Under the Omnibus: Corporate Sustainability Due Diligence Directive's rules on civil liability no longer overriding mandatory

The European Commission's recent Omnibus proposes a significant change to the Corporate Sustainability Due Diligence Directive (CSDDD). Article 29(7) of the original CSDDD requires Member States to implement its rules on civil liability rules so that these rules apply as overriding mandatory provisions, if the law applicable to the claim is not a law of a Member State. The Omnibus package proposes to delete art. 29(7) CSDDD. As a result, Member States will no longer be obliged to implement CSDDD's rules on liability as overriding mandatory provisions.

The Omnibus

On 26 February 2025 the European Commission presented the so-called Omnibus. It is a proposal to simplify reporting and compliance in the fields of ESG and corporate societal responsibility (COM(2025) 81 final). Subject to approval by the European Parliament and the Council, Member States will have to implement the changes introduced by the Omnibus by 31 December 2025. The updated instruments will be effective from 1 January 2026.

The Omnibus amends several existing instruments, including the Corporate Sustainability Due Diligence Directive (CSDDD), which entered into force on 25 July 2024. The Omnibus postpones the deadline for the CSDDD's implementation to 26 July 2027; and the deadline for companies covered by the directive's scope to be compliant is postponed to 26 July 2028.

CSDDD: civil liability by overriding mandatory provisions

Art. 29 CSDDD provides a harmonised EU uniform liability regime for breaches of due diligence in (cross-border) supply chains. While the CSDDD contains no rules on international jurisdiction (see the blogpost by Ralf Michaels on this matter here), the directive explicitly positions its provisions on civil liability within the

conflict of laws. The current text of art. 29(7) CSDDD provides:

Member States shall ensure that the provisions of national law transposing this Article are of overriding mandatory application in cases where the law applicable to claims to that effect is not the national law of a Member State.

This provision requires that Member States implement the directive's rules on civil liability so that they apply as overriding mandatory provisions (of national substantive law) if the claim is not governed by the law of a Member State. This rationale is also reiterated in Recital 90. The current text of the CSDDD allows for differences within the EU (between Member States' regimes); these differences would not trigger the application of overriding mandatory provisions. The overriding mandatory character (of any Member State's national civil liability regime based on the CSDDD) would only manifest itself when the applicable is the law of a third state. It is in relation to the latter situations, that the CSDDD has elevated the civil liability regime to the level of semi-public provisions.

Omnibus: no uniform civil liability regime; not by overriding mandatory provisions

The Omnibus restrains this ambition. Firstly, it contains a proposal to abolish an EU-wide harmonised liability regime. Secondly, it removes Member States' obligation to implement the (remaining elements of the uniform) liability regime as overriding mandatory provisions. Under the Omnibus:

'paragraph (12) amends Article 29 of the CSDDD as regards civil liability by deleting paragraph (1), paragraph (3), point (d) and paragraph (7), and changing paragraphs (2), (4) and (5).

- *to remove the specific, EU-wide liability regime in the Directive*

(…)

- *in view of the different rules and traditions that exist at national level when it comes to allowing representative action, to delete the specific requirement set out in the CSDDD in this regard (…)'*
- *for the same reason, by deleting the requirement for Member States to ensure that the liability rules are of overriding mandatory application in cases where the law applicable to claims to that effect is not the national*

law of the Member State (…)'.

Motivation

The provisions that propose to abandon the EU-wide liability regime, quoted above, refers to the divergence in the regulation of representative actions across the EU Member States. The Explanatory Memorandum included in the Omnibus provides several other reasons of the proposal. One of the main reasons is the aim to reduce the 'administrative, regulatory and reporting burdens, in particular for SMEs' (small and medium size enterprises). Although the Omnibus package amends instruments that cover primarily large economic players, the simplification aims to prevent a de facto shift of the compliance costs to smaller players, because '[t]he ability of the Union to preserve and protect its values depends amongst other things on the capacity of its economy to adapt and compete in an unstable and sometimes hostile geopolitical context,' as stated in the document with reference to the reports on EU global competitiveness.

Implications

From the perspective of private international law, the original art. 29(7) CSDDD is certainly challenging. It is namely not entirely clear how the doctrine of overriding mandatory rules (based on art. 9 Rome I, and art. 16 Rome II Regulations) would apply to civil liability claims grounded in the rules implementing the directive. Nonetheless, the CSDDD approach might have the potential to open new avenues for further practical and conceptual development of this conflict-of-law doctrine in the future.

Currently, as the Omnibus explicitly rules out the overriding mandatory character of the (remaining parts of) the CSDDD civil liability regime, if the Omnibus is adopted, one would rather not expect from Member States' legislatives or courts to elevate the regular domestic civil liability rules to the semi-public level of overriding mandatory provisions.