

**Recommendation of the European Group of Private International Law  
(GEDIP) 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**

GEDIP, on the occasion of its meeting in Oslo, 9-11 September 2022,

(1) Recalling its Recommendation communicated to the Commission on 8 October 2021, aimed at ensuring the effective application of the future instrument on corporate due diligence and liability [*see attached*];

(1) Having taken note of the Commission's Proposal for a directive on corporate due diligence published on 23 February 2022;

(2) Welcoming the Proposal to establish substantive rules of civil liability

- applying both to companies which are formed in accordance with the legislation of a Member State (Article 2(1)) and to those formed in accordance with the legislation of a third country but operating in the internal market (Article 2(2)),

- extending to both the company's own operations, the operations of its subsidiaries and the value chain operations carried out by entities with which the company has an established business relationship (Article 1 1)),

- extending to both actual and potential adverse human rights impacts and adverse environmental impacts (Article 1(1)),

- the mandatory nature of which is ensured both in cases where the law applicable to actions for damages is that of a Member State – subject to stricter national rules – and "in cases where the law applicable to [actions for a remedy] is not that of a Member State" (Article 22(4) and (5));

(4) Regretting, however, that the practical effect of these mandatory rules may not be ensured in the absence of provisions allowing their effective application, particularly in cross-border situations involving third countries, when a third-country company is active in the Union (A), or in the event of the involvement of a third-country entity as joint defendant (B), noting furthermore that the victim of environmental damage will have the option of choosing the law applicable to liability, but the victim of a violation of human rights will not (C), and considering the protection of the victim by the mandatory nature of the rules on liability to be insufficient (D), more specifically:

**(A) On the absence of jurisdiction over companies referred to in Article 2(2)**

(5) Noting that, while these rules relate to any company to which the proposal applies under Article 2(2), where the company has been incorporated in accordance with the law of a third country and has a turnover in the Union, the rules are not accompanied by any rule of judicial jurisdiction guaranteeing the possibility of bringing an action before a court of a Member State with regard to such a company in civil matters, contrary to what is proposed in the GEDIP Recommendation;

(6) That regulation 1215/2012 (Brussels I a) does not ensure the possibility of suing such a company in the Union even though it is active in the Union within the meaning of Article 2(2) of the Proposal;

(7) That in this case the possibility of bringing a case before a court of a Member State will depend on the non-harmonised rules of private international law of each Member State;

(8) Noting, moreover, that the designation, in Article 17 of the Proposal, of the national Supervisory Authority competent in respect of a company referred to in Article 2(2), namely that of the Member State in which the company has a branch or, failing that, of the Member State where the company has achieved most of its net turnover in the Union, is not intended to confer jurisdiction in civil matters on a judicial authority but only on an administrative authority for the exercise of a supervisory power;

**(B) On the absence of jurisdiction over co-defendants domiciled outside the Union**

(9) Noting that, while the company's liability under the Proposal extends 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, the Brussels I a Regulation (Article 8(1)) does not allow a court of a Member State to take jurisdiction just because proceedings are brought against a co-defendant not domiciled in the Union;

(10) Recalling in this respect that the GEDIP Recommendation proposed extending the rule of Article 8(1) to co-defendants domiciled in a third country and that without such a rule the possibility of bringing proceedings before a court in a Member State will, again, depend on the non-harmonised rules of private international law of each Member State.

**(C) On the choice of law applicable to a non-contractual obligation in the case of environmental damage but not in the event of a violation of human rights**

(11) Recalling that the GEDIP Recommendation also proposed to allow the victim to invoke, in the event of a violation of human rights, not only the law of the State in which the damage occurred but also that of the State in which the event giving rise to liability occurred, as provided for in the event of environmental damage by Regulation 864/2007 (Rome II), and without the company being able to invoke a less strict rule of safety or conduct of that State within the meaning of Article 17 of the Regulation;

**(D) On the insufficiency of the mandatory law rule**

12) Considering the provisions of Article 22(5) of the Proposal are insufficient because: first, the words "in cases where the law applicable to actions for damages to this effect is not that of a Member State" are redundant, since *all* the provisions of national law transposing the Directive should be of a mandatory nature and, secondly, all these provisions of national law transposing the Directive should apply irrespective of the law applicable to companies, contractual obligations or non-contractual obligations:

**RECOMMENDS** the insertion in the Proposal for a directive on Corporate Sustainability Due Diligence, without prejudice to a revision of Regulation 1215/2012 (Brussels I a) and – as the case may be of the 2007 Lugano Convention – as well as of Regulation 864/2007 (Rome II):  
- a provision ensuring the possibility of bringing an action before a court of a Member State against a company having achieved a turnover in the Union within the meaning of Article 2(2) of the proposed Directive;

- a provision ensuring the possibility of summoning a co-defendant not domiciled in a Member State of the Union in the same way as a co-defendant domiciled in a Member State;
- a provision allowing a claimant for damages resulting from a violation of human rights to base his claims not only on the law applicable under Article 4 of the Rome II regulation but also on the law of the country in which the event giving rise to the damage occurred;

RECOMMENDS also the deletion of the last paragraph of Article 22 of the proposal and its replacement by a general provision according to which Member States shall ensure the mandatory nature of the national provisions transposing the directive.

***Recommendation of the European Group of Private International Law  
communicated to the Commission on 8 October 2021***

***Private international law aspects of the future Instrument of the European  
Union on [Corporate Due Diligence and Corporate Accountability]***

**I. Scope of application**

*The provisions of this Instrument shall apply to [undertakings] established in the European Union and those established in a third State when operating in the internal market selling goods or providing services*

**II. Jurisdiction**

*Without prejudice to the application of the provisions of the Brussels I Recast Regulation, a person not domiciled in a Member State may in matters falling within the scope of this Instrument also be sued for compensation or other remedies:*

***1. Connected claims***

*where (s)he is one of a number of defendants, in the courts for the place where anyone of them is domiciled, provided the claims are connected such that it is expedient to hear and determine them together;*

***2. Forum necessitatis***

*where no jurisdiction is available within the European Union, and if proceedings outside the European Union are impossible or cannot reasonably be required to be brought, in the courts of a Member State with which the case has a link.*

**III. Overriding mandatory effect of the Instrument's provisions**

*[Member States shall ensure that] provisions contained in this Instrument shall apply irrespective of the law otherwise applicable to companies, to contractual obligations and to non-contractual obligations.*

**IV. Law applicable to non-contractual obligations arising out of damage resulting from non-compliance with due diligence obligations**

***1. Main rule***

*The law applicable to a non-contractual obligation arising out of damage as a result of non-compliance in respect of matters falling within the scope of this Instrument is the law determined by virtue of Article 4, paragraph 1 of the Rome II Regulation, unless the plaintiff chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.*

***2. Article 17 Rome II no excuse***

***Article 17 of the Rome 2 Regulation cannot be invoked by the defendant to exonerate or limit his liability.***