

GEDIP's Recommendation on the Proposal for a Directive on Corporate Sustainability Due Diligence

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As reported in this blog before (see CSDD and PIL: Some Remarks on the Directive Proposal), the European Commission on 23 February 2022 adopted a proposal for a Directive on corporate sustainability due diligence.

Earlier, at its annual meeting in 2021, the European Group for Private International Law (GEDIP) had adopted a Recommendation to the EU Commission concerning the PIL aspects of corporate due diligence and corporate accountability, and this blog reported on this Recommendation too, see GEDIP Recommendation to the European Commission on the private international law aspects of the future EU instrument on corporate due diligence and accountability.

While some of the recommendations proposed by GEDIP last year are reflected in the Draft Directive, the Draft fails to follow up on several crucial recommendations concerning judicial jurisdiction and applicable law. This will detract from its effectiveness.

In particular:

- The Proposal, while extending to third country companies lacks a provision on judicial jurisdiction in respect of such companies;
- The Proposal, while extending a company's liability to the activities of its subsidiaries and to value chain co-operations carried out by entities "with which the company has a well-established business relationship", lacks a provision dealing with the limitation of the provision on co-defendants in the Brussels I bis Regulation (Article 8(1)) to those domiciled in the EU;
- The Proposal lacks a provision allowing a victim of a violation of human

rights to also invoke, similar to a victim of environmental damage under Article 7 of Regulation 864/2007 (Rome II), the law of the country in which the event giving rise to the damage occurred, and does not prevent companies from invoking a less strict rule of safety or conduct within the meaning of Article 17 of Rome II;

- The provision of the Proposal on the mandatory nature of the provisions of national law transposing the Directive (Article 22 (5)) is insufficient because (i) the words “in cases where the law applicable to actions for damages to this effect is not that of a Member State” are redundant and (ii) all these provisions of national law transposing the Directive should apply irrespective of the law applicable to companies, contractual obligations or non-contractual obligations.

GEDIP therefore, on the occasion of its meeting in Oslo, 9-11 September 2022 adopted a Recommendation concerning the Proposal for a directive of 23 February 2022 on Corporate Sustainability Due Diligence, following up on its Recommendation to the Commission of 8 October 2021. The text of the Recommendation can be found [here](#).

[This post is cross-posted at the [EAPIL blog](#)]