

European Parliament Resolution on corporate due diligence and corporate accountability

Our blog has reported earlier on the Proposal and Report by the Committee on Legal Affairs of the European Parliament for a Resolution on corporate due diligence and corporate accountability. That proposal contained recommendations to amend the EU Regulations Brussels Ia (1215/2015) and Rome II (864/2007). The proposals were discussed and commented on by Jan von Hein, Chris Tomale, Giesela Rühl, Eduardo Álvarez-Armas and Geert van Calster.

On 10 March 2021 the European Parliament adopted the Resolution with a large majority. However, the annexes proposing to amend the Brussels Ia and Rome II Regulations did not survive. The Resolution calls upon the European Commission to draw up a directive to ensure that undertakings active in the EU respect human rights and the environment and that they operate good governance. The European Commission has already indicated that it will work on this.

Even if the private international law instruments are not amended, the Resolution touches private international law in several ways.

* It specifies that the “Member States shall ensure that relevant provisions of this Directive are considered overriding mandatory provisions in line with Article 16 of Regulation (EC) No 864/2007” (Art. 20). It is a bit strange that this is left to national law and not made an overriding mandatory provision of EU law in line with the CJEU’s Ingmar judgment (on the protection of commercial agents - also a Directive). Perhaps the legislator decides otherwise.

* It proposes a broad scope rule covering undertakings “operating in the internal market” and encompassing activities of these undertakings or “those directly linked to their operations, products or services by a business relationship or in their value chains” (Art 1(1)). It thus imposes duties on undertakings to have due diligence strategies and communicate these even if the undertakings do not have their seat in an EU Member State. In this way it moves away from traditional seat theories and place of activities tests.

