal of providing practical training, fostering a deeper understanding of international commercial law, and preparing students for resolving complex international business disputes.



The Vis Pre-Moot Steering Committee, composed of Jose Alvarez, Jennifer Mosquera, Alain Acanda, Blake Bierman, Romney Manassa, Brady Taylor, Pedro Jedlicka, Olivia Piluso, Maria Cortesi, and Fernanda Gil, celebrate at the cocktail reception.



Joe Rome of Sequor Law presents the Third Place award to Frederico Singarajah on behalf of Gray’s Inn as Jennifer Mosquera and Pedro Jedlicka look on.



Pedro Jedlicka and Jennifer Mosquera, co-chairs of the Vis Pre-Moot Steering Committee



Sherman Humphrey presents the First Place award to the University of Miami team.



The University of Miami team celebrates with the “U.”

ILS Law School Event 2 March 2026 Florida State University, Tallahassee

Fred Rocafort, Li Massie, and Kim Gray represented the International Law Section at a meeting with the Florida State University International Law Students Association.



Li Massie, Fred Rocafort, Kim Gray, and Lexi Low, president of FSU ILSA



ILS and FSU ILSA members gather for a group photo.

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ILS Membership Drive Cocktail 9 April 2026 • Coral Gables

ILS members invited nonmember colleagues to a special event in Coral Gables to learn more about the International Law Section. Participants enjoyed productive conversations and making new connections at Cafe Abbracci. Thanks to everyone who turned out for this well-attended and successful event. And a special thank you to the event sponsor, Hogan Lovells.



What a wonderful turnout!



Mae Espinosa, Alyson Diaz, Jennifer Mosquera, Miguel de Rivero, and Emily Hill



Omar Ibrahim and Blake Bierman



Laura Reich, Adrian Nuñez, and Davide Macelloni



Alain Acanda, Michael Hanlon, Giovanni Angles, Miguel de Rivero, Jennifer Mosquera, and Carolina Rosso

WORLD ROUNDUP

CARIBBEAN



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Countries adopt transparency, licensing, or prohibition mechanisms under the new regulatory paradigm for nominee services.

The ongoing reforms surrounding nominee services stem from the evolution of the Financial Action Task Force (FATF) Recommendations, particularly Recommendation 24 on transparency and beneficial ownership. Although this recommendation has been amended multiple times, the October 2024 changes represent a decisive shift. FATF now expressly requires countries to adopt effective measures ensuring that nominee shareholders and directors are not misused for money laundering or terrorist financing. To achieve this, the Interpretive Note introduces three mechanisms—transparency, licensing, and prohibition—that jurisdictions may select as they update their regulatory frameworks.

Under the transparency mechanism, nominees must disclose their status and the identity of their nominator to the company and the relevant corporate registry. This disclosure may take the form of entries in the share register, the companies register, or a beneficial ownership register, ensuring that nominee relationships are captured and visible to competent authorities.

The licensing mechanism goes further by requiring nominees to obtain a license or to operate within a regulated, anti-money-laundering-supervised profession. Licensing does not replace transparency; instead, both coexist so that nominee identities and nominator details remain properly recorded and up-to-date.

The prohibition mechanism allows countries to restrict or ban the use of nominee shareholders and/or directors altogether. However, an outright prohibition is the most restrictive and arguably the least proportionate approach. International bodies recognize that properly regulated nominee arrangements can serve legitimate and sometimes essential corporate governance purposes. These include compliance with local laws requiring a minimum number of directors, access to specialized managerial expertise, etc. Blanket bans ignore these legitimate uses and risk infringing on rights protected under constitutional and human-rights frameworks, particularly the freedom to choose representatives or to structure corporate governance. Consequently, full prohibition may compromise proportionality and legal soundness, making it a far less balanced alternative when compared with licensing

or enhanced transparency models.

Across jurisdictions, all three mechanisms are now reflected in practice. Panama has adopted a transparency-based system built on rigorous documentation, annual declarations, and enhanced traceability. Bermuda, by contrast, has implemented full prohibition, with legislation that expressly bans nominee directors. The Bahamas has chosen a hybrid model, prohibiting nominee directors while maintaining transparency requirements for nominee shareholders.

Meanwhile, Belize, the British Virgin Islands, and Nevis have embraced licensing frameworks. Belize regulates nominee services through fit-and-proper assessments and enhanced reporting obligations. Nevis integrates nominee services into its licensed registered agent model, requiring explicit licensing categories and full due diligence for nominees. BVI also requires companies to file information that captures nominee status, strengthening regulatory visibility.

These systems share a common denominator: each creates enforceable controls to prevent the misuse of nominee arrangements, supported by administrative and monetary sanctions.

Among FATF's three mechanisms, licensing stands out as the most balanced. It preserves transparency, enables proper supervision, and accommodates legitimate corporate needs. As countries continue implementing the revised standards, precise alignment with FATF's definitions of nominee, nominator, nominee director, and nominee shareholder will be essential to avoid gaps and to ensure the effectiveness of global beneficial-ownership frameworks.

Eyra Perdomo is an attorney in the Estate Planning & Corporate Services practice group at Morgan & Morgan. She has over twenty years of experience in corporate services and compliance. Throughout her career, Ms. Perdomo has led multidisciplinary teams in Panama and the British Virgin Islands, participating in the legal and corporate structuring of complex transactions, as well as in the implementation of compliance systems approved by regulators in jurisdictions such as Panama, BVI, Belize, Nevis, and The Bahamas.



ITALY



Giovanna Vaglio Bianco, Miami

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Italy approves draft legislative decree to transpose Pay Transparency Directive into law.

Equal pay for women and men for equal work (or for work of equal value) is one of the EU's cornerstone policies. In fact, this principle was adopted in the 1957 Treaty of Rome (now the Treaty on the Functioning of the EU). Since then, the EU has taken initiatives to tackle the gender pay gap.

Notwithstanding the efforts to implement the right to equal pay, the gender pay gap still persists; therefore, new EU rules on pay transparency were adopted in May 2023. These are outlined in Directive 2023/970 (the Pay Transparency Directive), which lays down minimum rules to reinforce the principle of equal pay for men and women through pay transparency.

Member states must transpose the Pay Transparency Directive into national law by 7 June 2026. Italy has approved a draft legislative decree, and Italian companies are preparing themselves to review human resources policies to establish clear criteria for salaries or salary ranges and well-defined career and salary progressions to ensure consistency and fairness according to EU principles. Such transparency is crucial to implementing equal pay.

The directive establishes, inter alia, the following:

- Before an interview, job applicants have the right to be informed by the employer of the initial pay of the job position or its range and, where relevant, details of the provisions of the collective agreement applied by the employer in relation to the position.
- Employees have the right to request (directly or through their workers' representatives or national equality body) information on their individual pay level and the average pay levels, broken down by sex, for categories of workers performing the same work or work of equal value to theirs. Any worker who has sustained damage as a result of an infringement of any right or obligation relating to the principle of equal pay has the right to claim and to obtain full compensation or reparation for that damage.
- Employers:
 - shall not ask job applicants about their current or previous pay and shall ensure that vacancy notices and job titles are gender neutral and recruitment processes are nondiscriminatory;
 - shall make easily accessible to their employees the criteria that are used to determine workers' pay, pay levels, and pay progression, and those criteria shall be

objective and gender neutral;

- shall inform all employees annually of their right to request and receive in writing information on their individual pay and average pay levels broken down by sex for colleagues doing the same work or work of equal value;
- shall provide periodically information such as the gender pay gap and the proportion of female and male staff receiving complementary or variable components; and
- shall cooperate with workers' representatives to identify, remedy, and prevent discriminatory pay differences when their pay reporting reveals a gender pay gap above 5% that cannot be justified by objective, gender-neutral criteria.

Giovanna Vaglio Bianco is an Italian attorney and member of the Milan Bar Association. She focuses her practice on employment and labor law, assisting national and international clients on labor law issues, including employment and self-employment contracts, employees' transfers, disciplinary proceedings, and dismissals.

WESTERN EUROPE



Susanne Leone, Miami

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German parliament backs controversial military service law.

Germany has approved a new law to strengthen its military in response to growing security concerns in Europe and NATO commitments. The plan focuses first on improving voluntary enlistment through better incentives, but it also allows for the possible return of conscription if recruitment targets are not met, subject to parliamentary approval.

The government aims to significantly increase troop numbers over the next decade and to rebuild its reserve forces. As part of this shift, young men will again, after conscription was suspended in 2011, undergo medical assessments, and all young adults will be asked about their willingness to serve, though only men are required to respond.

Overall, the policy reflects a broader effort across Europe to reinforce defense capabilities in light of rising geopolitical tensions.

Germany moves toward social media ban for children amid mental health and legal concerns.

Germany's major political parties are moving toward banning social media use for children under age 14, aligning with similar efforts in countries like Australia, France, and Spain. The proposals include strict age limits, fines for platforms that fail to verify users' ages, and the introduction of simplified, less addictive versions of social media for teenagers up to age 16.

Supporters argue that these measures are needed to address rising screen time and worsening mental health among young people. Researchers highlight that many platform features such as “likes,” endless scrolling, and notifications are designed to stimulate the brain’s reward system, encouraging habitual use. Concerns also include exposure to harmful content, cyberbullying, and unrealistic social standards.

The plans face legal and technical challenges, particularly around enforcing age verification and protecting user data. At the same time, broader scrutiny of tech companies is increasing, with cases and investigations targeting potentially addictive platform designs, including those linked to the Cambridge Analytica scandal. The company Cambridge Analytica improperly collected personal data from approximately 87 million Facebook users without their consent.

Susanne Leone is one of the founders of Leone Zhgun, based in Miami, Florida. She concentrates her practice on national and international business start-ups, enterprises, and individuals engaged in cross-border international business transactions or investments in various sectors. Ms. Leone is licensed to practice law in Germany and in Florida.

OFF WORLD

Neha S. Dagley, Miami



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The NASA Authorization Act of 2026 and the push for a lunar base reflect new NASA priorities.

On 4 March 2026, the U.S. Senate Committee on Commerce, Science, and Transportation unanimously advanced the NASA Authorization Act of 2026, a bipartisan measure led by Chairman Ted Cruz and Ranking Member Maria Cantwell. The House companion bill, H.R. 7273, cleared the House Science Committee in February. Taken together, the committee actions reflect renewed alignment on several core NASA priorities.

The legislation authorizes approximately US\$24.7 billion for Fiscal Year 2026 and US\$25.3 billion for FY2027, while providing specific direction on how NASA is expected to execute its exploration agenda.

The central feature of the Cruz-Cantwell substitute to S.933 (the substitute) is not simply a return to the Moon, but the establishment of a sustained U.S. presence on the lunar surface. Section 210, titled “Moon Base,” moves beyond general policy language. Specifically, the bill mandates “[a]s soon as practicable, the Administrator shall undertake activities necessary to establish a Lunar Surface Moon Base to develop a permanent crewed United States presence on the Moon capable of long-duration habitation, robotic,

and industrial operations to advance science, technology, and strategic interests.” It contemplates a lunar surface architecture capable of supporting long-duration habitation, infrastructure development, and sustained operations, and directs NASA to carry out the precursor and enabling activities necessary to translate that mandate into an executable program.

Those enabling activities are not abstract. The substitute identifies specific categories of work required to support a lunar outpost, including deployment of surface power systems, site preparation and precision landing capabilities, autonomous assembly, and communications and navigation infrastructure. The emphasis is on building systems that can support continuity, including early scientific and technology demonstrations designed to inform long-duration habitation.

The strategic rationale is explicit throughout the findings. The substitute points to the increasing number of spacefaring nations and the development of alternative lunar initiatives, including those led by China, and ties sustained lunar presence directly to U.S. leadership in shaping norms of behavior in cislunar space. The Moon is treated not as a destination, but as a domain in which governance, infrastructure, and presence will develop in parallel.

The timing aligns with a defining milestone. With the successful completion of Artemis II, the United States has, for the first time in decades, executed a crewed mission beyond low Earth orbit and returned safely, demonstrating not only capability but operational credibility in deep space. Against that backdrop, the focus shifts from return to continuity, and this legislation sets the stage on how that capability is translated into a sustained and structured U.S. presence on the Moon.

Neha S. Dagley is the founder of SpaceMarked Legal Advisory, a boutique practice focused on providing commercial legal advice for companies in the space, technology, and emerging industries. Ms. Dagley holds an Advanced LL.M. in Air and Space Law from Leiden University and is an elected member of the International Institute of Space Law. Her published work addresses mission authorization and investment frameworks for commercial space stations, legal certainty in space resource activities, and the integration of private human spaceflight into international legal frameworks.

From Policy Binders to Embedded Controls ..., continued from page 9

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Aspirational or absolute policy language, in sanctions, export controls, and customs compliance, creates risk where operational processes do not enforce those standards. Where policies prohibit conduct without exception, but decision-making remains informal or inconsistent, the disconnect demonstrates that the organization failed to follow its own controls. Policies that are not operationalized do not

mitigate risk; they are evidence that risks were identified without being effectively controlled.⁷

This dynamic is acute in customs compliance, where the statutory obligation of “reasonable care” requires importers to implement processes capable of producing accurate classification, valuation, and origin determinations on a consistent basis.⁸ CBP’s reasonable care standard requires importers to exercise reasonable care by taking affirmative steps, implementing internal controls, and ensuring accuracy, and frames compliance as an active responsibility, not a passive one.⁹

Enforcement authorities assess compliance programs by comparing documented controls against actual conduct, using transactional data, internal communications, and system records. When conduct doesn’t match written procedures, regulators treat the gap as evidence that controls were not implemented or enforced. As a result, policies do not just fail; they become evidence of control failure.¹⁰

Sanctions programs in high-risk jurisdictions face the same risks. Commercial pressure, tight margins, and changing business models often outpace compliance controls. When organizations under-resource compliance or treat it as a cost center, the gap between policy and practice grows. Regulators nevertheless expect compliance programs to be risk-based, adequately resourced, and effective under real-world conditions.¹¹

Reduced investment does not reduce expectations. In higher-risk environments, regulators expect heightened diligence. When controls are not effectively implemented, policies do not mitigate risk; they document that the organization understood the risk and failed to control it.¹²

Embedding Compliance Into Operations

The distinction between formal compliance and operational compliance is most visible at the point of decision-making. The

Applied Materials enforcement action illustrates this dynamic. The company maintained a formal compliance program, engaged in licensing activity, and implemented system-based controls, yet proceeded with re-exports to an Entity List party without the required authorization.¹³ These failures are not isolated. They reflect a broader pattern where control frameworks appear sound in design but are not structured to withstand operational pressure or conflicting business incentives.

Breakdowns occur where legal and compliance determinations are made outside structured workflows, or where those determinations are embedded into systems without appropriate validation. In Applied Materials, an incorrect legal interpretation was operationalized through checklists and system overrides, allowing transactions to proceed in violation of the Export Administration Regulations.¹⁴ The issue was not just the legal conclusion, but the lack of controls to validate decisions, ensure consistency, and enforce accountability. Effective programs require defined decision authority, independent validation, and system-based controls that block transactions until requirements are met.

Effective programs define clear decision authority for high-risk determinations and require formal escalation, documentation, and approval for any deviation from standard controls. When employees can reach or override legal or compliance conclusions outside these structures, controls fail regardless of the underlying analysis.

This matters most when compliance responsibilities are distributed across the organization, as fragmentation leads to inconsistent application of standards across regulatory domains. In high-risk environments, commercial pressure and operational urgency influence decision-making. Well-designed control frameworks anticipate these conditions and incorporate escalation requirements and approval thresholds that cannot be bypassed.

This breakdown is often reinforced by overreliance on outside counsel. Organizations that depend on external advice without building internal control capability struggle to sustain remediation. Without clear ownership, corrective actions remain reactive, preventing translation into repeatable processes embedded within operations.

Compliance is operational when systems govern decisions through validation, documentation, and accountability, not individual discretion.

Governance, Remediation, and Control Maturity

Effective compliance programs need clear decision ownership, defined approval processes, and accountability to ensure

consistent execution. Leadership commitment, often described as “tone at the top,” is foundational, but it is not sufficient on its own. It must translate into defined ownership, enforced decision authority, and accountability mechanisms that operate in practice.

Regulators evaluate remediation not only based on whether issues are corrected, but on whether organizations identify root causes and implement structural changes that prevent recurrence.¹⁵ Without this, corrective actions remain reactive and fail to produce lasting control improvements.

Control maturity evolves from discretionary decision-making to standardized processes, system-enabled controls, and ultimately governance that is continuously informed by monitoring and feedback.¹⁶ At higher levels of maturity, control frameworks are resilient to organizational change and capable of identifying patterns in performance over time, allowing organizations to detect systemic weaknesses and refine controls before issues escalate.

Achieving this level of maturity requires deliberate design: defining control ownership, embedding workflows into business systems, and continuously validating performance through testing and monitoring.

Operationalizing Compliance: A Practical Roadmap

Effective compliance programs should be designed with consistent structural characteristics grounded in regulatory expectations and operational best practices. At minimum, these programs include:

- Start where risk lives – Identify high-risk decision points
- Assign ownership – Define decision authority and accountability
- Build into workflows – Embed controls into enterprise resource planning and business systems
- Promote escalation – Establish clear triggers and response timelines
- Document in real time – Capture decisions and create audit-ready records
- Test and adapt – Evaluate performance and refine controls

These elements transform compliance from a reactive function into an operational system where decisions are governed by design and outcomes are consistent, documented, and defensible.

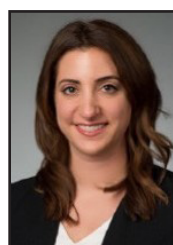
Conclusion

Policies remain necessary, but they are not sufficient in today’s enforcement environment. Regulators assess compliance programs based on whether controls are operational,

embedded, and capable of functioning under real-world conditions.

Enforcement outcomes reflect not only the underlying conduct, but the organization’s ability to detect, escalate, and remediate issues through effective controls.

Compliance does not fail in policy; it fails at the point of decision-making. In modern enforcement, compliance is judged not by what organizations say, but by what their systems require. Controls that do not govern behavior at the point of decision-making fail, regardless of how they are documented.



Lena Halasa is a Washington, D.C., Maryland, and Connecticut-licensed attorney based in South Florida, focusing on international trade, export controls, and economic sanctions. She designs and implements enterprise compliance programs that embed regulatory requirements into global operations and govern

decision-making at scale. Her work centers on translating complex regulatory frameworks into operational systems and controls that enable consistent, audit-ready execution across jurisdictions.

Endnotes

- 1 U.S. Dep’t of Justice, *Evaluation of Corporate Compliance Programs* (Sept. 2024), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/download>; U.S. Dep’t of the Treasury, *A Framework for OFAC Compliance Commitments* (2 May 2019), https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf; Bureau of Indus. & Sec., U.S. Dep’t of Com., *Export Compliance Guidelines: The Elements of an Effective Compliance Program* (2017), <https://www.bis.doc.gov/index.php/documents/compliance-a-training/export-management-a-compliance/ems-guidelines/283-ecp/file>.
- 2 DOJ ECCP, *supra* note 1.
- 3 19 U.S.C. § 1592(c)(4); U.S. Customs & Border Prot., *Mitigation Guidelines: Penalties for Violations of 19 U.S.C. § 1592* (Informed Compliance Publication).
- 4 Bureau of Indus. & Sec., U.S. Dep’t of Com., *Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases*, 15 C.F.R. pt. 766, supp. no. 1 (2020).
- 5 *Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases*, 81 Fed. Reg. 40,499, 40,500–01 (22 June 2016) (to be codified at 15 C.F.R. pt. 766, supp. no. 1).
- 6 DOJ ECCP, *supra* note 1.
- 7 OFAC Framework, *supra* note 1; BIS Export Compliance Guidelines, *supra* note 1.
- 8 19 U.S.C. § 1484(a)(1).
- 9 U.S. Customs & Border Prot., *Reasonable Care* (Informed Compliance Publication), <https://www.cbp.gov/trade/informed-compliance-publications/reasonable-care>.
- 10 DOJ ECCP, *supra* note 1.
- 11 OFAC Framework, *supra* note 1; BIS Export Compliance Guidelines, *supra* note 1.
- 12 DOJ ECCP, *supra* note 1.
- 13 In the Matter of Applied Materials, Inc. & Applied Materials Korea Ltd., BIS Order (11 Feb. 2026).
- 14 *Id.*
- 15 DOJ ECCP, *supra* note 1; U.S. Dep’t of Justice, *Justice Manual § 9-28.210*.
- 16 Comm. of Sponsoring Orgs. of the Treadway Comm’n (COSO), *Internal Control—Integrated Framework* (2013).

Compliance Frameworks for the Extraterritorial Application ..., continued from page 11



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corruption offences.¹⁷ UNCAC also provides the international legal architecture for mutual legal assistance, extradition, and cross-border asset recovery that makes multinational enforcement cooperation possible. The FCPA and the UK Bribery Act 2010 are best understood as the most aggressively enforced domestic implementations of those UNCAC obligations rather than as unilateral overreach, a framing that matters because it situates the extraterritorial assertions of U.S. and UK enforcement within a framework of internationally agreed obligations rather than pure jurisdictional opportunism. UNCAC's Implementation Review Mechanism provides a peer-review process through which states assess compliance, though its monitoring function is considerably less rigorous than the OECD Working Group on Bribery's peer examination process, and enforcement of its standards remains uneven across the treaty's broad membership.¹⁸ Against that multilateral backdrop, U.S. authorities have applied the FCPA to non-U.S. companies on the basis of minimal U.S. nexus, sometimes no more than the routing of a wire transfer through a U.S. correspondent bank account or the use of a U.S.-dollar-denominated transaction.¹⁹ The Department of Justice and the Securities and Exchange Commission have obtained multibillion-dollar resolutions with companies headquartered in France, Germany, Brazil, Sweden, and elsewhere, frequently for conduct that took place entirely outside the United States and that would also have violated the anti-corruption law of the companies' home states.²⁰ The UK Bribery Act 2010, which applies to any "associated person" of a commercial organization regardless of nationality or location, and which covers facilitation payments that the FCPA exempts, compounds the complexity for multinational groups with any UK connection.²¹

Sanctions. U.S. sanctions law is among the most aggressively extraterritorial bodies of law in existence. Primary sanctions prohibit U.S. persons, including entities organized under

U.S. law and their foreign branches, from transacting with designated persons or countries. Secondary sanctions, by contrast, threaten non-U.S. parties with exclusion from the U.S. financial system or market if they transact with designated parties, even where no U.S. person, property, or territory is involved in the transaction.²² European states have objected forcefully to secondary sanctions as violations of international law, enacting "blocking statutes" that prohibit EU operators from complying with listed U.S. sanctions (absent European Commission authorization where non-compliance would cause serious damage to the operator's interests).²³ In practice, commercial parties almost universally comply with U.S. secondary sanctions rather than face exclusion from dollar clearing, demonstrating that economic coercion can achieve compliance even where legal authority is contested.²⁴

Data Protection. The GDPR applies to any organization that offers goods or services to, or monitors the behavior of, data subjects in the European Union, regardless of the organization's establishment.²⁵ The regulation imposes substantial restrictions on the transfer of personal data to third countries that do not provide an adequate level of protection, a requirement that has produced repeated friction with the United States, culminating in the invalidation of successive U.S.-EU data transfer frameworks by the Court of Justice of the European Union in the *Schrems* decisions.²⁶ The EU-U.S. Data Privacy Framework adopted in 2023 represents the current attempt to stabilize this relationship, but its long-term durability remains uncertain.²⁷ Meanwhile, China's Personal Information Protection Law, Brazil's *Lei Geral de Proteção de Dados*, and analogous statutes in more than 160 jurisdictions have created a global patchwork of data localization and transfer requirements that impose genuinely contradictory obligations on globally integrated businesses.²⁸

Export Controls. The U.S. Export Administration Regulations and International Traffic in Arms Regulations control the export and re-export of controlled goods, software, and technology, including by foreign parties that acquire U.S.-origin items abroad.²⁹ The de minimis rule and the foreign direct product rule extend U.S. jurisdiction to foreign-produced items that incorporate even a small percentage of U.S.-origin controlled content, or that are produced using U.S. equipment or software above a certain threshold, creating a "long arm" that reaches deep into global supply chains.³⁰ The U.S. government's expansion of the foreign direct product rule in 2020 and 2022 to cover certain semiconductor-related transactions dramatically broadened the reach of U.S. export control law over non-U.S. parties, drawing official

protests from Beijing and expressions of concern from allied governments in the Netherlands, Japan, and South Korea, whose companies faced collateral disruption.³¹

The cumulative effect of these regimes is a landscape in which multinational enterprises face overlapping and sometimes contradictory obligations across multiple jurisdictions simultaneously. This is not merely an inconvenience; it creates genuine legal dilemmas in which compliance with one sovereign's mandate may constitute a violation of another's, a situation that international law has not yet developed adequate tools to resolve.³²

Corporate Compliance Architecture in a Multijurisdictional Environment

Faced with an environment that no single regulatory framework organizes coherently, multinational enterprises have developed compliance architectures that are fundamentally defensive in character, designed not to satisfy any single sovereign perfectly, but to minimize the aggregate exposure across all of them.³³ Understanding how practitioners construct that architecture is essential for any counsel advising a global client.

The first design choice concerns centralization versus decentralization. Highly centralized compliance programs, in which a global compliance function sets policy and monitors adherence across all jurisdictions, offer consistency and economies of scale but risk imposing U.S. or European standards on operations that may thereby expose them to liability under local law. A centralized sanctions screening system that applies OFAC lists globally may, for example, compel a non-U.S. subsidiary to refuse business with a counterparty in Cuba or Iran in a manner that violates EU blocking regulations.³⁴ Conversely, a fully decentralized approach, in which each subsidiary complies only with local law, may expose the parent to liability for failing to prevent corrupt or sanctioned conduct in its value chain.³⁵ Most sophisticated multinationals therefore adopt a hybrid model, establishing global minimum standards while permitting local variations within defined parameters.

The second design challenge is the management of jurisdictional nexus. Because many extraterritorial statutes assert jurisdiction on the basis of a connection to a particular country, such as the use of its currency, its financial institutions, or its communication networks, prudent compliance programs include nexus mapping exercises that identify which regulatory regimes attach to which categories of transactions.³⁶ A transaction that would otherwise be permissible may become problematic if it is denominated in U.S. dollars, processed through a U.S. correspondent bank, or

negotiated via electronic communications routed through U.S. infrastructure. Identifying and, where appropriate, structuring around these nexus points is a legitimate and widely practiced risk management technique, though counsel must remain alert to the risk that deliberate nexus avoidance may itself attract regulatory suspicion.

Third, effective multijurisdictional compliance requires continuous monitoring of regulatory developments across all relevant jurisdictions. Sanctions lists change with little notice; anti-corruption enforcement priorities shift with changes in administration; data protection regulators issue guidance that alters the compliance landscape without amending the underlying statute.³⁷ Enterprises lacking a systematic process for tracking regulatory developments across the jurisdictions in which they operate, or in which their transactions have nexus, face the risk of inadvertent violation of newly enacted or newly interpreted requirements.

Fourth, the role of third-party due diligence has expanded enormously. Because liability under the FCPA, the UK Bribery Act, and a growing number of supply chain due diligence laws extends to the conduct of agents, joint venture partners, distributors, and other third parties, the compliance architecture must extend beyond the enterprise's own employees and operations.³⁸ Germany's Supply Chain Due Diligence Act, the French *Loi de Vigilance*, and the EU Corporate Sustainability Due Diligence Directive all impose obligations to assess and address human rights and environmental risks in global supply chains, adding a further extraterritorial layer to the compliance matrix.³⁹

Finally, the strategic deployment of voluntary disclosure and cooperation as risk management tools deserves attention. In multiple jurisdictions, regulators have adopted formal or informal policies that treat voluntary disclosure, cooperation, and remediation as significant mitigating factors in enforcement decisions.⁴⁰ The U.S. Department of Justice's Corporate Enforcement Policy provides that companies that voluntarily self-disclose FCPA violations, cooperate fully, and remediate effectively will receive a presumption of declination; where a criminal resolution is nonetheless warranted, the policy prescribes at least a 50% reduction from the low end of the applicable Sentencing Guidelines fine range.⁴¹ Decisions about whether, when, and to which regulator to disclose a potential violation in a multijurisdictional enforcement environment are among the most consequential that in-house and external counsel face, requiring a careful assessment of the relevant regimes' disclosure policies, the risk of parallel proceedings, and the implications of disclosure in one jurisdiction for proceedings in another.⁴²

Soft Law, Intergovernmental Coordination, and the Path to Greater Predictability

Given the fragmentation described above, the obvious question is whether international law and international institutions can do more to reduce conflict and promote predictability. The answer, for the time being, is yes, but only modestly, and primarily through mechanisms that fall short of binding legal harmonization.

In the anti-corruption field, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has produced a substantial degree of convergence among its forty-four signatory states, establishing a common standard for the criminalization of foreign bribery and a monitoring mechanism that has driven genuine domestic enforcement improvements.⁴³ The Financial Action Task Force mutual evaluation process performs an analogous function in the anti-money laundering field, creating peer pressure that drives legal reforms across a broad membership.⁴⁴ These mechanisms demonstrate that intergovernmental coordination can produce meaningful convergence where states share an interest in effective enforcement, even without a formal treaty obligation to harmonize the precise content of their laws.

In the data protection arena, the 2013 OECD Privacy Guidelines and the APEC Cross-Border Privacy Rules framework have sought to establish interoperable standards for international data transfers without requiring full harmonization of domestic law.⁴⁵ The Council of Europe's Convention 108+, open to accession by non-European states, offers a binding but flexible framework that several non-European states have adopted.⁴⁶ These instruments have reduced, without eliminating, the divergence between national data protection regimes, and they have provided a common vocabulary that facilitates bilateral negotiations such as the EU-U.S. Data Privacy Framework.

The sanctions domain presents a starker picture. No multilateral framework coordinates national sanctions policy, and the proliferation of autonomous national and regional sanctions regimes, including those of the United States, European Union, United Kingdom, Canada, Australia, Japan, and others, has created a landscape of overlapping designation lists and divergent scope rules.⁴⁷ While the like-minded Western states made significant efforts to coordinate sanctions on Russia following the 2022 invasion of Ukraine, the coordination was ad hoc and imperfect, with differences in the scope of financial, energy, and technology restrictions creating opportunities for evasion through non-participating jurisdictions.⁴⁸ The fundamental problem is that sanctions are an instrument of foreign policy, and foreign policy coordination

requires a degree of political alignment that the current international environment does not reliably sustain.

Soft law plays a role in managing jurisdictional conflict even in the absence of formal coordination. The International Law Association's Guidelines on International Investment Law, the International Bar Association's Anti-Corruption Guidelines, and the United Nations Global Compact, while not legally binding, provide frameworks that companies can invoke to demonstrate good-faith compliance with recognized international standards.⁴⁹ More concretely, joint enforcement actions and information-sharing arrangements between national enforcement agencies, such as those routinely employed in FCPA matters involving parallel proceedings with UK, Swiss, and Brazilian authorities, have created a de facto system of coordinated enforcement that, while not harmonized in substantive law, reduces the risk of duplicative punishment and promotes predictability of outcome.⁵⁰

Conclusion and Practical Guidance for International Practitioners

The extraterritorial application of national laws has created a de facto system of regulatory globalization that outpaces the development of international legal frameworks designed to manage it. States assert prescriptive jurisdiction on broad and sometimes conflicting bases; enforcement agencies exercise that jurisdiction aggressively; and the international mechanisms available to resolve conflicts or constrain excess remain weak. For multinational enterprises, the result is a compliance environment that is fragmentary, expensive, and unpredictable.

For the practitioner, several practical conclusions follow from the foregoing analysis. First, jurisdictional mapping is not a one-time exercise but an ongoing obligation. The regulatory landscape changes continuously, and the nexus points triggering extraterritorial liability shift with enforcement policy, technological infrastructure, and the evolution of supply chains. Counsel advising global enterprises must build jurisdictional surveillance into their compliance advisory practice rather than treating it as a transaction-specific inquiry.

Second, where genuine conflicts of law exist, counsel must identify them explicitly, document the analysis, and escalate to decision-makers who can make an informed business judgment about which sovereign's requirements to prioritize. The availability of conflict-of-laws defenses in enforcement proceedings is limited, but documenting a good-faith conflict analysis is a meaningful mitigating factor in regulatory and prosecutorial discretion.⁵¹

Third, voluntary disclosure decisions in multijurisdictional matters require a comprehensive analysis of the enforcement

postures of all potentially interested regulators before any approach is made to any one of them. The sequencing of disclosures, the choice of which regulator to approach first, and the scope of what is disclosed are all consequential decisions that may determine not only the magnitude of sanctions but also the feasibility of negotiating a global resolution.⁵²

Fourth, counsel should encourage clients to engage with the soft-law instruments and industry-level coordination mechanisms that have emerged in each regulatory domain. Adherence to recognized international standards, participation in industry compliance initiatives, and engagement with regulatory bodies through comment processes and industry associations all contribute to a compliance posture that is more defensible and more likely to attract favorable regulatory treatment.

Finally, and perhaps most importantly, international practitioners should resist the temptation to treat extraterritorial compliance as purely a legal problem amenable to a legal solution. Extraterritorial compliance is also a governance problem, a business strategy problem, and a geopolitical problem. The enterprise that understands why states assert extraterritorial jurisdiction, the political and institutional interests those assertions serve, and how those interests are likely to evolve is far better positioned to manage its compliance obligations intelligently than the enterprise that treats each regulatory requirement as an isolated technical rule to be satisfied and filed away. In a world of borderless regulation, strategic legal counsel is, ultimately, a form of competitive advantage.



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Endnotes

1 See Sean D. Murphy, *Principles of International Law* 423 (3d ed. 2022); Cedric Ryngaert, *Jurisdiction in International Law* (2d ed. 2015).

2 Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 to 78dd-3 (2018). See also *FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act* (U.S. Dep't of Justice & SEC, 2d ed. 2020).

3 Commission Regulation 2016/679, art. 3, 2016 O.J. (L 119) 1 (EU) [hereinafter GDPR].

4 See Office of Foreign Assets Control, *OFAC Frequently Asked Questions*, FAQ 544 (U.S. Dep't of Treasury 2023), <https://ofac.treasury.gov/faqs>.

5 Bribery Act 2010, c. 23, § 7 (UK). See also *Guidance About Procedures Which Relevant Commercial Organisations Can Put in Place to Prevent Persons Associated with Them from Bribing* (Ministry of Justice 2011).

6 See Sean D. Murphy, *Principles of International Law* 423 (3d ed. 2022).

7 The effects doctrine was articulated most influentially in *United States v. Aluminum Co. of America*, 148 F.2d 416, 443 (2d Cir. 1945). See also *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004).

8 Ryngaert, *supra* note 1, at 94–105.

9 See *Barcelona Traction, Light and Power Co. (Belg. v. Spain)*, Judgment, 1970 I.C.J. 3 (5 Feb.) (discussing nationality of corporations under international law).

10 See *supra* note 6.

11 See *Princeton Principles on Universal Jurisdiction* (2001); see also Máximo Langer, *Universal Jurisdiction Is Not Disappearing: The Shift from 'Global Enforcer' to 'No Safe Haven' Universal Jurisdiction*, 13 J. Int'l Crim. Just. 245 (2015).

12 *Compare Restatement (Third) of Foreign Relations Law of the United States* § 403 (Am. Law Inst. 1987) (treating reasonableness as a substantive limit); see *supra* note 6.

13 *Restatement (Third) of Foreign Relations Law of the United States* § 403(2) (Am. Law Inst. 1987).

14 See *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court for the S. Dist. of Iowa*, 482 U.S. 522 (1987); *In re Vitamin C Antitrust Litig.*, 837 F.3d 175 (2d Cir. 2016).

15 See Roger P. Alford, *The Extraterritorial Application of Antitrust Laws: The United States and European Community Approaches*, 33 Va. J. Int'l L. 1 (1992).

16 See *United Nations Convention Against Corruption*, G.A. Res. 58/4, U.N. Doc. A/RES/58/4 (31 Oct. 2003), entered into force 14 Dec. 2005.

17 As of October 2025, UNCAC has 192 parties, making it the most widely ratified anti-corruption treaty in existence. See U.N. Office on Drugs and Crime, *What You Need to Know About the Conference of the States Parties to the UN Convention Against Corruption* (Dec. 2025), <https://www.unodc.org/unodc/en/frontpage/2025/December/cosp11-in-sight.html>. UNCAC Article 16(1) mandates that each state party criminalize active bribery of foreign public officials. Article 16(2) encourages, but does not require, criminalization of passive bribery by foreign officials. Article 26 requires states parties to establish the liability of legal persons for corruption offences. UNCAC, arts. 16, 26.

18 The UNCAC Implementation Review Mechanism (IRM), established by Conference of the States Parties Resolution 3/1 (2009), conducts peer reviews of states parties' implementation. Unlike the OECD Working Group on Bribery, the IRM lacks the authority to compel disclosure or mandate follow-up action; reviews rely substantially on self-assessment. For a comparative assessment, see UNCAC Coalition, *International Anti-Corruption Day 2025* (9 Dec. 2025), <https://uncaccoalition.org/international-anti-corruption-day-2025/> (noting that of 192 parties, only 83 second-cycle reviews have been completed as of December 2025).

19 See *United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018) (limiting FCPA jurisdiction in certain circumstances); see generally FCPA Resource Guide, *supra* note 2, at 11–13.

20 See, e.g., Press Release, U.S. Dep't of Justice, *Airbus Agrees to Pay Over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case* (31 Jan. 2020), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties>; Press Release, U.S. Dep't of Justice, *Alstom Sentenced to Pay \$772 Million Criminal Fine to Resolve Foreign Bribery Charges* (13 Nov. 2015), <https://www.justice.gov/opa/pr/alstom-sentenced-pay-772-million-criminal-fine-resolve-foreign-bribery-charges>; Press Release, U.S. Dep't of Justice, *Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations* (15 Dec. 2008), <https://www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html> (combined U.S. penalties of \$800 million); Press Release, U.S. Dep't of Justice, *Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties* (21 Dec. 2016), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty>; Press Release, U.S. Dep't of Justice, *Petróleo Brasileiro S.A. — Petrobras Agrees to Pay More Than \$850 Million for FCPA Violations* (27 Sept. 2018), <https://www.justice.gov/opa/pr/petrobras-agrees-pay-more-850-million-fcpa-violations>; Press Release, U.S. Dep't of Justice, *Ericsson Agrees to Pay Over \$1 Billion to Resolve FCPA Case* (6 Dec. 2019), <https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case>. Enforcement actions are also compiled in Stanford Law School, *FCPA Clearinghouse*, <https://fcpa.stanford.edu>.

21 Bribery Act 2010, c. 23, §§ 6–7 (UK); see Ministry of Justice, *Guidance*, *supra* note 5, at 15.

22 See Brian O’Toole & Nicholas Turner, *Getting Secondary Sanctions Right*, 111 Am. J. Int’l L. Unbound 60 (2017).

23 Council Regulation 2271/96, Protecting Against the Effects of the Extraterritorial Application of Legislation Adopted by a Third Country, 1996 O.J. (L 309) 1 (EC), art. 5 (prohibiting compliance with listed extraterritorial laws), as amended by Commission Delegated Regulation 2018/1100, 2018 O.J. (L 199) 1 (EU). Article 5 provides an exception permitting compliance where the European Commission authorizes it on the ground that non-compliance would seriously damage the operator’s interests or those of the Community.

24. See Clara Portela, *The EU’s Use of ‘Targeted’ Sanctions*, CEPS Working Document No. 391 (2014).

25. GDPR, *supra* note 3, art. 3(2).

26. Case C-362/14, *Schrems v. Data Protection Comm’r*, ECLI:EU:C:2015:650 (6 Oct. 2015) (Schrems I); Case C-311/18, *Data Protection Comm’r v. Facebook Ireland Ltd.*, ECLI:EU:C:2020:559 (16 July 2020) (Schrems II).

27. Commission Implementing Decision 2023/1795, 2023 O.J. (L 231) 118 (EU) (adequacy decision for the EU-U.S. Data Privacy Framework).

28. Graham Greenleaf, *Global Data Privacy Laws 2023: 162 National Laws & 20 Bills*, 181 Privacy Laws & Bus. Int’l Rep. 1, 1-4 (2023). The UNCTAD data protection tracker reports 137 jurisdictions with legislation as of 2024, accounting for differing methodologies. See U.N. Conference on Trade & Dev., *Data Protection and Privacy Legislation Worldwide*, <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>.

29 See *Export Control Reform Act of 2018*, 50 U.S.C. §§ 4801–4852; Arms Export Control Act, 22 U.S.C. §§ 2751–2799aa-2. The implementing regulations extend these controls to re-exports and to foreign parties acquiring U.S.-origin items abroad. See *Export Administration Regulations*, 15 C.F.R. §§ 730–774 (2024); *International Traffic in Arms Regulations*, 22 C.F.R. §§ 120–130 (2024).

30 See 15 C.F.R. § 734.9 (foreign direct product rule); § 734.4 (de minimis rule).

31 See Bureau of Industry and Security, *Commerce Strengthens Export Controls to Restrict China’s Access to Advanced Computing Chips* (press release, 7 Oct. 2022), <https://www.bis.doc.gov>. For contemporaneous reactions, see Press Release, Ministry of Foreign Affairs of the People’s Republic of China, Foreign Ministry Spokesperson’s Remarks on U.S. Chip Export Controls (13 Oct. 2022), <https://www.fmprc.gov.cn> (characterizing the measures as “technology hegemony”); Alexandra Alper, Toby Sterling & Karen Freifeld, *Biden Pressed Dutch PM to Further Limit China Chip Exports*, Reuters (13 Jan. 2023); Joyce Lee, *South Korea Seeks U.S. Chip Assurances Before Joining China Curbs*, Reuters (16 Feb. 2023).

32 See Alex Mills, *The Confluence of Public and Private International Law* (2009).

33 See generally DOJ, *Evaluation of Corporate Compliance Programs* (Updated Mar. 2023), <https://www.justice.gov/criminal/criminal-fraud>.

34 See Commission, *Questions and Answers: The Blocking Statute* (European Commission, 7 Aug. 2018).

35 See *U.S. v. Aluminum Co. of America*, 148 F.2d 416 (2nd Cir. 1945); DOJ, *Corporate Compliance Programs*, *supra* note 30.

36 See OFAC, *A Framework for OFAC Compliance Commitments* (U.S. Dep’t of Treasury, 2 May 2019), <https://ofac.treasury.gov>.

37 See DOJ, *Evaluation of Corporate Compliance Programs*, *supra* note 30, at 7–9 (discussing continuous improvement and periodic review).

38 See *FCPA Resource Guide*, *supra* note 2, at 21–27 (third-party due diligence); Bribery Act 2010, c. 23, § 7 (UK).

39 Lieferkettensorgfaltspflichtengesetz [LkSG] [Supply Chain Due Diligence Act], 16 July 2021, BGBl I at 2959 (Ger.); Loi no. 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre, JORF no. 0074 (Fr.); European Parliament and Council Directive on Corporate Sustainability Due Diligence, 2024 O.J. (L 1649) (EU).

40 See DOJ, *Criminal Division Corporate Enforcement, Compliance, and Policy Unit: Corporate Enforcement Policy* (Jan. 2023), <https://www.justice.gov/criminal/criminal-fraud/fcpa/corporate-enforcement-policy>.

41 U.S. Dep’t of Justice, Justice Manual § 9-47.120 (2023), FCPA Corporate Enforcement Policy, <https://www.justice.gov/criminal/criminal-fraud/file/838416/dl>. The policy provides a presumption of declination for qualifying voluntary disclosures, and where a criminal resolution is nonetheless warranted, prescribes a reduction of at least 50% off the low end of the applicable U.S. Sentencing Guidelines fine range, together with a general presumption against requiring a compliance monitor or guilty plea.

42 See generally Bruce Zagaris, *International White Collar Crime* (3d ed. 2019).

43 OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD/LEGAL/0293; see OECD, *OECD Anti-Bribery Convention: 25 Years of Fighting Foreign Bribery* (2022). The 44 state parties include all 38 OECD members plus Argentina, Brazil, Bulgaria, Peru, Romania, and South Africa. See Org. for Econ. Coop. & Dev., *OECD Convention on Combating Bribery: Ratification Status* (Mar. 2024), <https://www.oecd.org/corruption/oecdantibriberyconvention.htm>.

44 See Financial Action Task Force (FATF), *Mutual Evaluations*, <https://www.fatf-gafi.org> (last visited Dec. 2024).

45 OECD, *OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data* (2013); APEC, *APEC Cross-Border Privacy Rules System*, <https://cbprs.org> (last visited Dec. 2024).

46 Council of Europe Convention for the Protection of Individuals with Regard to Processing of Personal Data (Convention 108+), art. 5 (updated 2018), <https://www.coe.int>.

47 See generally Erica Moret, *Multilateralizing Autonomous Sanctions: The Emerging Practice of Western Sanction Coordination*, 34 Eur. J. Int’l L. 869 (2023).

48 See European Council, *EU Sanctions Against Russia Following the Invasion of Ukraine* (Dec. 2024), <https://www.consilium.europa.eu>.

49 See UN Global Compact, <https://unglobalcompact.org>; International Bar Association, *IBA Anti-Corruption Guidelines* (2023), <https://www.ibanet.org>.

50 See DOJ and SEC, *FCPA Resource Guide*, *supra* note 2, at 68–70 (discussing coordination with foreign enforcement authorities).

51 See DOJ, *Corporate Compliance Programs*, *supra* note 30; see also *Thompson v. Price Broadcasting Co.*, 817 F.Supp. 1538 (D. UT 1993).

52 See generally Thomas Fox, *The Compliance Handbook* (4th ed. 2022); DOJ, *Corporate Enforcement Policy*, *supra* note 33.



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The Treasury Department

Within the Treasury Department, agencies such as the Internal Revenue Service (IRS), Financial Crimes Enforcement Network (FinCEN), and others monitor financial flows related to inbound investments. They track cross-border capital movements using international reporting forms to identify significant foreign funding entering the U.S. economy.

Voluntary and Mandatory Reporting

Some reports, such as those to the Bureau of Economic Analysis (BEA), are voluntary and have seen limited enforcement, but they still provide valuable data on foreign investment. Advisors, counsel, and accountants approach these obligations cautiously, as thresholds for streamlined or detailed reporting affect compliance practices.

Penalties and Enforcement

Penalties for non-compliance with reporting obligations can serve as a “smoking gun,” guiding Treasury and related agencies in enforcement. Failure to disclose relevant financial information increases the risk of investigations and enforcement actions, especially if inconsistencies or red flags are present.

Investment Subject to CFIUS

Concerns that investments may be subject to CFIUS review often cause parties to hesitate before filing or disclosing, due to fears of scrutiny or revealing sensitive financial information. This interplay between interagency oversight and CFIUS highlights the need for proactive compliance and clear communication among stakeholders in cross-border transactions.

Regulatory Developments in Florida and Beyond Florida

While federal oversight is primary, regional regulations such as those in Florida also affect foreign investment. Florida’s CFIUS-related issues mainly stem from Senate Bill 264 (SB 264),⁶ passed in 2023, which imposes strict state-level restrictions on foreign real estate ownership. These often overlap with, but differ from, CFIUS regulations and create a more complex compliance environment for investors from “countries of concern,” including China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria.

The law prohibits foreign principals from directly or indirectly acquiring interests in agricultural land and property near military installations or critical infrastructure. Limited exceptions include minor stakes in publicly traded companies or certain non-controlling interests.

The legislation requires foreign owners with property held before 1 July 2023 to register with state authorities by 1 January 2024, or within thirty days of acquisition. The law also mandates disclosures and affidavits during Florida real estate transactions, with penalties for non-compliance but no effect on title insurability.

Legal challenges have been filed against SB 264, such as *Shen v. Simpson*,⁷ alleging constitutional violations. In *Shen*, four Chinese residents and an Orlando real estate firm argued the law discriminated against Asians and was preempted by federal law.⁸ The plaintiffs sought to block enforcement, but their initial motion was denied. In February 2024, the Eleventh Circuit temporarily halted enforcement for two plaintiffs, citing questions about federal preemption.⁹ In November 2025, the court upheld the law’s validity in a split decision, leaving SB 264 in effect without ruling on its overall legality.¹⁰ Implementation of the law continues, reflecting national trends restricting foreign ownership of critical assets, and underscores the need for buyers, sellers, and real estate professionals to understand and comply with these restrictions.

Texas and Virginia have enacted similar laws. Texas Senate Bill 147 restricts citizens and entities from certain countries of concern from purchasing real estate, especially land near critical infrastructure.¹¹ Virginia House Bill 2332 limits certain foreign-owned entities from acquiring agricultural land.¹²

Conclusion

Amid geopolitical uncertainty and changing trade policies, CFIUS remains central to protecting U.S. national security in international investments. Its rigorous review process and evolving tariff regulations highlight the need for proactive compliance and strategic planning. For global businesses, integrating CFIUS considerations into operational and legal frameworks is essential for navigating the complexities of modern international commerce.



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Endnotes

- 1 50 U.S.C. § 4565.
- 2 31 CFR § 800.1101.
- 3 50 U.S. Code § 4565.
- 4 *Learning Resources, Inc. v. Trump*, No. 24-1287, 2026 WL 789123 (U.S. Feb. 20, 2026) (vacating and remanding *Learning Resources, Inc. v. Trump*, 784 F. Supp. 3d 209 (D.D.C. 2025)).
- 5 89 FR 93180.
- 6 Fla. SB 264 (2023).
- 7 *Shen v. Simpson*, 687 F. Supp. 3d 1219, 1248–49 (N.D. Fla. 2023).
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 2025 TX SB147.
- 12 VA HB 2332.



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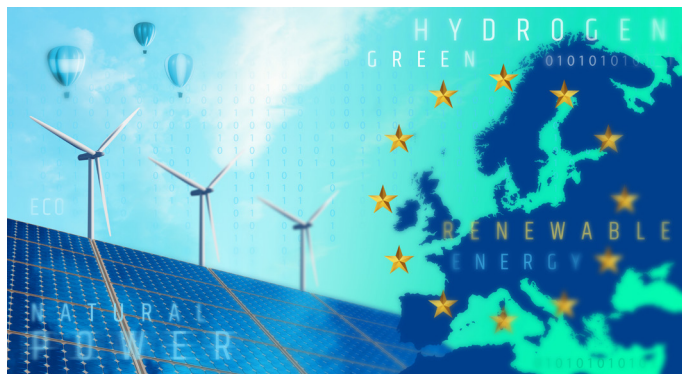
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CSRD and CSDDD After the Omnibus Package: ..., continued from page 15



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deferred until July 2029. In addition, the obligation to adopt climate transition plans has been removed. Publicly traded SMEs are fully exempt, representing a substantial reduction compared to the original framework—an estimated 70% to 95% reduction in scope. EU member states must transpose the directive into national law by 26 July 2028.

Regarding new measures, the European Commission is expected to issue updated implementing guidance and to establish a voluntary reporting regime for companies that fall outside the scope of the CSRD. In addition, for the CSDDD, there is no harmonized civil liability regime, meaning that the national laws of each member state will apply.

Even if Omnibus I reduces the scope of the CSDDD, thereby diluting its original ambition of establishing a harmonized EU baseline, the broader movement toward mandatory human rights and environmental due diligence is unlikely to slow. A growing body of national legislation, sector-specific EU instruments, and extra-EU import restrictions already impose overlapping—and at times more stringent—obligations on companies operating within the European market. These fragmented regimes were, in fact, one of the primary drivers behind the adoption of the CSDDD in the first place.

Several EU member states have already adopted their own due diligence laws. France, for example, has implemented national legislation requiring companies to conduct and report on environmental and human rights due diligence. These national frameworks continue to ensure that companies are held accountable, even if the EU-level directives are scaled back.⁷

The French Duty of Vigilance Law, adopted in June 2017, is a pioneering statute requiring very large companies to prevent human rights and environmental risks throughout their entire value chain.⁸ The French due diligence regime applies to very large companies—those with more than 5,000 employees

in France or more than 10,000 globally. In addition, the due diligence requirements extend to subsidiaries, subcontractors, and suppliers with an “established commercial relationship” with the company. Companies subject to the law must develop, publish, and effectively implement a vigilance plan.

The French Duty of Vigilance Law remains the strongest national human rights due diligence statute in Europe. Its civil liability provisions allow NGOs and affected communities to sue multinationals directly. To date, at least thirteen lawsuits have been brought under the law, including cases against a banking group over financing of Amazon deforestation and against TotalEnergies for projects carried out by its subsidiaries in Uganda. Plaintiffs may claim harm by the French parent company even for harms occurring outside of France, and because French courts have accepted jurisdiction over non-French subsidiaries, the law provides an attractive venue independent of any EU-wide directive. Very recently, in a judgment dated 13 March 2026, the cosmetics company Yves Rocher was found liable based on this law.⁹

Germany also has had a strong human rights due diligence regulation, in force since 2024. The Germany’s Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz (LkSG)*) required large companies headquartered within or with branches in Germany to conduct human rights and certain environmental due diligence in their supply chains. *LkSG* permits fines of up to €8 million (US\$9.3 million) (or 2% of global turnover) for noncompliance.

Norway’s 2022 Transparency Act combines OECD-style due diligence obligations with a statutory public access right. In September 2024, the Consumer Protection Authority issued the Act’s first penalty—NOK 450,000 (US\$44,500)—against a retailer that twice failed to respond to information requests. The law and this case illustrate a different mechanism for enforcing human rights obligations: reputational exposure coupled with administrative fines triggered by stakeholder inquiries rather than by audits initiated by state authorities. The case further demonstrates that the law has real teeth, effectively translating soft-law principles into hard-law enforcement.

Finally, the Netherlands also provides an interesting example. Dutch lawmakers have adopted other due diligence legislation, such as the Child Labour Due Diligence Act (*Wet Zorgplicht Kinderarbeid*) of 2019, which is still awaiting a royal decree to enter into force. Once effective, the Act will require any company—domestic or foreign—that sells goods or services to Dutch consumers to investigate child labor risks, to develop a

remediation plan where “reasonable suspicion” exists, and to file declarations.

Concerning sustainability reporting obligations, France introduced such requirements in 2001 for listed companies. Outside Europe, the United States provides notable examples, particularly California and New York, which are at the forefront of U.S. climate disclosure efforts. Both states have enacted landmark legislation requiring large companies to report greenhouse gas (GHG) emissions and climate-related risks. In California, Senate Bill 253, also known as the Climate Corporate Data Accountability Act, obliges certain large companies operating in the state to publicly disclose their GHG emissions. In New York, similar legislation requires companies to disclose Scope 1, 2, and 3 emissions, further strengthening climate transparency obligations for businesses operating in the state.¹⁰

Conclusion: Does Omnibus I Critically Weaken EU Sustainability Regulation?

In this international context, even with the reduced scope and delayed application of the EU’s CSRD and CSDDD, national legislation across EU member states, international frameworks such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct,¹¹ and practices aligned with the United Nations Guiding Principles on Business and Human Rights remain the most solid foundation for navigating the complex, overlapping regulatory regimes already in force.¹² Lawyers engaged in international practice, as primary advisors to multinational companies, must take this global approach into account. Given the rising expectations of consumers, financial stakeholders, and NGOs, together with increasing litigation and reputational risks, a strong corporate sustainability strategy—grounded in robust human rights and environmental due diligence—is no longer optional but a fundamental business necessity.



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Endnotes

- 1 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Corporate Sustainability Reporting Directive).
- 2 Directive (UE) 2024/1760 du Parlement européen et du Conseil of 13 juin 2024 sur le devoir de vigilance des entreprises en matière de durabilité et modifiant la directive (UE) 2019/1937 et le règlement (UE) 2023/2859.
- 3 CSRD en 2026 : L’actualité et tout ce que vous devez savoir sur le reporting de durabilité, <https://www.sami.eco/blog/fiche-csrd>.
- 4 Omnibus explained: key changes to the CSRD and CSDDD. Accountancy Europe 2026, <https://accountancyeurope.eu/publications/omnibus-explained-key-changes-to-the-csrd-and-csddd/>.
- 5 Directive (EU) 2025/794 of the European Parliament and of the Council of 14 Apr. 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which member states are to apply certain corporate sustainability reporting and due diligence requirements (“Stop-the-Clock” Directive).
- 6 Omnibus “Content” I: Directive (EU) 2026/470 of the European Parliament and of the Council of 24 Feb. 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements.
- 7 Death by Omnibus? The European Commission’s Proposal and the Fate of the Corporate Sustainability Due Diligence Directive (Part III): Beyond the Omnibus – The Persistent HRDD Patchwork, <https://opiniojuris.org/2025/07/11/death-by-omnibus-the-european-commissions-proposal-and-the-fate-of-the-corporate-sustainability-due-diligence-directive>.
- 8 Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre.
- 9 The Paris Judicial Court, in a judgment delivered on 12 Mar. 2026, ordered the Rocher Group, parent company of the cosmetics firm Yves Rocher, to pay a total of €48,000 to six former employees of a former Turkish subsidiary for breaches of its duty of vigilance. LE MONDE with AFP published 12 Mar. 2026.
- 10 *Id.*
- 11 OCDE: Responsible business conduct, <https://www.oecd.org/en/topics/responsible-business-conduct.html>.
- 12 Human rights due diligence (HRDD) allows financial institutions to identify, prevent, and mitigate potential and actual adverse human rights impacts. See <https://www.unepfi.org/humanrightstoolkit/human-rights-due-diligence-hrdd>.



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5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject (“storage limitation”);
6. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (“integrity and confidentiality”).²³

Franchise practitioners should consult Article 6 of the GDPR to confirm what amounts to lawful purposes under this regulation, and if they seek to use informed consent as the legal basis for collecting and processing data, then they must ensure they are in strict compliance with Articles 4 and 7 of the GDPR, which govern such consent. Having seen what GDPR compliance requires, we now turn to the question that will plague franchise practitioners: how substantial is the cost of non-compliance under the GDPR? In the words of Vivian Ward in the movie *Pretty Woman*: “Big mistake. Big. Huge!”²⁴

The GDPR explicitly states that there are two classes of infringement, each one more costly than the next. The less severe infringements could result in a fine of up to €10 million, or 2% of the firm’s worldwide annual revenue from the preceding financial year, whichever amount is higher.

The more serious infringements, which go against the very principles of the right to privacy and the right to be forgotten that are at the heart of the GDPR, can result in a fine of up to €20 million, or 4% of the firm’s worldwide annual revenue from the preceding financial year, whichever amount is higher.

Regulations Affecting e-Commerce

An additional aspect of franchises subject to regulation and compliance in the EU is e-commerce. The EU’s Digital Services Act (DSA) regulates franchisors that operate online platforms. The DSA, unlike its sister regulation, the Digital Markets Act, affects a wide range of online intermediaries, not just those considered “gatekeepers.”

The main goal of the DSA is to create a digital space that respects citizens and consumers’ fundamental rights. By establishing a clear set of rules across the EU, the DSA also enables smaller platforms, small and medium enterprises (SMEs) and start-ups to scale up in Europe, fostering innovation, growth and competitiveness.²⁵

The DSA also requires platforms to minimize the risks of exposing citizens, including children and young people, to illegal and harmful content.²⁶

Under the DSA, a franchise is subject to transparency when content is removed (platforms must explain why certain content is taken down), the franchise must implement easy flagging of illegal content for the franchisor’s platform, it must employ enhanced protections for minors (including compliance with the DSA’s complete ban on showing targeted advertisements to children), and more. The typical franchisor regulated by the DSA is one that operates a platform where users can, for example, book services, buy products, or interact. Such a franchisor must comply with user protection rules, content moderation transparency, and illegal content removal.

EU Member State Laws Affecting Franchises

Before we delve into regulation at the member state level, a friendly warning is in order: what amounts to a “franchise” can vary depending on national legislation, and in some cases (e.g., France), laws applicable to franchises can and do apply to arrangements that are not strictly franchises, but rather distribution agreements or license agreements. It is important that international practitioners seek the advice of local counsel to determine how local legislation characterizes the contemplated arrangement between the would-be franchisor and its potential franchisees.

Certain member states have either crafted dedicated franchise legislation or have national legislation that affects specific



aspects of a franchise relationship.²⁷ Of the ten member states that have such legislation (Belgium, Estonia, France, Italy, Latvia, Lithuania, Netherlands, Romania, Spain, and Sweden), eight²⁸ of them impose disclosure obligations.

Pre-Contractual Disclosure Obligations and Consequences of Disclosure Failures

“[A]lthough European competition law treats franchising in a relatively benign manner, member state law takes a somewhat different and entirely heterogeneous approach. Eight EU member states have franchise-specific regulatory regimes, but no two are the same.”²⁹ Indeed, it is this very lack of uniformity that presents a second significant hurdle (and is the more likely pitfall) for franchisors in the EU.

Belgium

Disclosure obligations under Belgian law are regulated by Book X of the Belgian Code of Economic Law.³⁰ As from 1 September 2024:

[I]t is no longer necessary to include a description of the relevant contractual provisions under the broad umbrella of “obligations” (which often boiled down to the franchisor copy-pasting almost the entire franchise agreement), but the legislator has added the following information requirements to the PID:

- start-up or recurring costs such as marketing, IT, transport, and training costs at the franchisee’s expense and the conditions for the modification of these costs;
- obligations to respect maximum prices;
- minimum turnover and minimum purchase obligations and the consequences of non-compliance;
- limitations on the use of intellectual property rights;
- limitations on access to and rights to use customer data during and following the contract’s expiry;
- limitations on on-line sales and on-line promotions;

- clauses relating to the relationship and dependence between the commercial cooperation agreement and the lease or any other agreement regarding the point of sale;
- grounds for termination mentioned in the agreement and the financial consequences, in particular regarding costs and investments; and
- jurisdiction, choice of law, and procedural language clauses.³¹

Should a franchisor fail to provide sufficient disclosure, a franchisee may seek, within two years of the conclusion of the franchise agreement, the nullification of franchise agreement clauses affected by insufficient disclosure; and, if the disclosure failure is pervasive enough, franchisors may find the entire agreement nullified.³²

France

In France, the *Loi Doubin*, which has been codified in Article L. 330-3 of the French Commercial Code, reigns supreme in terms of regulation of franchise agreements;³³ under it, franchisors are obligated to provide, at least twenty calendar days prior to entry into the agreement, certain information regarding the franchisor, its network, a feasibility analysis of the general and local market in which the franchise would compete, the franchise agreement itself, and any other information that may be relevant in the prospective franchisee’s decision to enter into the franchise agreement.³⁴ This law applies to any party providing a trade name, trademark, or logo, requiring exclusivity or quasi-exclusivity. Failure to comply with section L 330-3 of the Commercial Code carries criminal penalties (typically in the form of a fine). As for franchisee remedies, they are extensive and include the ability to rescind the franchise agreement.

Italy

A slightly different approach emerges in Italy, which regulates franchises through the Italian Franchise Act³⁵ and requires, under Section 4 and 6 of the same, that pre-contractual disclosures be made thirty days prior to execution of the franchise agreement. Disclosures under Italian law must include, among others, information on existing outlets and franchisees as well as disclosure of legal proceedings not unlike those required under Item 3 and Item 20 of a U.S. FTC Rule-compliant Franchise Disclosure Document. Failure to comply with these disclosure obligations allows franchisees to seek the annulment of the agreement pursuant to section 1439 of the Italian Civil Code and damages under Section 8 of the Franchising Act.

Latvia

Turning to Latvia's Commercial Law (*Komerclikums*) Articles 474–480, which implement the best practice defined by the UNIDROIT Model Franchise Disclosure Law,³⁶ we find that franchisors must provide not only a general description of the franchise, but also evidence of the existence of rights under the franchise, a general description of the know-how,³⁷ information surrounding the franchise term and extensions, disclosure of fees and payment terms, as well as any other information the franchisor considers necessary for entry into the franchise contract.³⁸ Failure to provide pre-contractual disclosure in Latvia can lead to the unilateral termination of the agreement by the franchisee.³⁹

The Netherlands

The Netherlands' Dutch Franchise Act⁴⁰ requires franchisors to provide all information that can reasonably be expected to be of importance for the franchisee in relation to entering into the franchise agreement, including the franchise agreement itself, the information regarding the required financial contributions and investments by the franchisee, the way and frequency in which parties consult each other, financial data regarding the franchise location that is to be operated by the franchisee, and the extent to which the franchisor, whether or not through a derived franchise system, may compete with the franchisee.⁴¹ This information must be disclosed at least four weeks before the execution of the franchise agreement. "A franchise agreement is subject to the franchisee's right of annulment in cases of non-compliance with the statutory pre-sale disclosure obligations."⁴²

Romania

In Romania, franchising is regulated under Government Ordinance No. 52/1997, which requires franchisors to present a disclosure letter drafted in the language of the franchise agreement that discloses the history and experience of the franchisor, details of the management's identity, the litigation history of the franchisor and its management, the initial investment required to operate the franchise, the mutual obligations of the parties, the franchisor's financial results from the previous year, and information on the pilot unit.⁴³ If a franchisor fails to accurately disclose, the franchisee may file a lawsuit seeking damages, and a franchisee that proves that its consent has been vitiated may be granted the invalidation/annulment of the franchise agreement. If the agreement is invalidated, the franchisee is entitled to the reimbursement of the entry fee and the royalties paid, among other things.⁴⁴

Spain

Spain illustrates yet another approach to pre-contractual disclosures. Under Article 3 of the Royal Decree 201/2010,

franchisors are required to disclose, at least twenty business days (*días hábiles*) before execution of the franchise agreement or pre-agreement, or payment of any consideration by the prospective franchisee to the franchisor:

a) Identification details of the franchisor: name or corporate name, address, as well as, when it is a commercial company, share capital as stated in the latest balance sheet, indicating whether it is fully paid up or to what extent, and registration details in the Commercial Registry, where applicable.

In the case of a master franchisee, the above circumstances regarding its own franchisor shall also be included.

b) Proof of having been granted, for Spain and in force, ownership title or license to use the trademark and distinctive signs of the franchising entity, and any legal actions filed that may affect the ownership or use of the trademark, if any, stating in all cases the duration of the license.

c) General description of the sector of activity that is the subject of the franchise business, covering the most important data thereof.

d) Experience of the franchising company, which shall include, among other data, the date of creation of the company, the main stages of its evolution, and the development of the franchise network.

e) Content and characteristics of the franchise and its operation, which shall include a general explanation of the business system that is the subject of the franchise, the characteristics of the know-how and the ongoing commercial or technical assistance that the franchisor will provide to its franchisees, as well as an estimate of the investments and expenses necessary to start up a typical business. In the event that the franchisor provides the potential individual franchisee with projections of sales figures or operating results, these must be based on experiences or studies that are sufficiently substantiated.

f) Structure and scope of the network in Spain, which shall include the form of organization of the franchise network and the number of establishments operating in Spain, distinguishing between those operated directly by the franchisor and those operating under franchise agreements, indicating the population where they are located and the number of franchisees that have left the network in Spain in the last two years, stating whether the termination occurred due to expiration of the contractual term or for other causes of termination.

g) Essential elements of the franchise agreement, which shall include the rights and obligations of the respective parties, duration of the contract, conditions for termination and, where applicable, renewal, financial considerations, exclusivity agreements, and limitations on the franchisee's free disposal of the franchise business.⁴⁵

Failure of disclosure under Spanish law allows the franchisee to rescind the contract, seek damages, and potentially invalidate the agreement.

Sweden

Finally, the Swedish Franchise Disclosure Act requires franchisors to provide, in good time (*I god tid*),⁴⁶ information about the implications of the franchise agreement and such other factors that are needed in consideration of the circumstances. There are eight specific aspects that franchisors are mandated to disclose under Swedish law, including (i) description of the franchise activity, (ii) information of other franchisees, (iii) fees payable to the franchisor and other economic conditions of the franchise activity, (iv) information regarding the intellectual property rights to be granted, (v) restrictions and mandatory requirements on goods and services, (vi) non-competition covenants, (vii) renewal and termination information, and (viii) information surrounding dispute resolution.⁴⁷ Disclosure failures can result in an injunction at the Swedish Patent and Market Court, where an injunction could be combined with an imposition of a fine.

A Brief Note on Registration Obligations

As many U.S. franchise practitioners know, registration obligations are distinct and separate from disclosure obligations. Jurisdictions all over the globe,⁴⁸ including certain states in the United States, require franchisors to register relevant details and documentation with a government agency for franchisor monitoring purposes and to ensure transparency and maintain a certain level of quality; yet, in another surprising turn of events, of the EU member states that regulate franchises in some capacity, only Spain chose to require registration (but even this registration obligation was repealed in 2018).

Conclusion

Franchising in the EU is a complex undertaking. While the EU's regulatory framework does not include a single, dedicated franchise statute, international practitioners would be mistaken to conclude that the absence of such a statute signals a light-handed regulatory environment. Franchise systems operating in the EU must navigate a multilayered compliance framework that spans EU-level competition law, robust data protection obligations under the GDPR, and, where applicable, the emerging contours of the DSA—all before even reaching member state law.

The most acute compliance risks tend to materialize at the member state level. The eight EU member states that impose pre-contractual disclosure obligations do so in materially different ways: the timing, content, and consequences of disclosure failures vary significantly. For the international practitioner, there is no one-size-fits-all approach.

A final word of caution: this article is intended as an introduction to franchise compliance in the EU rather than

a comprehensive compliance guide. Practitioners advising clients on EU franchise matters should treat each jurisdiction as its own distinct engagement, retain experienced local counsel in each relevant member state, and remain attentive to the evolving regulatory landscape that continues to shape franchising across the continent.



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Endnotes

1 There are more than 800,000 franchises in the United States (Alex Smrecznik, *What Are The Largest Franchises In The World In 2025? A Franzy Study*, Franzy (17 Apr. 2025)), <https://franzy.com/blog/largest-franchises/#:~:text=There%20are%20more%20than%20800%2C000,ranked%20by%20number%20of%20locations.>

2 *Franchise Growth – The European Advantage*, Global Franchise Team (22 Jan. 2026), <https://www.global-franchise.com/insight/franchise-growth-the-european-advantage> (but see Farrah Rose, *Franchising in Europe*, The Franchise Centre, <https://www.thefranchisingcentre.com/wp-content/uploads/2025/09/TFC-Farrah-EFF-Article.pdf> (stating that “[a]cross Europe, there are an estimated 8,500 to 14,000 franchise brands operating”).

3 Farrah Rose, *Franchising in Europe*, The Franchise Centre, <https://www.thefranchisingcentre.com/wp-content/uploads/2025/09/TFC-Farrah-EFF-Article.pdf>.

4 Alex Michael Pawlowski, *This Is How The EU Is Regulating The Heck Out Of Everything And Why It Needs To Stop*, Medium (2 Mar. 2025), <https://alexmichaelpawlowski.medium.com/this-is-how-the-eu-is-regulating-the-heck-out-of-everything-and-why-it-needs-to-stop-49327547bdf5>.

5 European IP Helpdesk, *Fact Sheet: Commercialising Intellectual Property: Franchising* (22 Oct. 2025), www.ec.europa.eu/ip-helpdesk.

6 The other primary treaty that serves as the basis for EU law is the Treaty on European Union (TEU), which stipulates the EU's purpose, how its institutions (i.e., the European Commission, the European Parliament, and the European Council) are governed, and the EU's rules and policies regarding security.

7 The seven parts to the TFEU are (i) Principles, (ii) Non-discrimination and citizenship of the Union, (iii) Union policies and internal actions, (iv) Association of the overseas countries and territories, (v) External action by the Union, (vi) Institutional and financial provisions, and (vii) General and final provisions.

8 *Competition Policy*, European Parliament, Fact Sheets on the European Union, <https://www.europarl.europa.eu/factsheets/en/sheet/82/competition-policy> (stating that “The main objective of the EU competition rules is to enable the proper functioning of the EU's internal market. The Treaty on the Functioning of the European Union (TFEU) aims to prevent restrictions on and distortions of competition, such as the abuse of dominant positions, anti-competitive agreements, and mergers and acquisitions should they reduce competition. Furthermore, State aid is prohibited when it leads to distortions of competition, but can be authorised in specific cases”).

9 Consolidated Version of the Treaty on the Functioning of the European Union art. 101, 2012 O.J. (C 326) 47. Article 101 of the TFEU prohibits cartels and other anticompetitive agreements that has the potential of upsetting the EU's internal market.

10 European Commission, *Competition: Antitrust Procedures in Anticompetitive Agreements*, https://competition-policy.ec.europa.eu/system/files/2020-12/antitrust_procedures_101_en.pdf.

11 Dreyfus, *Franchising Law in the European Union and the United Kingdom: 2026 Complete Guide* (16 Dec. 2025), <https://www.dreyfus.fr/en/2025/12/16/franchise-law-in-the-european-union-and-the-united-kingdom-2026-complete-guide/>.

12 See *supra* note 9. Article 101 of the TFEU prohibits cartels and other anti-competitive agreements that have the potential of upsetting the EU's internal market.

13 Commission Regulation 2022/720, On the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices, 2022 O.J. (L 134) 4, <http://data.europa.eu/eli/reg/2022/720/2024-02-11>.

14 Commission Notice, Guidelines on Vertical Restraints, 2022/C 248/01, 2022 O.J. (C 248) 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2022.248.01.0001.01.ENG.

15 See *supra* note 8.

16 Natasha Tardif, Marc Levy & Audrey Augusto, *Hardcore Restriction, Concurrences: Competition Law Dictionary*, <https://www.concurrences.com/en/dictionary/hard-core-restrictions>.

17 Gillian Sproul & Dr. Robert Hardy, *Franchising and the New EU and UK Vertical Block Exemptions*, https://www.gtlaw.com/-/media/files/insights/alerts/2022/07/gt-alert_franchising-and-the-new-eu-and-uk-vertical-block-exemptions.pdf (“in general, in-term non-competes should be for no more than 5 years and no longer than 1 year for permitted post-term non-competes (relating to the supply of products and services that compete with the franchise products and services from the premises/land from which the franchisee operated)”).

18 Ben Wolford, *What Is GDPR, the EU's New Data Protection Law?*, GDPR.eu, <https://gdpr.eu/what-is-gdpr/>.

19 Under the GDPR, “controller” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law. Council Regulation 2016/679, On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) art. 4(7), 2016 O.J. (L 119) 1 (defining “controller”).

20 Under the GDPR, “processor” means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller. Council Regulation 2016/679, *supra*, art. 4(8) (defining “processor”).

21 *How to Comply With the EU's GDPR in 10 Steps*, BLOOMBERG LAW (20 June 2024), <https://pro.bloomberglaw.com/insights/privacy/how-to-comply-with-the-eus-gdpr-in-10-steps/#who>.

22 *What Personal Data Is Considered Sensitive?*, European Commission, https://commission.europa.eu/law/law-topic/data-protection/rules-business-and-organisations/legal-grounds-processing-data/sensitive-data/what-personal-data-considered-sensitive_en.

23 Council Regulation 2016/679, On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1.

24 *PRETTY WOMAN* (BUENA VISTA PICTURES 1990).

25 *The Digital Services Act*, European Commission, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act>.

26 *Id.*

27 Other non-EU European nations with franchise laws include Albania, Belarus, Georgia, Moldova, Russia, and Ukraine.

28 Belgium, France, Italy, Latvia, Netherlands, Romania, Spain, and Sweden have laws that require specific disclosures be made to potential franchisees in these jurisdictions. Estonia and Lithuania, on the other hand, have franchise laws that impose mandatory terms on franchise agreements.

29 Dr. Mark Abell, *Which EU Jurisdictions Most Heavily Regulate Franchising, Who's Who Legal*, <https://www.twobirds.com/-/media/pdfs/brochures/franchising/which-eu-jurisdictions-most-heavily-regulate-franchising.pdf>.

30 Code of Economic Law (Belg.), Book X, https://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel#list-link-lien_1.

31 Cedric Berckmans, *Back to the Drawing Board: Belgian Precontractual Information Requirements for Franchise Agreements Undergo Another Amendment*, Bird & Bird (11 Nov. 2024), <https://www.twobirds.com/en/insights/2024/belgium/belgian-precontractual-information-requirements-for-franchise-agreements-undergo-another-amendment>.

32 *Id.*

33 Certain sections of the French Commercial Code specifically apply to franchisors. Code de commerce [C. com.] art. R. 330-1 (Fr.); *id.* art. L. 330-3. Meanwhile, French contract law, which applies to many contracts including franchise agreements, is separately codified in the Code civil [C. civ.] arts. 1100–1231-7 (Fr.).

34 Alan R. Greenfield & Victoria Alejandra Moreno Pabon, *Why U.S. Franchisors' Expansions Overseas Fail*, ABA FRANCHISE LAW J. (12 Mar. 2026), <https://www.americanbar.org/groups/franchising/resources/journal/2026-winter/why-us-franchisors-expansions-overseas-fail/>.

35 Law no. 129/2004 governs franchising, which it defines as a collaboration between legally and financially independent parties for product or services distribution.

36 Dace Ščadro, *The Regulation of Franchise Agreements in the Baltic States*, Franchising.lv (13 July 2020), <https://franchising.lv/en/2020/07/13/the-regulation-of-franchise-agreements-in-the-baltic-states/>.

37 “Know-how in a franchise agreement refers to a body of non-patented, practical, and proven knowledge—often documented in an operating manual—developed by the franchisor through experience.” Google AI Overview, 21 Apr. 2026.

38 Ivita Samlaja, *International Franchise Handbook: Focus on Latvia*, CEE Legal Matters (29 Oct. 2021), <https://ceelegalmatters.com/briefings/18253-international-franchise-handbook-focus-on-latvia>.

39 Ščadro, *supra* note 36.

40 Wet Franchise (Wet van 1 juli 2020 tot wijziging van Boek 7 van het Burgerlijk Wetboek in verband met de invoering van regels omtrent de franchiseovereenkomst) [Franchise Act] (Neth.), available at www.eerstekamer.nl/behandeling/20200715/publicatie_wet/document3/f=/v1acfxldkz7.pdf (last visited 31 Mar. 2026).

41 *Id.* art. 913; Martine de Koning, *Dutch Franchise Act into Force!*, Int'l Bar Ass'n (7 June 2021), https://www.ibanet.org/ifc-dutch-franchising-act-summary-article-june-21#_edn9.

42 Martine de Koning, Jelle Blom, Tosca Bokhove, & Joachim Niemeijer, *Franchise Laws and Regulations: Netherlands 2026*, ICLG (12 Nov. 2025), <https://iclg.com/practice-areas/franchise-laws-and-regulations/netherlands/>.

43 Ordonanta Guvernului nr. 52 din 28 august 1997 privind regimul juridic al franchisei, Monitorul Oficial nr. 224 of 30 Aug. 1997. *For an English translation*, see CCH, *Business Franchise Guide* ¶ 7225.

44 Irina Vasile & Alexandru Dragomir, *Franchising Comparative Guide*, Mondaq (17 July 2024), <https://www.mondaq.com/corporatecommercial-law/1387242/franchising-comparative-guide?msg=15>.

45 Real Decreto 201/2010, de 26 de febrero, por el que se regula el ejercicio de la actividad comercial en régimen de franquicia y la comunicación de datos al registro de franquiciadores (Spain), <https://www.boe.es/eli/es/rd/2010/02/26/201/con>.

46 Generally understood to mean no less than 14 days.

47 Lag (2006:484) om franchisegivares informationskyldighet [Act on Franchisors' Duty to Disclose Information] (Swed.), https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2006484-om-franchisegivares_sfs-2006-484/.

48 These registration jurisdictions include, but are not limited to, Mexico, Dominican Republic, Colombia, Brazil, Nigeria, Ethiopia, China, Malaysia, Indonesia, Vietnam, South Korea, Russia, the United States (which has 14 so-called registration states), Saudi Arabia, Oman, and Kuwait.

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meaningful explanation of that decision. Recital 171 clarifies that the explanation must be sufficiently clear to allow the individual to understand the reasoning behind the outcome and to exercise available legal remedies effectively. This right applies in cases where health, safety, or fundamental rights are at stake, and it operates without prejudice to more specific protections already guaranteed elsewhere in EU law.¹⁷ Complementing this transparency right, Article 14 of the Act establishes that decisions affecting individuals cannot rest exclusively on automated AI output; meaningful human oversight must be maintained throughout the decision-making process, particularly in high-risk contexts. Taken together, these provisions reflect a deliberate legislative choice to treat human accountability not as an operational inconvenience, but as a structural requirement of any AI system that exercises consequential authority over individuals.

The United States: Innovation, Federalism, and Litigation

The United States occupies a distinctive position in the global AI governance landscape. It is simultaneously the world's leading producer of AI technology—home to the majority of the most advanced AI models currently in deployment¹⁸—and the only major digital power that has not enacted comprehensive federal AI legislation. Understanding this paradox requires situating U.S. AI policy within the broader constitutional and political framework that has historically shaped American technology regulation.

The U.S. approach to AI governance is consistent with its longstanding tradition of market-oriented technology regulation: a preference for ex post enforcement over ex ante rules, reliance on existing legal frameworks rather than purpose-built legislation, and a structural skepticism toward broad regulatory mandates that might constrain private innovation. This philosophy has been reinforced at

the executive level. Executive Order No. 14180, signed on 11 December 2025, establishes as federal policy the goal of sustaining U.S. AI leadership through a minimally burdensome national framework, explicitly identifying the fragmentation produced by divergent state-level regulation as a primary threat to that objective.¹⁹ The Order directs multiple federal agencies—including the Department of Justice, the Federal Trade Commission, and the Federal Communications Commission—to develop coordinated responses to state AI laws deemed inconsistent with this federal policy, signaling a significant escalation in the federal-state tension over AI governance authority.²⁰

This federal posture does not mean, however, that the United States lacks regulatory activity in the AI space. Sector-specific agencies have moved within their existing mandates. The Federal Trade Commission has asserted authority over deceptive and unfair AI practices under Section 5 of the FTC Act. The Equal Employment Opportunity Commission has issued guidance on algorithmic discrimination in hiring. Financial regulators have addressed AI-related risks in credit decisions and model risk management. The result is a patchwork of agency-level interventions that provide some degree of governance without constituting a coherent national framework.

At the state level, the legislative picture is considerably more active. California, Colorado, Illinois, and New York, among others, have introduced or enacted AI-related legislation addressing transparency, bias auditing, automated employment decisions, and the use of AI in consumer-facing contexts.²¹ This state-level dynamism is precisely what Executive Order 14180 seeks to constrain, setting up what is likely to become a sustained constitutional and political conflict over the appropriate locus of AI regulatory authority in the United States.

In the absence of comprehensive legislation, courts are emerging as a critical governance venue. Litigation involving algorithmic bias, AI-generated evidence, deepfake liability, intellectual property disputes arising from AI training data, and the legal status of AI-assisted decisions is already well underway across multiple federal circuits. These cases will incrementally define the legal standards governing AI in the United States, filling the legislative vacuum through common law development in a way that is inherently slower, less predictable, and more fragmented than statutory regulation. For practitioners advising clients on AI risk, this litigation landscape represents both a source of legal uncertainty and a set of emerging obligations that cannot be ignored

simply because they lack the formal clarity of a regulatory framework.

The United States' engagement with international AI governance adds a further layer of complexity. On 5 September 2024, the U.S. signed the Council of Europe's Framework Convention on Artificial Intelligence—the first binding multilateral AI treaty—signaling a willingness to engage with international human rights standards in the AI context.²² That signature sits in deliberate tension with the domestic deregulatory posture reflected in Executive Order 14180. The result is a hybrid U.S. strategy: innovation-first at home, human-rights-engaged abroad—a duality that multinational organizations operating under both U.S. and foreign regulatory regimes must actively navigate.

China: Fragmented Regulation and Centralized Control

China's approach to AI regulation is characterized by a combination of fragmentation and centralization. Rather than adopting a single legislative instrument, Chinese authorities have implemented a series of targeted measures addressing specific technologies.

The Administrative Provisions on Algorithm Recommendation impose obligations relating to transparency, fairness, and user autonomy.²³ Providers must disclose the use of algorithms and offer users the ability to opt out of personalized recommendations. The provisions also prohibit discriminatory practices, including differential pricing based on personal characteristics. Foreign companies offering digital services accessible within Chinese territory are subject to these provisions regardless of their place of incorporation; the jurisdictional trigger is access to the Chinese market rather than formal establishment.

The Interim Measures for the Management of Generative Artificial Intelligence Services extend regulation to generative AI technologies. These measures require providers to ensure that generated content complies with core socialist values, to prevent discriminatory outputs, and to respect intellectual property rights.²⁴ They also impose obligations relating to data governance, including the requirement to use lawfully sourced datasets and to obtain consent where personal data is involved.

The Administrative Provisions on Deep Synthesis and subsequent labeling measures address the risks associated with synthetic media. These rules require both visible and machine-readable labeling of AI-generated content and impose obligations relating to content monitoring and user identification.²⁵

China's regulatory framework is further complemented by ethics review mechanisms and draft rules governing human-

like AI systems. These measures emphasize the importance of aligning AI development with state policy objectives, including social stability and public order.²⁶

Canada: Legislative Ambition and Pragmatic Governance

Canada's experience with AI regulation offers an instructive contrast to both the EU's comprehensive legislative model and China's state-directed sectoral approach. Unlike those jurisdictions, Canada has not yet enacted binding federal AI legislation applicable to the private sector. Its most ambitious attempt—the Artificial Intelligence and Data Act (AIDA), introduced as part of Bill C-27 in June 2022—lapsed in January 2025 when Parliament was prorogued following Prime Minister Trudeau's resignation, before the bill could complete its legislative passage.²⁷ The failure of AIDA does not, however, reflect a lack of regulatory ambition. Canada had already established itself as an early mover in AI governance: it launched the world's first national AI strategy in 2017, introduced binding rules on automated decision-making in federal public administration through the Directive on Automated Decision-Making in 2019,²⁸ and co-founded the Global Partnership on AI in 2020.

In the absence of a comprehensive federal statute, Canada's AI governance framework rests on a layered combination of federal administrative instruments, provincial legislation, and sector-specific regulatory guidance. The Directive on Automated Decision-Making remains the primary binding instrument at the federal level, imposing impact assessment requirements, transparency obligations, and tiered accountability standards on government institutions that deploy automated decision systems.²⁹ At the provincial level, Ontario has enacted legislation extending transparency and risk-management requirements to public-sector AI use³⁰ while Quebec and British Columbia have issued principles and policies governing responsible AI deployment within their respective public bodies.³¹

For practitioners, Canada's model is significant for two reasons. First, it demonstrates that meaningful AI governance can be pursued through administrative and soft law instruments even in the absence of primary legislation, a lesson that may be relevant as other jurisdictions grapple with similar legislative delays. Second, the alignment of Canada's governance approach with OECD principles and EU-level standards means that multinational organizations subject to the EU AI Act will generally find Canadian compliance expectations to be directionally consistent, reducing the cost of cross-jurisdictional harmonization for North American operations.

Soft Law, Treaty Frameworks, and Emerging Convergence

In addition to binding regulation, soft law instruments play a central role in shaping AI governance. The OECD AI Principles establish a framework based on human rights, transparency, and accountability.³² The UNESCO Recommendation on the Ethics of Artificial Intelligence similarly articulates a set of global standards grounded in human dignity, fairness, and oversight.³³

Although non-binding, these instruments function as normative benchmarks that influence domestic legislation and corporate governance practices. They contribute to regulatory convergence by establishing a shared set of principles applicable across jurisdictions.

The Council of Europe's Framework Convention on Artificial Intelligence represents a further step toward international coordination. As the first binding multilateral treaty addressing AI governance, it establishes baseline obligations relating to human rights, transparency, and accountability.³⁴

Global Compliance and Practical Implications

The interaction of these regulatory frameworks creates a complex compliance environment for multinational companies. U.S.-based companies deploying AI systems internationally must comply with foreign regulatory regimes, particularly the EU AI Act, which effectively results in the importation of EU compliance standards into domestic operations. The extraterritorial reach of the EU AI Act, combined with China's market-based regulatory requirements and the influence of soft law instruments, requires companies to adopt coordinated and proactive compliance strategies.

In practice, many organizations align their global operations with the most stringent applicable standards. This often results in the adoption of EU-compliant frameworks as a baseline for global operations. While this approach reduces regulatory fragmentation, it also reflects the growing influence of international AI governance on corporate behavior.

For practitioners, the key challenge lies in identifying applicable regulatory regimes, assessing extraterritorial exposure, and designing compliance frameworks that can accommodate overlapping obligations.

Conclusion

Artificial intelligence has transformed regulation into a fundamentally cross-border legal issue. The European Union, China, Canada, and the United States have each developed distinct regulatory models, reflecting different legal traditions and policy priorities. At the same time, these frameworks interact to create a layered system of global governance.

As AI continues to evolve, regulatory convergence is likely to develop through a combination of legislation, soft law, and judicial interpretation. For practitioners, the ability to navigate this complex and evolving landscape will become an essential component of international legal practice.



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Endnotes

- 1 Alexander Wodi, *Artificial Intelligence (AI) Governance: An Overview* (4 May 2024), SSRN, <https://ssrn.com/abstract=4840769>.
- 2 Jennifer C. Daskal, *The Un-Territoriality of Data*, 125 Yale L.J. 326, 329 (2015).
- 3 *Id.*; see also Wodi, supra note 1.
- 4 Maggie Arai, *What's Next After AIDA?*, Schwartz Reisman Institute for Technology and Society (11 Feb. 2025), <https://srinstitute.utoronto.ca/news/whats-next-for-aida>.
- 5 OECD, *OECD AI Principles* (May 2019; updated 3 May 2024), <https://oecd.ai/en/ai-principles>; UNESCO, *Recommendation on the Ethics of Artificial Intelligence* (23 Nov. 2021), <https://www.unesco.org/en/articles/recommendation-ethics-artificial-intelligence>; Framework Convention on

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Artificial Intelligence and Human Rights, Democracy and the Rule of Law, 5 Sept. 2024, CETS No. 225.

6 See Wodi, *supra* note 1, at 8.

7 *Id.* at 12.

8 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, OJ L 2024/1689, 12.7.2024 [hereinafter EU AI Act], Art. 1, Recital 2.

9 *Id.*

10 *Id.*

11 *Id.* Recitals 3–9.

12 *Id.* Art. 5.

13 *Id.* Art. 6; annex III.

14 *Id.* Arts. 8–15.

15 *Id.* Art. 50.

16 *Id.* Art. 99.

17 *Id.* Recital 171.

18 Stanford Institute for Human-Centered Artificial Intelligence (HAI), *AI Index Report 2025: Policy Highlights* (2025), at ¶ 3, <https://hai-production.s3.amazonaws.com/files/hai-ai-index-2025-policy-highlights.pdf>.

19 Exec. Order No. 14180, *Ensuring a National Policy Framework for Artificial Intelligence* (11 Dec. 2025), <https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/>.

20 *Id.*

21 See generally Global AI Law & Policy Tracker, *Global AI Law & Policy Tracker* (last updated May 2025), https://assets.contentstack.io/v3/assets/bltd4dd5b2d705252bc/blt34a8e3844fb44942/global_ai_law_policy_tracker.pdf.

22 Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, 5 Sept. 2024, CETS No. 225.

23 Administrative Provisions on Algorithm Recommendation for Internet Information Services (effective 1 Mar. 2022), China Law Translate, <https://www.chinalawtranslate.com/en/algorithms/>.

24 China Law Translate, *Interim Measures for the Management of Generative Artificial Intelligence Services* (promulgated 10 July 2023; effective 15 Aug. 2023), <https://www.chinalawtranslate.com/en/generative-ai-interim/>.

25 Administrative Provisions on Deep Synthesis of Internet-based Information Services (effective Jan. 2023), China Law Translate.

26 See Barbara Li, *Global AI Governance Law and Policy: China*, IAPP (12 Nov. 2025), <https://iapp.org/resources/article/global-ai-governance-china>.

27 Arai, *supra* note 4.

28 Directive on Automated Decision-Making, Treasury Board of Canada Secretariat (effective 1 Apr. 2019) (Can.).

29 *Id.*

30 Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024, S.O. 2024, c. 24 (Ont.) (Can.).

31 See e.g. Simon Du Perron & Cassandre Legault, *Ten Principles for the Responsible Use of Artificial Intelligence (AI) by Québec Public Bodies*, Borden Ladner Gervais LLP (21 Nov. 2024), <https://www.blg.com/en/insights/2024/08/dix-principes-dutilisation-responsable-de-lintelligence-artificielle>.

32 OECD, *supra* note 5.

33 UNESCO, *supra* note 5.

34 Framework Convention on Artificial Intelligence and Human Rights, *supra* note 5.

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CAT RUDs also significantly narrow the scope of both torture and non-refoulement by defining torture to require specific intent and by limiting the definition of cruel, inhuman, and degrading treatment in a similar manner.²⁴ In addition, the United States conditions its Article 3 non-refoulement obligation on an individualized “more likely than not” standard.²⁵ This formulation effectively raises the evidentiary threshold above CAT’s text, which only requires “substantial grounds for believing” that a person would be in danger of being subjected to torture.²⁶

Domestic Enacting Statutes and Regulations

As the Refugee Protocol, CAT, and ICCPR are all treated as non-self-executing in the United States, their obligations are implemented through a domestic and regulatory framework.²⁷ Non-refoulement is principally operationalized through asylum and withholding of removal under the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980,²⁸ and through regulations implementing CAT pursuant to the Foreign Affairs and Reform and Restructuring Act of 1998 (FERRA).²⁹ The Refugee Act serves as the primary vehicle incorporating refugee protection into U.S. law, while FARRA § 2242 implements CAT’s non-refoulement obligation through binding regulations.³⁰

Specifically, treaty-based protections are filtered through domestic law, including:

- INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (2024), which prohibits removal to a country where an individual’s “life or freedom” would be threatened;
- FARRA § 2242, which implements Article 3 of CAT,³¹ and

- Implementing regulations, principally C.F.R. §§ 208.16-.18 (2025), which implement withholding of removal and protection under CAT.

Despite significant executive enforcement efforts, there has been no major new legislation in 2025–2026 to amend these statutory or regulatory frameworks implementing non-refoulement protections. However, recent executive actions have sought to constrain access through executive orders, proclamations, and agency directives. These measures aim to restrict asylum eligibility, expand expedited removal, and facilitate third-country removals, often involving individuals with no prior connection to the receiving state. In doing so, the executive operates within a domestically tethered system shaped by RUDs.

Where treaty commitments are implemented through statutes and regulations, courts have continued to treat withholding of removal and CAT protection as mandatory safeguards that cannot be displaced by policy. They have repeatedly reaffirmed that such relief must be granted where statutory criteria are satisfied and have required procedures sufficient to ensure meaningful access to those protections.³² While granting asylum is discretionary, non-refoulement in the form of withholding of removal and CAT protection is mandatory.³³

Whether an applicant has established a fear rising to the level of persecution is highly fact-dependent and subject to deferential judicial review. 8 U.S.C. § 1252(b)(4)(B) states: “the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” On 4 March 2026, the U.S. Supreme Court in *Urias-Orellana v. Bondi*³⁴ reaffirmed this deferential standard, holding that agency determinations regarding persecution must be upheld if supported by “substantial evidence.”³⁵

In summary, the United States has a binding obligation not to remove individuals to countries where they face persecution or torture, but that obligation is defined and enforced through domestic statutes and regulations rather than directly through the treaties themselves. Because those treaties are treated as non-self-executing and subject to RUDs, U.S. law narrows and channels non-refoulement through distinct standards—most notably the “well-founded fear” standard for asylum and the “more likely than not” standard governing withholding of removal and CAT protection. Although asylum remains discretionary, withholding of removal and CAT relief are mandatory once the statutory criteria are satisfied, preserving a baseline prohibition on refoulement within a system otherwise shaped by executive discretion.

Third-Country Refoulement (Chain Refoulement)

U.S. removal practices—especially third-country deportations—are formally lawful under domestic implementations of INA and FARRA and a narrow CAT interpretation. Courts and adjudicators have limited relief where claims rely on speculative chains of events, including the possibility of onward transfer by third-country officials. In *Matter of J-F-F*, for example, the attorney general held that relief under CAT cannot rest on a “series of suppositions” unless each step in the chain—thus “chain” refoulement—is more likely than not to occur.³⁶

Courts have followed this approach, requiring applicants to show a clear, individualized likelihood of torture, even where risk depends on actions taken by third-country authorities.³⁷

Critically, the regulatory scheme focuses on the country of removal designated by DHS rather than downstream risks following transfer. This reflects the effect of RUDs, which narrow and channel treaty obligations into domestic standards. The judiciary has reinforced this narrowing. In *Jama v. Immigration & Customs Enforcement*,³⁸ the Court permitted removal to third countries without advance acceptance. Lower courts have followed this approach, focusing on the immediate receiving country and often ignoring risks that depend on the discretionary actions of third-country officials.³⁹

The practical effect of this framework is visible in recent third-country deportations. The United States has transferred migrants to countries with which they have no prior ties, including sending fourteen West African nationals to Ghana pursuant to bilateral treaty arrangements.⁴⁰ These transfers were carried out with limited notice and procedural transparency, and in some cases individuals were not informed of their destination until removal was already underway.⁴¹

Once transferred, migrants may face detention, relocation, or onward removal by the receiving state. Countries participating in or reportedly negotiating similar arrangements include Ghana, Eswatini, Rwanda, Uganda, Cameroon, South Sudan, and Equatorial Guinea.⁴² It should be noted that several of these states themselves have a history demonstrating a “consistent pattern of gross, flagrant or mass violations of human rights.”⁴³

Some receiving states have functioned as transit points, and reports indicate that migrants have, in certain instances, been moved onward or exposed to conditions that raise serious concerns about potential return to their countries of origin.⁴⁴

This illustrates the central problem. The risk of downstream harm is often foreseeable, based on known country conditions and the structure of these agreements. But it is rarely provable with the specificity required under U.S. law because each

step in the chain depends on contingent decisions by foreign officials.

The practical upshot is this: The United States, through a complex combination of treaty exceptions—no matter how tenuously used—in concert with RUDs and narrow interpretations of statutes and regulations, takes the position that it may remove some noncitizens to a third country without fully accounting for where that country might send them next—so long as the risk of subsequent harm cannot be established with sufficient certainty.⁴⁵

As the examples below show, the results are cruel. It is a system that is arguably formally lawful, but functionally indifferent to what happens next.

The Current Terrors of Third-Party Refoulement by the United States

U.S. immigration policy has entered a period of profound instability. In an enigma to the human rights community, the Supreme Court lifted a lower court stay—at least temporarily—permitting the continuation of third-country removals.⁴⁶ The practical effect has been stark: The DHS may deport noncitizens to countries to which they have no connection, without written notice or a meaningful opportunity to raise claims under CAT as implemented by FARRA § 2242 (codified at 8 C.F.R. § 208.18).⁴⁷ What remains is a system in which legal protections exist on paper but are increasingly inaccessible in practice.

CECOT

The most notorious contemporary example is El Salvador’s Terrorism Confinement Center (CECOT), a facility synonymous with hellish conditions and documented abuse. Less than twenty-four hours after invoking the wartime Alien Enemies Act of 1798 against the Venezuelan prison gang *Tren de Aragua*, the Trump administration initiated a large-scale, clandestine removal operation.⁴⁸ The government airlifted approximately 250 Venezuelan men along with dozens of Salvadorans to CECOT without providing meaningful due process protections.

Subsequent reporting indicated that many detainees were not gang members.⁴⁹ The operation proceeded despite federal court orders⁵⁰ directing that at least one of the flights be turned around and others halted. Called “one of the worst abuses of government power in generations,”⁵¹ the result was not merely unlawful transfer, but disappearance in all but name: detainees being held incommunicado for months, confined with violent offenders, and cut off from counsel, courts, and family.⁵²

The visual record underscores cruelty. In front of a cell overcrowded with nearly naked detainees, Kristi Noem smugly warned, “If you come to our country illegally, this is one of the consequences you could face.”⁵³ A congressman posed before the same conditions with a thumbs up.⁵⁴ Only months later were the detainees transferred onward to Venezuela for screening and release—after enduring conditions few courts would tolerate even for the worst of the worst violent convicted prisoners.⁵⁵

A Moroccan Lesbian Deported to Cameroon

Even formal legal protections have proven fragile. Immigration judges have, in some cases, denied asylum while simultaneously issuing protection orders prohibiting return to the country of origin—recognizing a likelihood of persecution or death.⁵⁶

One such case involved a lesbian from Morocco, where same-sex acts are punishable by up to three years in prison. After her relationship was discovered, her family tried to kill her. A U.S. immigration judge denied asylum but expressly barred her removal to Morocco due to a credible threat to her life. Three days before her release hearing she was instead transferred to Cameroon—a country that similarly criminalizes homosexuality. Trapped between two nightmares and pressured by Cameroon, she ultimately returned to Morocco.⁵⁷ She now lives in hiding.⁵⁸

Eswatini and Equatorial Guinea

The pattern extends beyond isolated cases. Nineteen migrants—each of whom had completed criminal sentences in the United States—were transferred to Eswatini: a state known for violent suppression. The reported taxpayer cost was approximately US\$413,000 per person. Another group was sent to Equatorial Guinea at a cost of US\$7.5 million.⁵⁹

Among them was a Cambodian national who had been granted protection from removal. He was subsequently refoiled to Cambodia—the very country from which U.S. authorities had determined he would likely face persecution.⁶⁰ Eswatini, which has no asylum program, served merely as a conduit. Since then, two more groups of deportees have been sent to Eswatini.⁶¹

These are not aberrations. The United States has reportedly secured removal arrangements with multiple African states, effectively constructing a network of third-country destinations where legal accountability verges on fiction and onward refolement is foreseeable.

Ghana and Expanding Third-Country Networks

At least fourteen deportees were transferred to detention centers in Ghana, including thirteen Nigerians and one Gambian—none of whom had ties to the country. Many were subject to orders prohibiting their return to their countries of origin due to demonstrated risks of torture. All of them were ultimately refoiled.⁶²

Additional agreements with Rwanda, Uganda, and South Sudan⁶³ further illustrate this trajectory. These countries are not final destinations. Rather, by design, they function as waypoints—places of detention, coercion, or eventual expulsion back into persecution.

Even for individuals granted formal protection, a parallel system has emerged—one that relocates migrants to unfamiliar territories where they face chain refolement. These downstream harms are not speculative; they are predictable and increasingly documented. Yet they remain difficult to prove under the demands of U.S. legal standards.

The result is a system that does not openly repudiate its legal obligations but instead renders them functionally hollow—achieving the indirection that the law forbids outright.

Formally Compliant, Substantively Unlawful: U.S. Third-Country Removals Violate Customary International Law

The United States has engineered its practice in an attempt to remain formally compliant with treaty obligations through its use of RUDs, implementing statutes, narrowing judicial constraints, and executive action grounding refolement, including chain refolement, tenuously to national security, public order, or danger to the community.⁶⁴ This framework is designed to maintain the appearance of compliance with statutes and regulations interpreting the Refugee Convention, CAT, and ICCPR but does not address the fact that the core obligations of those treaties are now customary international law.

Customary International Law Supersedes U.S. Treaty Interpretations

Customary international law arises from general and consistent state practice accepted as law *opinio juris*, distinct from treaty obligations. Customary international law cannot be modified by RUDs or unilaterally narrowed by national law.⁶⁵ Non-refolement has attained the status of customary international law,⁶⁶ and U.S. courts recognize customary international law as binding federal law.⁶⁷

Even as a matter of domestic interpretation, U.S. law resists the conflict with international obligations. Under the *Charming Betsy* canon (not a mandate; courts can and do depart from it both explicitly and implicitly), statutes should be construed, where reasonably possible, to avoid violating international law. This imperative principle underscores that statutory and regulatory narrowing of protection regimes does not compel outcomes inconsistent with the customary international law obligations of the United States.⁶⁸

RUDs and treaty implementing statutes do not displace customary law. RUDs operate within treaty law and do not alter independent customary obligations.⁶⁹ Domestic statutes may override treaties internally (last-in-time rule) but do not eliminate international responsibility for violating customary international law.⁷⁰

Even within treaty law, state discretion to limit obligations is not absolute. Under the Vienna Convention on the Law of Treaties, reservations that defeat a treaty's object and purpose are impermissible—placing substantive limits on efforts to narrow core protections such as non-refoulement.⁷¹ If RUDs cannot guard a treaty's central guarantees, they cannot eliminate parallel obligations arising under international law.

Customary International Law and Refoulement

Ultimately, the governing rule under binding customary international law is this: no state may transfer an individual to a place where they face a foreseeable risk of serious harm. What was first codified in the Refugee Convention and CAT, and reinforced through interpretations of ICCPR, have developed into a binding norm of customary international law.

Across these regimes, doctrinal formulations vary—from a “well-founded fear”⁷² of persecutions, to “substantial grounds” for believing torture will occur,⁷³ to a “real risk” of irreparable harm⁷⁴—but they converge on a common core: the prohibition of refoulement. Each forbids removal where the consequences are both foreseeable and severe. Each has been consistently affirmed in state practice and *opinio juris*.⁷⁵

Critically, the prohibition encompasses not only direct return to a country of harm, but also chain refoulement—the transfer of an individual to an intermediary state that is likely to expose them to onward removal or mistreatment. Under CAT, this obligation is absolute—there is no exception for national security or criminality. Even under the Refugee Convention's narrower exception framework, modern interpretation and practice have constrained the circumstances under which removal may proceed where serious harm is at stake. Read together, these regimes establish a baseline rule for chain

refoulement: if a state knows or should know that removal will place an individual at risk of persecution, torture, or comparable harm, the transfer is prohibited.

This convergence is not merely theoretical—it is functional. The fragmentation of standards within U.S. law and the increasing reliance on third-country removals operate to obscure rather than eliminate the underlying obligation. By transferring individuals to jurisdictions lacking meaningful protection systems, or where onward removable is foreseeable, the United States does not avoid the prohibition on refoulement; it risks violating it. The result is a system that is arguably compliant within the bounds of conventional international law, but fails under the broader and also binding framework of customary international law.

Conclusion

The United States has established a confusion of RUDs, statutes, judicial narrowing, and executive action that—while arguably facially compliant—functionally circumvents the protections of the Refugee Convention, CAT, and ICCPR. Invocations of national security, public order, and criminality have not merely tested the limits of these regimes—they have been used to systematize their erosion. The result is not a single violation. It is a pattern of categorical exclusions, accelerated removals, and third-country transfers the predictably place individuals in harm's way.

The evidence is not abstract. Individuals removed without meaningful process have been sent to environments defined by permanence—facilities described by their own officials as “a cemetery of the living dead,”⁷⁶ where beatings, rape, neglect, and indefinite detention are not aberrations but routine.⁷⁷ Where the United States knows, or should know, that transfer will result in such treatment, the prohibition on refoulement is not implicated in the margins—it is direct. Even under the narrowest readings of treaty law, such outcomes strain any claim of compliance.

Under customary international law, however, the analysis is direct. The prohibition on refoulement—which includes chain refoulement—is neither bound by geography or intermediaries. Once an individual is enroute to a third country lacking protection systems, or transferred on to face persecution, torture, or even death, the violation is complete upon transfer. The legal obligation does not dissipate at the border; it follows the foreseeable consequences.

A system that reliably delivers human beings to persecution and torture is not operating at the edge of legality—it has already crossed it.



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Endnotes

- 1 Human Rights Watch & Cristosal, “You Have Arrived in Hell”: Torture and Other Abuses Against Venezuelans in El Salvador’s Mega Prison (12 Nov. 2025), <https://www.hrw.org/report/2025/11/12/you-have-arrived-in-hell/torture-and-other-abuses-against-venezuelans-in-el>.
- 2 Convention Relating to the Status of Refugees art. 33(1), 28 July 1951, 189 U.N.T.S. 137 (“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”); binding on the U.S. through the Protocol Relating to the Status of Refugees art. I, 31 Jan. 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended at 8 U.S.C. §§ 1101(a)(42), 1158, 1231(b)(3)); Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3) (2024) (prohibiting removal to a country where an alien’s “life or freedom would be threatened” on account of a protected ground); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428–29 (1987) (recognizing the “well-founded fear” standard derived from the Refugee Protocol).
- 3 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, 10 Dec. 1984, 1465 U.N.T.S. 85 (prohibiting removal of a person to a state where there are substantial grounds for believing they would be subjected to torture).
- 4 Refugee Convention, *supra* note 2, art. 33(1); see also U.N. High Comm’r for Refugees, *Note on the Principle of Non-Refoulement* ¶ 3 (Nov. 1997), <https://www.refworld.org/docid/438c6d972.html> (describing non-refoulement as prohibiting return to persecution, torture, or other serious harm).
- 5 U.N. Treaty Collection, *Definitions*, https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.
- 6 Refugee Convention, *supra* note 2, art. 31(1) (prohibiting penalties on refugees on account of their illegal entry or presence, provided they present themselves without delay and show good cause).
- 7 See Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, 31 Jan. 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, 1465 U.N.T.S. 85; International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171.
- 8 Refugee Convention, *supra* note 2, arts. 1, 33; see also U.N. High Comm’r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* ¶¶ 28–31 (reissued 2019).
- 9 Convention Against Torture, *supra* note 3, art. 3; ICCPR, *supra* note 1, art. 2(1).
- 10 Refugee Convention, *supra* note 2, arts. 1, 33(1).
- 11 CAT, *supra* note 3, art. 3(1).
- 12 *Id.*, art. 3(2).
- 13 ICCPR, *supra* note 7, arts. 2(1), 6, 7; Human Rights Comm., General Comment No. 31, ¶ 12, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004).
- 14 *Id.*
- 15 CAT, *supra* note 3, art. 3(1).
- 16 *Id.*, art. 2.
- 17 Refugee Convention, *supra* note 2, art. 33(2)
- 18 ICCPR, *supra* note 7, art. 4(1)
- 19 *Id.*, art. 4(2).

20 Human Rights Comm., General Comment No. 31, ¶ 12, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004).

21 ICCPR *supra* note 7, at 19–20 (U.S. reservations, understandings, and declarations) (declaring Articles 1–27 non-self-executing).

22 International Covenant on Civil and Political Rights: Reservations, Understandings, and Declarations of the United States, United Nations Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-9&chapter=4&clang=_en.

23 *Id.*

24 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Exec. Rep. No. 101-30, at 36 (1990) (understanding requiring specific intent for torture and limiting CIDT to constitutional standards).

25 8 C.F.R. § 208.16(c)(2) (2024); see also *INS v. Stevic*, 467 U.S. 407, 429–30 (1984) (articulating “more likely than not” standard in withholding context).

26 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, status of ratification, U.N. Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-9&chapter=4&clang=_en.

27 See International Covenant on Civil and Political Rights, S. Exec. Doc. No. 102-23, at 19 (1992) (declaring the Covenant non-self-executing); Foreign Affairs Reform and Restructuring Act of 1998 § 2242, Pub. L. No. 105-277, div. G, 112 Stat. 2681, 2681-822 (codified as a note to 8 U.S.C. § 1231); see also *INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984) (discussing non-self-executing nature of the Protocol).

28 Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.).

29 FARRA, *supra* note 28.

30 *Id.* § 2242(b); see also 8 C.F.R. §§ 208.16–.18 (2025).

31 FARRA § 2242(a).

32 See, e.g., *Riley v. Bondi*, 606 U.S. 259 (2025) (recognizing the distinct procedural posture of withholding-only proceedings and preserving their role within the removal framework); *Order, Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-5243, at 2, 31 (D.C. Cir. 1 Aug. 2025) (reaffirming that “both CAT protection and withholding of removal are mandatory forms of relief” and must be granted where statutory criteria are satisfied) <https://media.cadc.uscourts.gov/orders/docs/2025/08/25-5243LDSN4>.

33 *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-5243, at 2, 31 (D.C. Cir. 1 Aug. 2025), <https://media.cadc.uscourts.gov/orders/docs/2025/08/25-5243LDSN4> (reaffirming that “both CAT protection and withholding of removal are mandatory forms of relief” and must be granted where statutory criteria are satisfied).

34 *Urias-Orellana et al. v. Bondi, Attorney General*, No. 24-777 (U.S. 4 Mar. 2026).

35 *Id.* at 1-2.

36 *Matter of J-F-F*, 23 I. & N. Dec. 912, 917–18 (A.G. 2006).

37 See, e.g., *INS v. Stevic*, 467 U.S. 407, 429–30 (1984); 8 C.F.R. § 208.16(c)(2) (2025).

38 *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335 (2005).

39 See, e.g., 8 C.F.R. § 208.16(c)(2) (2025).

40 Chinedu Asadu, *What to know about the US deportations to non-citizen African countries*, Associated Press (Sept. 2025), <https://apnews.com/article/ghana-migrants-deportation-us-trump-africa-747ad0f69d8b5bf1db9dfc8ea8f527ec>.

41 *Id.*

42 *Id.*

43 CAT, *supra* note 3, art. 3(2).

44 *Id.*

45 See FARA, *supra* note 28, 208.16–208.18.

46 *Dep’t of Homeland Sec. v. D.V.D.*, No. 24A1153, slip op. at 5 (U.S. 23 Jun. 2025) (Sotomayor, J., dissenting).

47 FARRA, *supra* note 28; see also 8 C.F.R. § 1208.18 (2026) (EOIR regulations).

48 Aaron Reichlin-Melnick, *United States Frees Venezuelans Held in El Salvador Following Prisoner Swap*, Am. Immigr. Council (21 July 2025), <https://www.americanimmigrationcouncil.org/blog/united-states-frees-venezuelans-el-salvador-prisoner-swap/#:~:text=Starting%20four%20months%20>

ago%2C%20the,moving%20the%20men%20to%20CECOT.

49 Human Rights Watch, *supra* note 1.

50 See, e.g., *J.G.G. v. Trump*, No. 25-cv-00766 (D.D.C. 15 Mar. 2025) (temporary restraining order) (ordering government to halt removals and return deportation flights carrying alleged gang members to the United States) (complicated appellate history).

51 Aaron Reichlin-Melnick, United States Frees Venezuelans, *supra* note 49, (reporting that the United States deported approximately 250 Venezuelan migrants to El Salvador's CECOT prison without due process, where they were detained for months before being released in a prisoner exchange).

52 *Id.*

53 April Rubin, *These Are the Lawmakers Who Have Visited CECOT, El Salvador's Mega-Prison*, Axios (17 Apr. 2025) (reporting that CECOT has become a focal point of U.S. immigration policy after the transfer of hundreds of migrants with limited or no due process, and noting that access to the facility has been uneven between Republican and Democratic lawmakers).

54 April Rubin, *These Are the Lawmakers Who Have Visited CECOT, El Salvador's Mega-Prison*, Axios (17 Apr. 2025).

55 United States Frees Venezuelans, *supra* note 49.

56 Monika Pronczuk, The U.S. Deported a Gay Asylum-Seeker to a Third Country Where Homosexuality Is Illegal, Associated Press (22 Feb. 2026) (reporting that the United States deported asylum seekers to third countries, including individuals with protection orders, raising due process and non-refoulement concerns), <https://apnews.com/article/trump-deportation-cameroon-morocco-lgbt-interview-1ea278f4c981df798773e26972c5d54f>.

57 *Id.*

58 *Id.*

59 Gerald Imray and Valere Gonzalez, *Cambodian Man Deported by the U.S. to Eswatini Is Being Repatriated, His Lawyer Says*, Associated Press (25 Mar. 2026) (describing U.S. use of third-country deportations and subsequent detention of deportees abroad).

60 *Id.*

61 Nokukhanya Musi and Michelle Gumede, *Eswatini receives third batch of migrants deported by the US* (12 Mar. 2026), <https://apnews.com/article/eswatini-deportees-us-trump-immigration-5388e0771714b074953cfc1f110b67c>.

62 Chinedu Asadu, *What to know about the US deportations to non-citizen African countries*, Associated Press (Sept. 2025) <https://apnews.com/article/ghana-migrants-deportation-us-trump-africa-747ad0f69d8b5bf1db9dfc8ea8f527ec>.

63 Eswatini receives third batch, *supra* note 62.

64 Refugee Convention, *supra* note 2, art. 33(2)

65 Vienna Convention on the Law of Treaties arts. 19–23, 23 May 1969, 1155 U.N.T.S. 331.

66 U.N. High Comm'r for Refugees, *Advisory Opinion on Extraterritorial Application of Non-Refoulement Obligations* (2007), <https://www.unhcr.org/media/advisory-opinion-extraterritorial-application-non-refoulement-obligations-under-1951-0>; Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement* (20 June 2001), <https://www.refworld.org/docid/3b3702b15.html>.

67 *The Paquete Habion*, 175 U.S. 677, 700 (1900) (“International law is part of our law”).

68 *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (“It has also been observed that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains”); but see *Nippon Steel Corp. v. United States*, 732 F. Supp. 3s 1351, 1373 (Ct. Int'l Trade 2024) (Congress can override a *Charming Betsy* interpretation).

69 Vienna Convention, *supra* note 67, arts. 19–23.

70 Harold Hongju Koh, *Is International Law Really State Law?*, 111 HARV. L. REV. 1824, 1835 n. 62 (1998), <https://scispace.com/pdf/is-international-law-really-state-law-4c63o0g054.pdf>.

71 Vienna Convention, *supra* note 67, art. 19(c); see also Human Rights Comm., General Comment No. 24, ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add/6 (1994).

72 Refugee Convention, *supra* note 2, art. 33 (prohibiting return of refugees to territories where life or freedom would be threatened, subject to narrow national security exceptions).

73 CAT, *supra* note 3, art. 3(1) (prohibiting transfer where there are substantial grounds for believing a person would be subjected to torture, without exception).

74 Human Rights Comm., General Comment No. 31, ¶ 12, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004) (interpreting the ICCPR to prohibit removal where there is a real risk of irreparable harm, including torture or arbitrary deprivation of life).

75 Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement* ¶¶ 87–92 (20 June 2001), U.N. High Comm'r for Refugees, <https://www.refworld.org/docid/3b3702b15.html> (concluding that non-refoulement has attained the status of customary international law through consistent state practice and opinio juris).

76 Tom Phillips & Clavel Rangel, *“Cemetery of the Living Dead”*: Venezuelans Recall 125 Days in Notorious El Salvador Prison, GUARDIAN (29 July 2025), <https://www.theguardian.com/us-news/2025/jul/29/venezuela-cecot-prison-el-salvador-trump-immigration-crackdown> (reporting detainee accounts of extreme abuse and describing the prison as a “cemetery of the living dead”).

77 Maanvi Singh, *Venezuelans Deported by US Detail Fresh Claims of Torture and Abuse at El Salvador Mega-Prison*, GUARDIAN (26 Mar. 2026), <https://www.theguardian.com/world/2026/mar/26/cecot-human-rights-petition> (reporting that deported migrants filed a petition before the Inter-American Commission on Human Rights alleging torture and abuse following transfer to El Salvador).

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Extreme Vetting – The New Normal at USCIS and Consulates: ... , continued from page 23



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It is important for practitioners to counsel their clients on the difference between a basic and advanced search. It is also important for clients to understand that the border search will only include an examination of information that is resident upon the device at the time it is presented for inspection. CBP officers may not use the device to access information that is solely stored remotely, in the cloud for example.²³ Based on current procedures, clients may want to carry a dedicated travel device, such as a laptop or cellphone, with minimal personal or sensitive data.

Social Media Vetting

In March 2025, in accordance with EO 14161, DOS launched an AI-fueled “Catch and Revoke” effort to cancel the visas of foreign nationals who appeared to support Hamas or other designated terror groups.²⁴ On 30 April 2025, Secretary of State Marco Rubio announced—in a DOS newsletter—a “one-strike policy: Catch-and-Revoke,” stating that “[w]henver the government catches non-U.S. citizens breaking our laws, we will take action to revoke their status.”²⁵ Rubio stated this policy would extend to students who have “supported terrorists or otherwise abused our hospitality,” as well as immigrants convicted of crimes such as domestic violence and assault.²⁶

On 18 June 2025, DOS announced that they would conduct a comprehensive and thorough vetting, including online presence, of all student and exchange visitor applicants in the F, M, and J nonimmigrant classifications.²⁷ The announcement also instructed all applicants for F, M, and J nonimmigrant visas “to adjust the privacy settings on all of their social media profiles to public.”²⁸ On 18 August 2025, DOS announced it had “revoked more than 6,000 international student visas because of violations of U.S. law and overstay. The agency said the “vast majority” of the violations were assault, driving under the influence (DUI), burglary and “support for terrorism.”²⁹

As of 15 December 2025, DOS now requires that an online presence review also be conducted for all H-1B applicants and their dependents and that their social media profiles be set to “public.”³⁰

On 19 August 2025, USCIS issued new policy guidance making clear that applicants’ online activity and potential “anti-American” views will have significant negative discretionary weight when the agency determines if a favorable exercise of discretion is warranted, such as in green card cases.³¹ Specifically, USCIS adjudicators are allowed to investigate whether the alien has endorsed, promoted, supported, or otherwise espoused anti-American views or the views of a terrorist organization or group (including in social media content by or involving an alien).³² Under this policy guidance, USCIS officers now treat social media as part of the applicant’s overall record when exercising discretion.

Considering the new policy guidance, it is imperative that practitioners review their clients’ social media accounts for any anti-government posts, chats, or other group discussions. Practitioners should counsel their clients to delete online posts that could be interpreted as political, controversial, or offensive. Criticism against the current administration may hinder a client’s application for relief. Practitioners should conduct online searches of their clients to review the information that appears and is readily available. Practitioners should also check the organizations their clients are following on social media, as these may be red flags in the adjudication of benefits applications where favorable government discretion is a factor.

Suspension of Entry of Foreign Nationals

INA 212(f) authorizes the president, by proclamation, to suspend the entry of all aliens or any class of aliens, or impose on the entry of aliens any restrictions he may deem appropriate. On 4 June 2025, the president issued Presidential Proclamation (PP) 10949 to exercise his INA 212(f) authority and fully suspend the entry or admission of aliens from twelve countries, and partially restrict and limit the entry of nationals from seven other countries.³³ On 27 November 2025, USCIS issued policy guidance stating it would “consider relevant country-specific facts and circumstances such as those outlined in PP 10949 as part of its adjudication of discretionary benefit requests. Discretionary benefit requests that USCIS adjudicates include, but are not limited to, certain adjustment of status applications, extension of nonimmigrant stay, and change of nonimmigrant status.”³⁴ On 16 December 2025, the president issued PP 10998, imposing entry restrictions on nationals of thirty-nine countries, superseding the 4 June

2025 proclamation.³⁵ There is a full suspension of entry for immigrants and nonimmigrants for citizens of Afghanistan, Burma (Myanmar), Chad, Republic of the Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan, Yemen, Burkina Faso, Laos, Mali, Niger, Sierra Leone, South Sudan, and Syria.³⁶ There is a partial suspension of entry, which includes B1, B2, F, J, and M nonimmigrants and all immigrants, for citizens of Burundi, Cuba, Togo, Turkmenistan (immigrants only), Venezuela, Angola, Antigua and Barbuda, Benin, Côte d'Ivoire, Dominica, Gabon, The Gambia, Malawi, Mauritania, Nigeria, Senegal, Tanzania, Tonga, Zambia, and Zimbabwe.³⁷

The full or partial suspension of and limitation on entry do not apply to:

- i. Any lawful permanent resident of the United States;
- ii. Any dual national of a country designated under sections 2 and 3 of the proclamation when the individual is traveling on a passport issued by a country not so designated;
- iii. Any foreign national traveling with a valid nonimmigrant visa in the following classifications: A-1, A 2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6;
- iv. Any athlete or member of an athletic team, including coaches, persons performing a necessary support role, and immediate relatives, traveling for the World Cup, Olympics, or other major sporting event as determined by the secretary of state;
- v. Special immigrant visas for U.S. government employees; and
- vi. Immigrant visas for ethnic and religious minorities facing persecution in Iran.³⁸

Practitioners should review the six categories of non-applicability listed to determine if their clients are subject to this proclamation. Practitioners should also be aware that PP 10998 applies only to foreign nationals of the designated countries who were outside the United States and did not have a valid visa issued to them on or before 31 December 2025.³⁹ Foreign nationals, even those outside the United States, who hold valid visas as of the effective date are not subject to PP 10998. No visas issued before 1 January 2026 at 12:01 a.m. EST have been or will be revoked pursuant to the proclamation.⁴⁰ Visa applicants who are subject to PP 10998 may still submit visa applications and schedule interviews, but they may be ineligible for visa issuance or admission to the United States.⁴¹ There is a discretionary waiver available in that the secretary of state may find that travel by an individual would serve the U.S. national interest on a case-by-case basis.⁴² Practitioners should ask their clients if they can meet

the national interest standard, although it seems unlikely unless special circumstances exist.

Hold on Asylum Applications and Benefit Applications

In accordance with PP 10949, on 2 December 2025, USCIS issued a Policy Memorandum directing USCIS personnel to:

1. Place on hold all asylum applications, regardless of the alien's country of nationality, pending a comprehensive review;
2. Place a hold on pending benefit requests for aliens from countries listed in PP 10949, pending a comprehensive review, regardless of entry date; and
3. Conduct a comprehensive re-review of approved benefit requests for aliens from countries listed in PP 10949 who entered the United States on or after 20 January 2021.⁴³

The memorandum mandates that all applicants meeting these criteria undergo a thorough re-review process, including a potential interview and, if necessary, a re-interview, to fully assess all national security and public safety threats along with any other related grounds of inadmissibility or ineligibility.⁴⁴

Similarly, effective 21 January 2026, DOS announced that it was conducting a full review of all screening and vetting policies to ensure that immigrants from high-risk countries do not unlawfully utilize welfare in the United States or become a public charge.⁴⁵ As a result, DOS paused all visa issuances to immigrant visa applicants who are nationals of the following countries: Afghanistan, Albania, Algeria, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belize, Bhutan, Bosnia and Herzegovina, Brazil, Burma, Cambodia, Cameroon, Cape Verde, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Dominica, Egypt, Eritrea, Ethiopia, Fiji, The Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Haiti, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyz Republic, Laos, Lebanon, Liberia, Libya, Moldova, Mongolia, Montenegro, Morocco, Nepal, Nicaragua, Nigeria, North Macedonia, Pakistan, Republic of the Congo, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Tanzania, Thailand, Togo, Tunisia, Uganda, Uruguay, Uzbekistan, and Yemen.⁴⁶ Despite this pause, consular officers are still continuing to conduct immigrant visa interviews.

Practitioners should be aware that dual nationals applying with a valid passport of a country that is not on the list are exempt from this pause. For nationals of these seventy-five countries, DOS is issuing visa applicants a section 221(g) refusal notice following their interviews. A visa refusal under section 221(g) of the Immigration and Nationality Act (INA) "means the applicant did not establish eligibility for a visa to the satisfaction of the

consular officer, as is required under U.S. law, specifically section 291 of the INA.⁴⁷ It is possible that a consular officer will reconsider a visa application refused under 221(g) at a later date, based on additional information or upon the resolution of administrative processing, and determine that the applicant is eligible.⁴⁸ Once the government eventually lifts the pause, the immigrant visa case can be reopened or resumed without requiring a new application, provided the applicant's eligibility and admissibility remain unchanged. Unfortunately, there is no timeline for how long the pause will remain in effect. The pause will remain in place while DOS reviews public-charge-related screening and vetting procedures. Practitioners should counsel their clients regarding the possibility of indefinite delays of their immigrant visas.

Family-Based Immigrants

On 1 August 2025, USCIS issued a Policy Alert aimed at deterring fraudulent, frivolous, or otherwise non-meritorious family-based immigrant visa petitions.⁴⁹ As a result, USCIS amended the following sections of its Policy Manual for family-based immigrant petitions:

- Stricter vetting of applications, especially marriage-based petitions
- Clearer guidelines for when USCIS will require interviews
- Guidance on how USCIS manages related or multiple petitions by the same parties
- Explaining that USCIS may issue a Notice to Appear (NTA) to place the foreign national in removal proceedings as the immigrant visa petition accords no immigration status⁵⁰

In cases where the foreign beneficiary is seeking benefits as the spouse of a U.S. citizen or lawful permanent resident, practitioners should counsel their clients regarding the enhanced vetting procedures. It is more necessary than ever for couples to establish the bona fide nature of their marriage with documentation of a shared life and co-mingling of assets. Clients should be aware that ICE investigators may conduct surprise home visits. In addition, USCIS officers may interview the petitioner and beneficiary separately at the green card interview. Practitioners should be thorough in the preparation of their cases, including preparing and filing written statements from the parties to the marriage, addressing the bona fide nature of the relationship and submitting documentary evidence in support where available.

Naturalization

In the context of naturalization applications, under President Trump's administration, USCIS has taken definitive steps to "restore robust vetting for aliens" and "restore integrity to the naturalization process"⁵¹:

1. Stricter reviews of disability exceptions to the English and civics requirements
2. Issuing guidance on assessing aliens' good moral character, requiring applicants to establish their positive contributions to American society instead of a mere absence of bad behavior
3. Resuming neighborhood investigations to ensure that aliens meet statutory requirements and are worthy of U.S. citizenship
4. Clarifying that unlawfully voting, unlawfully registering to vote, and making false claims to U.S. citizenship disqualify aliens from showing good moral character

Implementing a new naturalization civics test⁵²

To properly counsel their clients, practitioners should be aware of these new requirements, particularly the new requirement that an applicant for naturalization must affirmatively establish positive attributes for purposes of good moral character rather than relying on the absence of misconduct. The positive factors that USCIS officers may consider are:

- Sustained community involvement and contributions in the United States;
- Family caregiving, responsibility, and ties in the United States;
- Educational attainment;
- Stable and lawful employment history and achievements;
- Length of lawful residence in the United States; and
- Compliance with tax obligations and financial responsibility in the United States.⁵³

Practitioners should strive to submit documentation that complies with each of the listed positive factors as evidence of their clients' good moral character for purposes of qualifying for naturalization. These documents can include letters of reference from people in the community who can attest to the applicant's honesty and integrity, school transcripts and copies of degrees, IRS transcripts, letters of employment, and evidence of participation in the community, such as letters from religious organizations, charities, or other welfare programs.

Conclusion

Practitioners of immigration law face an ever-changing landscape under the current administration. Considering the new security protocols and extreme vetting procedures in place and on the horizon, practitioners must stay informed of the latest updates to properly counsel and prepare their clients.



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Endnotes

- 1 Exec. Order No. 14161, 90 Fed. Reg. 8451 (2025).
- 2 *Id.*
- 3 See 8 CFR § 103.2 (b)(9).
- 4 8 CFR § 103.16.
- 5 Pub. L. 107-173—Enhanced Border Security and Visa Entry Reform Act of 2002.
- 6 *Id.*
- 7 “Safety & Security of U.S. Borders: Biometrics,” last accessed on 23 Mar. 2026, travel.state.gov/content/travel/en/us-visas/visa-information-resources/border-biometrics.
- 8 90 Fed. Reg. 49062 (3 Nov. 2025).
- 9 *Id.* at 49067.
- 10 See proposed 8 CFR 103.16(c)(2).
- 11 *Id.*
- 12 *Supra* note 8 at 49069.
- 13 “DHS announces Final Rule to advance the Biometric Entry/Exit Program,” 20 Nov. 2025, www.cbp.gov/newsroom/national-media-release/dhs-announces-final-rule-advance-biometric-entry/exit-program.
- 14 *Id.*
- 15 www.cbp.gov/travel/cbp-search-authority/border-search-electronic-devices (last modified on 28 Jan. 2026).
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 Mark Caputo, “Scoop: State Dept. to use AI to revoke visas of foreign students who appear pro-Hamas,” *Axios*, 6 Mar. 2025, www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas.
- 25 “100 days of an America First State Department,” last accessed on 23 Mar. 2026, impolicytracking.org/policies/dos-announces-one-strike-policy-catch-and-revoke/#/tab-policy-documents.
- 26 *Id.*
- 27 “Announcement of Expanded Screening and Vetting for Visa Applicants,” 18 June 2025, www.state.gov/releases/office-of-the-spokesperson/2025/06/announcement-of-expanded-screening-and-vetting-for-visa-applicants/.
- 28 *Id.*
- 29 Ana Faguy, “US State Department revokes 6,000 student visas,” *BBC*, 18 Aug. 2025, www.bbc.com/news/articles/cz93vznxd07o.
- 30 “Announcement of Expanded Screening and Vetting for H-1B and Dependent H-4 Visa Applicants,” last updated on 3 Dec. 2025, travel.state.gov/content/travel/en/News/visas-news/announcement-of-expanded-screening-and-vetting-for-h-1b-and-dependent-h-4-visa-applicants.html.
- 31 USCIS, Policy Alert, “Clarifying Discretionary Factors in Certain Immigration Benefit Requests,” 19 Aug. 2025, www.uscis.gov/sites/default/files/document/policy-manual-updates/20250819-DiscretionaryFactors.pdf.
- 32 *Id.*
- 33 See 90 Fed. Reg. 24497 (4 June 2025) (Afghanistan, Burma, Burundi, Chad, Republic of Congo, Cuba, Equatorial Guinea, Eritrea, Haiti, Iran, Laos, Libya, Sierra Leone, Somalia, Sudan, Togo, Turkmenistan, Venezuela, and Yemen).
- 34 “Impact of INA 212(f) on USCIS’ Adjudication of Discretionary Benefits,” 27 Nov. 2025, www.uscis.gov/sites/default/files/document/policy-manual-updates/20251127-Discretion.pdf.
- 35 Presidential Proclamation 10998: Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States (16 Dec. 2025).
- 36 “Presidential Proclamation – Restricting Entry,” 12 Jan. 2026, www.cbp.gov/document/bulletins/presidential-proclamation-restricting-entry.
- 37 *Id.*
- 38 *Id.*
- 39 *Id.*
- 40 “Suspension of Visa Issuance to Foreign Nationals to Protect the Security of the United States,” last updated on 2 Feb. 2026, travel.state.gov/content/travel/en/News/visas-news/suspension-of-visa-issuance-to-foreign-nationals-to-protect-the-security-of-the-united-states.html.
- 41 *Id.*
- 42 *Id.*
- 43 “Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries,” 2 Dec. 2025, www.uscis.gov/sites/default/files/document/policy-alerts/PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf.
- 44 *Id.*
- 45 “Immigrant Visa Processing Updates for Nationalities at High Risk of U.S. Public Benefits Reliance,” last updated on 2 Feb. 2026, travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-processing-updates-for-nationalities-at-high-risk-of-public-benefits-usage.html.
- 46 *Id.*
- 47 “Administrative Processing Information,” last accessed on 23 Mar. 2026, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html>.
- 48 *Id.*
- 49 “Family-Based Immigrants,” 1 Aug. 2025, www.uscis.gov/sites/default/files/document/policy-manual-updates/20250801-FamilyBasedImmigrants.pdf.
- 50 *Id.*
- 51 USCIS News Release, “USCIS Unveils First Changes to Naturalization Test in Multi-Step Overhaul of American Citizenship Standards,” 17 Sept. 2025, www.uscis.gov/newsroom/news-releases/uscis-unveils-first-changes-to-naturalization-test-in-multi-step-overhaul-of-american-citizenship.
- 52 *Id.*
- 53 “Restoring a Rigorous, Holistic, and Comprehensive Good Moral Character Evaluation Standard for Aliens Applying for Naturalization,” 15 Aug. 2025, https://www.uscis.gov/sites/default/files/document/policy-alerts/08.15.2025-Restoring_a_Good_Moral_Character_Evaluation_Standard_for_Aliens_Applying_for_Naturalization-Policy_Memorandum_FINAL.pdf.



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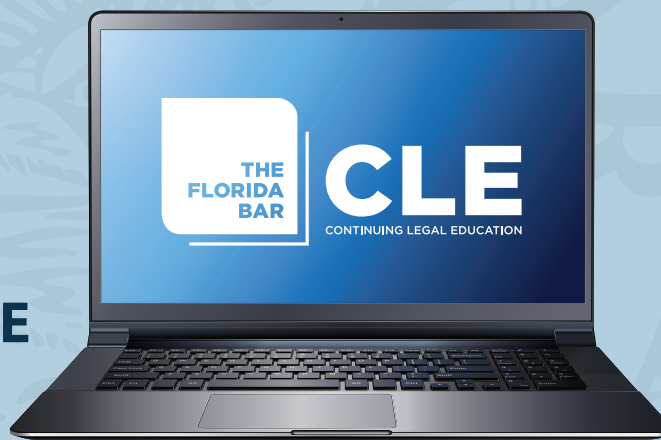
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