Cross-Border Liability under the Revised Corporate Sustainability Due Diligence Directive (CSDDD)

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Executive Summary

1) Under the lex loci damni rule set out in Article 4(1) Rome II Regulation, the liability of parent and buyer companies for human rights violations occurring at their subsidiaries and suppliers is, as a rule, governed by foreign law. Because the applicable law typically lacks any developed body of supply-chain liability rules, this connecting factor gives rise to considerable legal uncertainty. Where the applicable law belongs to the English common-law tradition, companies also face substantial liability risks.

2) To remedy this legal uncertainty, the national provisions transposing the CSDDD should be designated as overriding mandatory provisions, so that they prevail over the (foreign) law otherwise applicable under the conflict-of-laws rules. This option is not foreclosed by the deletion of the former Article 29(7) CSDDD, as follows from Recital 49 of the Omnibus Directive. An express statutory rule to this effect is preferable. Absent such a rule, the courts may be expected to classify the national transposing provisions as overriding mandatory provisions in any event – but a measure of legal uncertainty would then remain.

1) In enacting an express rule on overriding mandatory application, Member States essentially have two options. The preferable option is the “broad solution”: Member States create a self-standing liability regime – modelled, for example, on the former Article 29(1) CSDDD – and confer overriding mandatory status on that regime as a whole. Alternatively, Member States may designate only the due diligence obligations themselves as overriding mandatory provisions (“narrow solution”).

A. Introduction

1 In its original version of 5 July 2024, the European Corporate Sustainability Due Diligence Directive[1] (CSDDD) contained extensive provisions for private enforcement. Article 29(1) CSDDD required Member States to implement an EU-wide harmonised liability regime under which companies that culpably breached their human rights- and environment-related due diligence obligations would have been liable to compensate those affected.[2] Under Article 29(7) CSDDD, Member States were to ensure that their liability regimes were "of overriding mandatory application in cases where the law applicable to claims to that effect is not the national law of a Member State".[3] The Omnibus Directive[4] of 26 February 2026 deleted both paragraphs; instead, its Recital 49 calls on Member States to regulate civil liability in cross-border cases for themselves.

2 The significance of this intervention by the Union legislature has not yet been settled. As regards the substantive law of liability, there is much to suggest that Member States *must* provide, under their national law, a civil-law remedy for breaches of the due diligence obligations that entitles those affected to full compensation (cf. Article 29(2), first sentence, CSDDD).[5] This also appears to be the understanding of the European Commission.[6] A provision such as section 3(3),

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[1] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L 2024/1760 of 5.7.2024.

[2] For further details, see Bastian Brunk, Zivilrechtliche Haftung nach Art. 29 der europäischen Lieferkettenrichtlinie (CSDDD), CRZ 2024, p. 130, 132 et seq. with further references.

[3] See further Brunk, Zivilrechtliche Haftung (fn. 2), p. 137.

[4] Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain requirements for sustainability reporting and corporate due diligence, OJ L 2026/470 of 26.2.2026.

[5] See further Bastian Brunk, Civil Law Issues Regarding the Implementation of the EU Supply Chain Directive, Legal Opinion, 17.4.2026, para. 87–91, 105, available online at https://www.oxfam.de/dokument/18413/rechtsgutachten-csddd-en.pdf (last accessed 27.8.2026); similarly Gabrielle Holly/Mathilde Dicalou/Alix Myczkowski/Fatmanur Caygın, Guidance for effective transposition and implementation, Danish Institute for Human Rights 2026, p. 71 et seq.; Gleb Kulov, Die Auswirkungen des Omnibus-Vorschlags auf die zivilrechtliche Haftung nach der EU-Lieferkettenrichtlinie, NJOZ 2025, p. 800 et seq.; Louisa Nowalder, Was bleibt von Art. 29 CSDDD nach Omnibus? – Zivilprozessuale Perspektiven, ZIP 2025, p. 2925, 2930; Marlen Vesper-Gräske/Jonas Köster/Valentin Weigel, Zur Zukunft des deutschen Lieferkettenrechts: Auswirkungen der Umsetzung der CSDDD auf das LkSG, CB 2026, p. 153, 158 et seq.; Thomas Voland/Louisa Nowalder, Ankunft des ersten "Omnibus": Die Änderungen an CSDDD und CSRD, ESG 2026, p. 43, 48; Rolf H. Weber, Haftung und Aufsicht im VE-NUFG, Jusletter 29.6.2026, para. 40 et seq.; expressing doubt Eva-Maria Kieninger, Der Brüsseler Omnibus fährt eine Schneise in die zivilrechtliche Haftung für Menschenrechtsverstöße, ZIP 2025, p. 682, 683; Anne-Christin Mittwoch, Der Brüsseler Omnibus rollt. Freie Fahrt für eine unbürokratische ESG-Transformation der Wirtschaft?, GPR 2025, p. 120, 126; Patricia Sarah Stöbener de Mora/Paul Noll, Das Omnibus-I-Paket zur Vereinfachung der Nachhaltigkeitsberichterstattung und Sorgfaltspflichten, EuZW 2025, p. 501, 505; disputing the Member States' obligation to ensure a civil-law remedy Ulrich Hagel/Michael Wiedmann, EU-Omnibus zur CSRD und CS3D und Koalitionsvertrag zum LkSG – Vereinfachung oder Erschwernis?, CCZ 2025, p. 116, 124; Nicholas Schoch/Johanna Möller, Quo vadis CSDDD? – Inwieweit vereinfacht das Omnibus-Paket der Europäischen Kommission die Sorgfaltspflichten in der Lieferkette, RIW 2025, p. 397, 400 et seq.; most recently also Hans Christoph Grigoleit/Johannes Hösle, Lieferkettenbezogene Legalitätskontrolle nach LkSG und CSDDD, ZHR 190 (2026), p. 395, 443 et seq.

[6] European Commission, Directive on Corporate Sustainability Due Diligence (CS3D) as amended by Omnibus I, presentation of 18.3.2026, slide 12 (on file with the author), according to which Member States must reflect the

first sentence, of the German Supply Chain Due Diligence Act (LkSG), which expressly excludes such a claim, would accordingly be incompatible with EU law.[7] Member States remain free, however, to decide whether – as appears preferable[8] – to create a separate claim for breaches of the due diligence obligations, or instead to allow for damages under their general law of tort. Either way, they must implement the liability modalities set out in Article 29(2) to (6) CSDDD.[9]

3 How the Member States implement the substantive requirements of Article 29 CSDDD on civil liability is not the subject of this opinion. The focus here is instead on the *conflict-of-laws* dimension of the Directive, and in particular on the deletion of the rule on overriding mandatory application formerly contained in Article 29(7) CSDDD.[10] In terms of its practical consequences for the private enforcement of the Directive, this change may ultimately prove more far-reaching than the deletion of the EU-law liability rule in the former Article 29(1) CSDDD itself.[11] This is because Member States' liability rules – including the substantive due diligence obligations themselves – have no bearing on private enforcement in cross-border cases unless the conflict-of-laws rules actually designate them as applicable.[12]

4 To secure the application of their national liability law, Member States have at their disposal the conflict-of-laws instrument of overriding mandatory provisions under Article 16 Rome II Regulation. Recital 49 of the Omnibus Directive makes clear that this route is not restricted by the deletion of the former Article 29(7) CSDDD. This opinion examines that route in what follows. It first sets out the general conflict-of-laws position (B.). It then turns to the question whether the due diligence obligations qualify as overriding mandatory provisions and identifies the corresponding options open to national legislatures (C.). The opinion closes with a brief summary and recommendations for the design of the liability regime in the Member States (D.).

B. Applicable law *de lege lata*

5 The human rights violations and environmental harm addressed by the CSDDD are characterised by their cross-border nature. Typically, they involve harm occurring at a subsidiary or supplier abroad. A paradigm case is that underlying the KiK judgment of the

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CSDDD due diligence obligations in their liability law ("National (tort) law needs to reflect (EU-level) dd duty"), while the specific conditions for liability are, following the Omnibus revision, left to national law to determine ("specific conditions ('how') left to national law").

[7] Brunk, Legal Opinion (fn. 5), para. 106; Kulov, Auswirkungen des Omnibus-Vorschlags (fn. 5), p. 801; contra Grigoleit/Hösle, Lieferkettenbezogene Legalitätskontrolle (fn. 5), p. 447; Gerhard Wagner, Die Absurditäten der Lieferkettenhaftung, FAZ of 9.6.2026: "Das alles spricht dafür, die Richtlinie so zu interpretieren, dass in Deutschland alles beim Alten, der Rückgriff auf das allgemeine Haftungsrecht wegen Verletzung lieferkettenbezogener Sorgfaltspflichten also ausgeschlossen bleiben kann."

[8] See Brunk, Legal Opinion (fn. 5), para. 105; Kulov, Auswirkungen des Omnibus-Vorschlags (fn. 5), p. 801.

[9] Brunk, Legal Opinion (fn. 5), para. 98 et seq.

[10] See also Brunk, Legal Opinion (fn. 5), para. 48 et seq.; Eva-Maria Kieninger, Der Brüsseler Omnibus (fn. 5), p. 683 et seq.; Kulov, Auswirkungen des Omnibus-Vorschlags (fn. 5), p. 801 et seq.

[11] See already Brunk, Legal Opinion (fn. 5), para. 51.

[12] See Leonhard Hübner, Lieferkettenregulierung per kollisionsrechtlicher Eingriffsnorm, in: Paal/Poelzig/Fehrenbacher, Festschrift für Werner F. Ebke zum 70. Geburtstag, 2021, p. 415, according to whom private international law thus constitutes "die Achillesferse für die praktische zivilrechtliche Wirksamkeit".

Regional Court of Dortmund (LG Dortmund) of 10 January 2019.[13] That case concerned the liability of the German company KiK Textilien und Non-Food GmbH ("KiK") for the fire at the Pakistani textile factory Ali Enterprises in Karachi on 11 September 2012, in which 258 people died and around 50 others were injured. The conflict-of-laws rules determine, in the first instance, which law governs liability in such cases. Because the liability is non-contractual, the applicable law is governed by the provisions of the Rome II Regulation.[14] An agreed choice of law under Article 14 Rome II Regulation will rarely be available in supply-chain cases,[15] so that the objective connecting factors apply. In the absence of a special conflict rule for human rights violations (see III. below), the general rule under Article 4(1) Rome II Regulation usually governs (see I. below); for environmental harm, the special rule under Article 7 Rome II Regulation applies instead (see II. below).

I. The general rule (Article 4(1) Rome II Regulation)

1. Connection to the place of damage (lex loci damni)

6 Under the general rule in Article 4(1) Rome II Regulation, claims in tort are governed by the law of the place where the damage occurs (lex loci damni). The place of damage is the place where the protected interest is injured or – in the case of claims for injunctive relief – is threatened with injury (cf. Article 2(3)(b) Rome II Regulation). In typical supply-chain scenarios, the place of damage does not lie within the forum State but is located in the producing countries at the start of the supply chain. As in the KiK case, for example, this often involves harm to the life, health or liberty of workers at subsidiaries or suppliers. Property rights may also be affected, for instance through project-related (forced) resettlement or emission-related damage to land neighbouring production sites. In such cases, the lex loci damni rule generally results in the application of foreign law.[16]

7 Through its objective connecting factors, the Rome II Regulation is intended to promote legal certainty as to the applicable law and the predictability of judicial decisions (Recitals 6 and 14 Rome II Regulation). In particular, the lex loci damni rule under Article 4 Rome II Regulation is also intended to ensure an appropriate balance of interests between tortfeasor and victim (Recital 16 Rome II Regulation). The application of foreign law therefore does not necessarily disadvantage injured parties – on the contrary: the applicable law will typically be the law of their own home country or habitual residence. From the perspective of injured parties, the lex loci damni rule thus not only makes the applicable law predictable but also designates a law that is particularly accessible and familiar to them.[17]

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[13] LG Dortmund, judgment of 10.1.2019, 7 O 95/15, IPRax 2019, 317; legal aid for the appeal (Prozesskostenhilfe) refused by OLG Hamm, order of 21.5.2019, I-9 U 44/19, NJW 2019, 3527.
[14] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"), OJ L 199/40 of 31.7.2007.
[15] Giesela Rühl, in: Kaltenborn/Krajewski/Rühl/Saage-Maaß, Lieferkettensorgfaltspflichtenrecht, 2023, § 3 Anh. I LkSG para. 8; but see Heinz-Peter Mansel, Internationales Privatrecht de lege lata wie de lege ferenda und Menschenrechtsverantwortlichkeit deutscher Unternehmen, ZGR 2018, p. 439, 463, according to whom companies may, in their governance principles, commit themselves to consenting to a subsequent choice of law in favour of their home law; adopting this approach Bastian Brunk, Menschenrechtscompliance, 2022, p. 344.
[16] See KKRS/Rühl (fn. 15), § 3 Anh. I LkSG para. 13.
[17] Peter Mankowski, in: Fleischer/Mankowski, Lieferkettensorgfaltspflichtengesetz, 2023, Einl. para. 352, who describes this in terms of a "rechtliches Heimspiel".

2. Concerns regarding the lex loci damni rule in supply-chain cases

a) Legal uncertainty and the unpredictability of court decisions

8 In the specific case of supply-chain liability, however, the lex loci damni rule entails disadvantages for both sides – companies and affected persons alike. This is because the law in this area is developing fast, and unevenly, across jurisdictions[18] and is consequently marked by considerable uncertainty. Where the lex loci damni rule designates foreign law, that law must first be ascertained – a laborious exercise – in any court proceedings for damages.[19] For the parties involved, this is both costly and unpredictable: since most countries as yet have no specific legislation or case law on supply-chain liability, the outcome of that exercise – and hence of the litigation itself – is hard to predict.

b) Significant liability risks where English common law applies

9 This legal uncertainty persists even where the place of damage lies in a jurisdiction of the English legal tradition. However, owing to recent English case law, the application of the common law exposes companies to significant liability risks. In *Vedanta*[20] and *Shell*[21], concerning corporate groups, the UK Supreme Court held first that parent companies are subject to a duty of care to prevent harm to third parties caused by their subsidiaries. Where damage occurs, the parent company is liable to pay damages if it has controlled the subsidiary's conduct through instructions or group-wide policies and has thereby shaped the risks at the subsidiary.[22] Liability may even arise where the parent company merely creates the impression, in its published materials, that it exercises a certain degree of supervision and control over its subsidiaries, when in fact it does not ("greenwashing").[23] Following a recent decision of the UK Court of Appeal in *Dyson*[24], these categories of liability extend to supplier cases as well – that is, to the liability of a buyer company for its suppliers.[25]

10 The particular liability risks associated with this case law stem from the fact that the routes to liability developed by the UK Supreme Court in *Vedanta* (the "Vedanta routes"[26]) go, in some respects, considerably further than continental European liability law (for example, German law[27]). The common law's global reach compounds the problem: the categories developed in

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[18] From an English-law perspective, see Hamida Begum v Maran [2021] EWCA Civ 326, para. 61: "one of the most fast-developing areas of the law of negligence".
[19] Qualifying this, Mansel, Internationales Privatrecht (fn. 15), p. 458: "Das Argument, die Ermittlung ausländischen Rechts sei teuer und zeitraubend, ist altbekannt. Es hat keinen spezifischen Bezug zu den vorliegenden Sachverhalten."
[20] Vedanta v Lungowe [2019] UKSC 20.
[21] Okpabi v Shell [2021] UKSC 3.
[22] Vedanta v Lungowe [2019] UKSC 20, para. 51 et seq.; Okpabi v Shell [2021] UKSC 3, para. 26.
[23] Vedanta v Lungowe [2019] UKSC 20, para. 53: "[T]he parent may incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not in fact do so. In such circumstances its very omission may constitute the abdication of a responsibility which it has publicly undertaken."; adopted in Okpabi v Shell [2021] UKSC 3, para. 148.
[24] Limbu v Dyson [2024] EWCA Civ 1564.
[25] Limbu v Dyson [2024] EWCA Civ 1564, para. 18: "As to the negligence claim, the circumstances capable of giving rise to parent company liability for harm suffered by individuals as a result of a foreign subsidiary's operations, which it is said can extend to harm caused by the subsidiary's supply chain contractor".
[26] On this term, see Okpabi v Shell [2021] UKSC 3, para. 26 et seq.
[27] See Giesela Rühl/Bastian Brunk, in: Kaltenborn/Krajewski/Rühl/Saage-Maaß, Lieferkettensorgfaltspflichtenrecht, 2023, § 3 Anh. II LkSG para. 45.

England are relevant not only where the place of damage lies in England, but also in cases of human rights violations in the former English colonies of Anglophone Africa or on the Indian subcontinent.[28] The places of damage in *Vedanta*, *Shell* and *Dyson*, for example, lay in Zambia, Nigeria and Malaysia respectively. Strictly speaking, English courts here develop what is, from their own perspective, foreign law.

11 Nevertheless, the law remains uncertain even where a common law jurisdiction is designated. First, none of the decisions handed down to date has been a judgment on the merits; all have been interlocutory rulings on jurisdiction.[29] Second, in many jurisdictions of the English legal tradition these decisions are persuasive, but not binding, authority.[30] Zambian, Nigerian and Malaysian courts might therefore reach different conclusions in comparable proceedings. Nor can it be predicted with confidence whether a Member State court applying, say, Indian or Pakistani law would in a given case actually draw on the English case law on group and supply-chain liability.[31] In any given case, the lex loci damni rule accordingly guarantees neither certainty as to the applicable law nor predictability of the judicial outcome.

c) Weakening of the preventive effect of the due diligence obligations

12 Liability in tort serves a number of distinct legal functions.[32] First, liability is directed at compensating harm suffered (compensatory function). Second, the prospect of liability creates an incentive to avoid causing damage (preventive function). Further functions of liability law can be derived from this preventive rationale: liability law serves to steer conduct by inducing potential defendants to behave in ways that avoid it (regulatory function); and, with regard to public-law commands and prohibitions – such as the due diligence obligations under the CSDDD – it contributes to the enforcement of the law (enforcement function). Finally, liability law also has a sanctioning function.

13 Liability law can fulfil its preventive and regulatory functions only if potential defendants can identify the standard by which they must align their conduct in order to avoid liability.[33] Given the uncertainties described above as to the applicable law, this is at present all but possible. The lex loci damni rule points to foreign law or – in the case of extensive, internationally diversified

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[28] KKRS/Rühl/Brunk (fn. 27), § 3 Anh. II LkSG para. 34; see also Kieninger, Der Brüsseler Omnibus (fn. 5), p. 684: “Viele Länder des Globalen Südens sind weiterhin vom englischen Common Law geprägt und die jüngere und jüngste englische Rechtsprechung zu Fällen mit Zulieferern aus Sambia, Nigeria, Bangladesch und Malaysia geht im Rahmen der Haftung aus ‚negligence‘ durchwegs von einer ‚duty of care‘ der westlichen Konzernspitzen in Bezug auf die Produktions- und Arbeitsbedingungen in den Zulieferbetrieben aus.”
[29] See further KKRS/Rühl/Brunk (fn. 27), § 3 Anh. II LkSG para. 30 et seq., 41.
[30] See further KKRS/Rühl/Brunk (fn. 27), § 3 Anh. II LkSG para. 34.
[31] On the KiK proceedings, see Chris Thomale/Marina Murko, Pakistanisches Recht vor europäischen Gerichten: Transnationale Menschenrechtsklagen aus der Sicht eines Produktionslandes, ZVglRWiss 120 (2021), p. 127, 144: “[D]ie pakistanischen Verfahren infolge des Fabrikbrandes in Karatschi wurden nicht auf Basis von tort law, sondern aufgrund der strafrechtlichen Verantwortlichkeit der Fabrikeigentümer und der öffentlich-rechtlichen Verpflichtungen der Behörden geführt. Eine Klage auf Grundlage des tort of negligence scheint in Pakistan in diesem Zusammenhang nicht einmal angedacht worden zu sein. Auch im Verfahren vor dem LG Dortmund stellte die Anwendbarkeit des common law of torts parallel zu den einschlägigen statutarischen Normen des Fatal Accidents Act 1855 eine wichtige Rechtsfrage dar.”
[32] On the functions of the law of tort, see Gerhard Wagner, in: Münchener Kommentar zum BGB, 9th ed. 2024, Vor § 823 para. 45 et seq.
[33] Similarly Giesela Rühl, Towards a German Supply Chain Act? Comments from a Choice of Law and a Comparative Perspective, European Yearbook of International Economic Law (EYIEL) 2020, 2022, p. 55, 72.

supply chains – to a multitude of foreign legal systems, the content of which is only imperfectly discernible to potential defendants. In this respect, there is no workable point of reference by which companies can align their conduct.

14 Even where such a point of reference exists – for example because the parameters of group and business-partner liability are sufficiently settled under the applicable law – the lex loci damni still does not draw the operative standard of conduct from the due diligence obligations under Article 5 et seq. CSDDD. The lex loci damni rule thus results in a weakening of the preventive effect of the due diligence obligations.[34]

II. Environmental harm (Article 7 Rome II Regulation)

15 For environmental harm and related human rights violations, the applicable law is determined by Article 7 Rome II Regulation. In line with the conflict-of-laws principle of ubiquity, this special conflict rule for environmental torts permits an alternative connection to the place of damage or the place of the event giving rise to the damage. The injured party thereby enjoys freedom of choice as to the applicable law: in principle, the lex loci damni rule under Article 4(1) Rome II Regulation applies, unless the injured party instead opts for the law of the place of the event giving rise to the damage (*lex loci actus*). In cases of distance torts, this gives the injured party the possibility of choosing whichever law is more favourable to them (principle of favourability).[35]

16 This freedom of choice, however, benefits the injured party only where the place of the event and the place of damage diverge and the law of the place of the event is more favourable for enforcing the claim. To establish this, the relevant place of the event must first be located. It is disputed whether, in determining the place of the event, regard should be had only to the immediate act of infringement (typically committed by a subsidiary or business partner abroad)[36] or also to the lead firm's breach of a duty of control, organisation or supervision.[37] Until this question is settled by the CJEU, considerable uncertainty as to the applicable law therefore also persists under Article 7 Rome II Regulation, at the expense of predictability of judicial decisions.[38] In particular – as with the lex loci damni rule under Article 4(1) Rome II Regulation – there is, on the current state of the law, no guarantee that in supply-chain cases the CSDDD's due diligence obligations will in fact be applied as the "law of the place of the event". Moreover, the significance of Article 7 Rome II Regulation in human rights cases is in any event limited, given its environmental nexus.

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[34] Similarly Geert Van Calster, Legal opinion: how the Omnibus creates uncertainty on civil liability for companies, para. 13, available online at https://gavclaw.com/wp-content/uploads/2025/06/legal_opinion_gvc.pdf (last accessed 27.8.2026).
[35] See Peter Huber, in: Beck-Online, Großkommentar, 1.6.2022, Art. 7 Rom II-VO para. 34 et seq.
[36] In favour of this approach, BeckOGK/Huber (fn. 35), Art. 7 Rom II-VO para. 38; Gerhard Wagner, Haftung für Menschenrechtsverletzungen, RabelsZ 80 (2016), p. 717, 735.
[37] For a possible place of the event at the seat of the parent company, see Rechtbank Den Haag, judgment of 26.5.2021, ECLI:NL:RBDHA:2021:5339, para. 4.3.1 et seq.; Brunk, Menschenrechtscompliance (fn. 15), p. 320 et seq.; Peter Mankowski, Internationales Privatrecht II, 2nd ed. 2019, para. 337; Mansel, Internationales Privatrecht (fn. 15), p. 460 et seq., 462.
[38] See KKRS/Rühl (fn. 15), § 3 Anh. I LkSG para. 20.

III. No special conflict rule for human rights violations

17 In view of the shortcomings just described, the introduction of a special conflict rule for human rights violations was considered during the legislative process for the CSDDD.[39] Specifically, the Legal Affairs Committee of the European Parliament proposed a new Article 6a Rome II Regulation, a special conflict rule for human rights violations based on the principle of favourability. Under this proposal, injured parties would have enjoyed a (unilateral) freedom of choice: they could have chosen (1) the law of the place of damage, (2) the law of the place of the event, (3) the law of the seat of the parent or buyer company, or (4), where the parent or buyer company had no seat in a Member State, the law of the place of activity.[40] This would, however, have come at the cost of legal certainty for companies, which is why the proposal was ultimately abandoned in the course of the legislative process.

C. Overriding mandatory provisions (Article 16 Rome II Regulation)

18 Rather than granting the injured party a freedom of choice under the conflict-of-laws rules, the European legislature initially opted for the overriding-mandatory-provisions solution in the former Article 29(7) CSDDD. Under this approach, Member States were to ensure that their national liability rules transposing Article 29 CSDDD applied irrespective of any conflict-of-laws designation of third-country law. This was intended to ensure that Member State liability law would apply as a matter of course in cross-border supply-chain cases.

19 Although the Omnibus Directive has deleted the former Article 29(7) CSDDD, the overriding-mandatory-provisions solution is not thereby foreclosed. Rather, the European legislature leaves that decision to the Member States: under Recital 49 of the Omnibus Directive, they are not precluded from giving the provisions transposing the CSDDD effect as overriding mandatory provisions. As shown below, this route remains the correct one even after the deletion of the former Article 29(7) CSDDD, and Member States should adhere to it when transposing the CSDDD.

I. Foundations

20 For non-contractual obligations, the application of overriding mandatory provisions is governed by Article 16 Rome II Regulation. The provision leaves open how the concept of an overriding mandatory provision is to be understood, but the definition in Article 9(1) Rome I Regulation may be drawn on for this purpose.[41] Accordingly, overriding mandatory provisions are mandatory provisions the respect for which is regarded by a State as so crucial for safeguarding its public interests, in particular its political, social or economic organisation, that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable under the conflict-of-laws rules.[42] Because the concept has its origin in EU law, it

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[39] In detail, KKRS/Rühl (fn. 15), § 3 Anh. I LkSG para. 38 et seq.
[40] Committee on Legal Affairs, Report with recommendations to the Commission on corporate due diligence and corporate accountability of 11.9.2020, A9-0018/2021; see further KKRS/Rühl (fn. 15), § 3 Anh. I LkSG para. 38 with further references.
[41] CJEU 31.1.2019 – Case C-149/18 (Da Silva Martins), ECLI:EU:C:2019:84, para. 27 et seq.; CJEU 5.9.2024 – Case C-86/23 (HUK Coburg II), ECLI:EU:C:2024:689, para. 37.
[42] This definition derives from CJEU 23.11.1999 – Case C-369/96 (Arblade) and C-376/96 (Leloup), ECLI:EU:C:1999:575, para. 30: "[T]hat term must be understood as applying to national provisions compliance

must be given an autonomous interpretation; according to the case law of the CJEU, that interpretation must be a narrow one.[43] Whether a given rule qualifies as an overriding mandatory provision is, however, a matter for the Member States to determine, and they enjoy a broad margin of discretion in doing so.[44]

21 A national legislature is free to state expressly in the text of a provision that it is to be treated as an overriding mandatory provision. Such express statements are not a precondition for that classification, and are found only in a small number of cases. As a rule, it falls to the courts to determine whether a provision is of an internationally mandatory character and therefore prevails, as an overriding mandatory provision, over the otherwise applicable law. The courts' determination is made through ordinary statutory interpretation, that is, "on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that provision was adopted".[45]

22 In its judgment in *HUK Coburg II*[46], the CJEU clarified the concept of overriding mandatory provisions. It identified three conditions for that classification: (1) a claim to international application, (2) a sufficient connection with the forum State, and (3) necessity.

1. Claim to international application

23 By applying overriding mandatory provisions, a State asserts its public interests as against the law otherwise applicable under the conflict-of-laws rules. Overriding mandatory provisions accordingly presuppose that the enacting State unconditionally intends them to apply: it is not enough that the parties should be unable to contract out of a rule in purely internal cases by a choice of law (cf. Article 14(2) Rome II Regulation); rather, what is required is a further-reaching claim to international application, which asserts itself whatever law the objective connecting factors designate.[47]

24 Given the narrow interpretation that the concept of an overriding mandatory provision demands, such a claim to international application exists only in the case of public interests of particular weight. The reference to the public interest also makes clear that overriding mandatory provisions do not serve to balance interests within a private-law relationship.[48] A provision whose purpose is limited to the protection of individual interests is accordingly not an overriding mandatory provision. Classification as an overriding mandatory provision may

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with which has been deemed to be so crucial for the protection of the political, social or economic order in the Member State concerned as to require compliance therewith by all persons present on the national territory of that Member State and all legal relationships within that State."

[43] CJEU 31.1.2019 – Da Silva Martins (fn. 41), para. 29; CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 30 et seq.; see also Recital 32 Rome II Regulation, according to which Member States may apply overriding mandatory provisions only "in exceptional circumstances".

[44] Abbo Junker, in: Münchener Kommentar zum BGB, 9th ed. 2025, Art. 16 Rom II-VO para. 17; Felix Maultzsch, in: Beck-Online, Großkommentar, 1.6.2026, Art. 16 Rom II-VO para. 25; Thomas Pfeiffer, Eingriffsnormen im Deliktsrecht, Beck-Online, Fachdienst Zivilrecht, LMK 2024, 820620.

[45] CJEU 31.1.2019 – Da Silva Martins (fn. 41), para. 31.

[46] CJEU 5.9.2024 – HUK Coburg II (fn. 41).

[47] Felix Berner, Die Identifikation von Eingriffsnormen i.S.d. Art. 16 Rom II-VO, Anmerkung zu EuGH v. 5.9.2024 - C-86/23 - E.N.I. u.a. ./. HUK-COBURG Allgemeine Versicherung AG, GPR 2025, p. 52, 53; Peter Georg Picht, in: Rauscher, Europäisches Zivilprozess- und Kollisionsrecht (EuZPR / EuIPR), Bd. III, 5th ed. 2023, Art. 16 Rom II-VO para. 5.

[48] Rauscher/Picht (fn. 47), Art. 16 Rom II-VO para. 4.

nevertheless be appropriate where the protection of individual interests pursued by the provision simultaneously serves an essential public interest.[49]

2. Sufficient connection with the forum State

25 According to the case law of the CJEU, applying an overriding mandatory provision presupposes, as an unwritten condition, a sufficiently close link with the Member State of the forum.[50] The court must therefore ask whether the particular dispute is sufficiently closely connected with the forum State. Such a connection may arise, for example, from the debtor's seat or a domestic place of the event giving rise to the damage.

3. Necessity of overriding application

26 In its *HUK Coburg II* judgment, the CJEU further required that overriding application be necessary to safeguard the public interest pursued. Recourse may not be had to Article 16 Rome II Regulation "if the objective of protecting the interest at issue pursued by the relevant provision of the law of the forum can also be achieved by applying the law designated pursuant to the conflict-of-law rules of [the Rome II Regulation]".[51] Member State courts must therefore examine whether that objective can equally be achieved by applying the lex causae. This first requires the public interests pursued by the overriding provision to be identified by interpretation. The court must then ask, comparatively, whether the lex causae protects those interests equally well. The courts enjoy a broad margin of discretion in carrying out this assessment.[52]

II. The due diligence obligations as overriding mandatory provisions

27 Subject to the requirements set out above, it is open to Member States to enact an express statutory rule on whether their CSDDD transposing provisions qualify as overriding mandatory provisions (see III. below). This is not a precondition for such a classification; the courts may reach the same result by way of statutory interpretation.

28 For example, the Tribunal Judiciaire de Paris interpreted the French Duty of Vigilance Act ("Loi de vigilance")[53] to this effect in its *Yves Rocher* judgment.[54] The court held that not only the duty of vigilance ("devoir de vigilance") as such, but also the associated liability rule in Article L. 225-102-2 of the French Commercial Code, must be classified as overriding mandatory provisions.[55] The Tribunal Judiciaire de Paris expressly referred to the CSDDD and the Omnibus Directive, even though neither has yet been transposed into French law. The court held that the deletion of the former Article 29(1) and (7) CSDDD does not prevent Member States from creating their own liability regimes and applying them as overriding mandatory

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[49] CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 45 et seq.; Berner, Identifikation von Eingriffsnormen (fn. 47), 53 et seq.; Pfeiffer, Eingriffsnormen im Deliktsrecht (fn. 44); Rauscher/Picht (fn. 47), Art. 16 Rom II-VO para. 4.
[50] CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 33 et seq.
[51] CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 43, 48; critical of this Berner, Identifikation von Eingriffsnormen (fn. 47), 55; a more favourable assessment is offered by Pfeiffer, Eingriffsnormen im Deliktsrecht (fn. 44).
[52] See CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 48, 53.
[53] Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.
[54] Tribunal Judiciaire de Paris (34ème chambre), judgment of 12.3.2026 – RG 22/04017 – Sherpa u.a. ./. Laboratoires de Biologie Végétale Yves Rocher.
[55] Tribunal Judiciaire de Paris 12.3.2026 – Yves Rocher (fn. 54), para. 75.

provisions so that the CSDDD's objectives are achieved in full: to remedy adverse impacts on human rights and the environment arising from the activities of companies, their subsidiaries and their business partners in their chains of activities, and to give victims access to justice.[56]

29 This purpose of the Directive, correctly identified by the Tribunal Judiciaire de Paris, does indeed support classifying Member States' transposing provisions as overriding mandatory provisions within the meaning of Article 16 Rome II Regulation. It is true that no Member State has yet enacted transposing legislation.[57] However, the purpose of the Member States' transposing legislation will correspond to that of the Directive and is thus already established. Moreover, the due diligence obligations under Article 4(1) CSDDD are, for the most part, fully harmonised law, and otherwise, under Article 4(2) CSDDD, minimum-harmonised law. The question of their conflict-of-laws classification can accordingly already be approached through a hypothetical statutory interpretation. As noted above (see para. 21), the CJEU requires for this purpose an analysis of the wording, general scheme, objectives and legislative context. In particular, the conditions established in *HUK Coburg II* must be examined: whether (1) the due diligence obligations carry a claim to international application, (2) a sufficient connection with the forum State exists, and (3) overriding application is necessary.

1. Claim to international application

30 The due diligence obligations under the CSDDD are, by their very nature, internationally mandatory law within the meaning of the conflict-of-laws rules. This is apparent, first, from their cross-border reach (see a) below). Second, the due diligence obligations are mandatory in the sense that compliance is not left to the discretion of those subject to them, but – as the pecuniary penalties under Article 27(1) CSDDD show – is enforced in the public interest through State coercive measures (see b) below). Nor can it be objected, against their classification as overriding mandatory provisions, that the due diligence obligations serve merely to protect individual interests (see c) below).

a) Cross-border reach of the due diligence obligations

31 A first indication in favour of classifying the due diligence obligations as overriding mandatory provisions is their cross-border reach.[58] Companies are required to ensure the protection of human rights and the environment along their "global value chains"[59], which necessarily means that they must observe the due diligence obligations worldwide. This objective could not be achieved without such a classification. Rather, the due diligence obligations would as a rule be deprived of effect, because under Article 4(1) and Article 15(a) Rome II Regulation, the applicable standard of care in tort would be governed not by them, but by the law of the third

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[56] Tribunal Judiciaire de Paris 12.3.2026 – Yves Rocher (fn. 54), "Si la proposition de directive Omnibus, prévoit de supprimer le régime harmonisé de la responsabilité civile des entreprises et la qualification uniforme de loi de police, elle n'interdit pas aux Etats membres de créer ou de maintenir leur régime spécifique, pour atteindre pleinement les objectifs constants de la directive, qui sont de remédier aux incidences négatives sur les droits de l'homme et l'environnement, en ce qui concerne les activités des entreprises et celles de leurs filiales et de leurs partenaires commerciaux dans les chaînes d'activités des entreprises, et permettre à la victime d'accéder à la justice."

[57] Article 37(1) CSDDD grants Member States until 26 July 2028 to transpose the Directive.

[58] See Kulov, Auswirkungen des Omnibus-Vorschlags (fn. 5), p. 803.

[59] See Recitals 3, third sentence; 4, first sentence; 9, first sentence; 15, second sentence; 31, first sentence, CSDDD; see further Kulov, Auswirkungen des Omnibus-Vorschlags (fn. 5), p. 803.

country where the damage occurs.[60] Foreign law will, as a rule, also protect human rights and the environment through its own law of tort.[61] What it does not guarantee is that this protection takes the form of supply-chain duties imposed on the parent or buyer company. If that company's inclusion within the chain of responsibility is to be secured, the due diligence obligations must apply irrespective of the lex causae.[62]

b) Public-law enforcement mechanism

32 The due diligence obligations are enforced, in particular, through public-law supervisory and penalty proceedings: under Article 24 CSDDD, Member States must designate supervisory authorities to monitor compliance with the due diligence obligations, and under Article 25 CSDDD must equip them with far-reaching powers of intervention. In particular, under Article 27 CSDDD, supervisory authorities may impose pecuniary penalties of up to 3% of a company's (or group's) consolidated worldwide net turnover in a financial year. Sanctions of this kind show that the sanctioned provisions serve an essential public interest, and thus strongly indicate that they are overriding mandatory provisions.[63]

c) No mere individual-protection purpose

33 The due diligence obligations do not serve merely to protect individual interests; they simultaneously safeguard essential public interests.[64] The protection of human rights forms part of the European system of values (Recital 1 CSDDD), and environmental protection is a key objective of the Union (Recital 2 CSDDD). This alone establishes an essential public interest in the implementation of the due diligence obligations.[65] Beyond that, the Union pursues its own sustainability objectives through the Directive, as its recitals make clear: according to Recital 4 CSDDD, the "behaviour of companies across all sectors of the economy is key to success with regard to the Union's sustainability objectives"; the Directive is intended to ensure, according to Recital 16 CSDDD, "that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies". Finally, the Directive also serves market-ordering purposes, in particular strengthening the internal market (Recital 9 CSDDD) and safeguarding a level playing field (Recital 31 CSDDD).

2. Sufficient connection with the forum State

34 According to the case law of the CJEU, applying overriding mandatory provisions presupposes a sufficiently close link between the particular case and the forum State.[66] This requirement is satisfied both for EU companies (see a) below) and for third-country companies (see b) below).

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[60] At most, the due diligence obligations might be taken into account under the conflict-of-laws rules as rules of safety and conduct under Article 17 Rome II Regulation; see further Brunk, Menschenrechtscompliance (fn. 15), p. 354 et seq.; contra KKRS/Rühl (fn. 15), § 3 Anh. I LkSG para. 31 et seq.
[61] In detail, Wagner, Haftung für Menschenrechtsverletzungen (fn. 36), p. 750 et seq.
[62] Similarly Kieninger, Der Brüsseler Omnibus (fn. 5), p. 684; to the same effect in the result KKRS/Rühl (fn. 15), § 3 Anh. I LkSG para. 43.
[63] On the LkSG, Hübner, FS Ebke (fn. 12), p. 421; Eva-Maria Kieninger, Zivilrechtliche Haftung für Sorgfaltspflichtverletzungen nach Lieferkettengesetz und Sustainability-Richtlinie, ZIP 2024, p. 1037, 1043; generally BeckOGK/Maultzsch (fn. 44), Art. 16 Rom II-VO para. 22.
[64] On this requirement, CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 46; see para. 21.
[65] To the same effect Kieninger, Der Brüsseler Omnibus (fn. 5), p. 683 et seq.: the criterion of an overriding public interest is "im Falle des Schutzes von grundlegenden Menschenrechten und Umweltstandards gegeben".
[66] CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 33 et seq.

a) EU companies

35 Some commentators doubt whether a sufficiently close link with the forum State exists where the human rights violation occurs abroad.[67] That doubt is misplaced, at least where the due diligence obligations are addressed to companies established in the forum State. With the registered office in a Member State required by Article 2(1) CSDDD[68] as the connecting factor, a sufficiently close link with the forum State already exists. Moreover, since the due diligence obligations are duties of corporate organisation and management, they must – even where the underlying facts otherwise take place abroad – be performed at least in part domestically, so that a sufficient connection with the forum State can be established on this ground as well.[69]

b) Third-country companies

36 For third-country companies that likewise fall within the scope of the CSDDD, a sufficient connection with the forum State is considerably harder to establish. This is true in particular in so-called foreign-cubed cases, that is, purely foreign cases in which every element of the facts lies abroad and both the company and the injured party are established abroad.[70] It is nonetheless worth considering whether, in such cases, the required connection with the forum State could be established by reference to the market-based connecting factor which Article 2(2) CSDDD provides for the application of the Directive to third-country companies.[71] Under that provision, the CSDDD applies to third-country companies that exceed certain turnover thresholds within the Union.[72] Article 2(7), first sentence, CSDDD provides a further connecting factor by reference to any branch that may exist domestically. Anchoring the conflict-of-laws connection in Article 2(2) and (7) CSDDD would align it with the requirement, under public international law, of a “genuine link”. This would help ensure that extraterritorial supply-chain regulation, which is legitimate as a matter of public international law, is not deprived of effect at the conflict-of-laws level.[73] However, in practice this question will rarely be significant, because under the rules of the European Regulation on jurisdiction and

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[67] Rejecting a sufficient connection with the forum State in the case of human rights violations occurring abroad, Ben Steinbrück, in: Gehling/Ott, Lieferkettensorgfaltspflichtengesetz (2022), Anh. § 11 LkSG para. 41; Wagner, Haftung für Menschenrechtsverletzungen (fn. 36), p. 746 et seq.; Gerhard Wagner, Lieferkettenverantwortlichkeit – alles eine Frage der Durchsetzung, ZEuP 2023, p. 517, 519.

[68] Cf. Article 2(1) CSDDD: “companies which are formed in accordance with the legislation of a Member State”.

[69] Similarly, on the LkSG, Hübner, FS Ebke (fn. 12), p. 423.

[70] With an illustrative example, Sophia Schwemmer, Globale Nachhaltigkeitsstandards made in Brüssel?, in: Heindler/Melcher, Die Achtung des Fremden (2024), p. 153, 154, 166.

[71] Generally, in favour of aligning application of administrative-law provisions as overriding mandatory provisions with their public-law scope of application, Christian Rüsing, Zum Verhältnis von Internationalem Privat- und Verwaltungsrecht, RabelsZ 90 (2026), p. 120, 133–137, 140; expressing doubt Schwemmer, Globale Nachhaltigkeitsstandards (fn. 70), p. 166, according to whom, given the Directive’s protective purpose tied to the legal interest concerned, “wohl eher einen Bezug des Geschädigten zum Gebiet der Mitgliedstaaten verlangen müsste”.

[72] See Recital 30 CSDDD: “For the purpose of defining the scope of application of this Directive in relation to third-country companies, the described turnover criterion should be chosen as it creates a territorial connection between the third-country companies and the Union territory. Turnover is a proxy for the effects that the activities of those companies could have on the internal market. In accordance with international law, such effects justify the application of Union law to third-country companies.”

[73] See further Schwemmer, Globale Nachhaltigkeitsstandards (fn. 70), p. 167.

enforcement of judgments,[74] a domestic forum will generally not be available against third-country companies in any event.[75]

3. Necessity of overriding application

37 In *HUK Coburg II*, the CJEU required that overriding application be necessary, that is, that the objective it pursues cannot be achieved by applying the lex causae.[76] Whether that condition is satisfied in every individual case may be doubted having regard to English common law, which, in supply-chain cases, likewise imposes a duty of care giving rise to liability on parent and buyer companies (see para. 9 et seq. above). On the better view, the due diligence obligations must still apply irrespective of the lex causae even where the law designated by the conflict-of-laws rules imposes comparable duties of conduct, or is even more favourable to the injured party, in liability terms, than the lex fori. First, without overriding application, companies would lack a uniform point of reference by which to align their conduct. Accordingly, the due diligence obligations could not produce their preventive effect (see paras. 13 et seq. above).[77] Second, enforcement of the law would be significantly weakened, because otherwise there would be no private enforcement of the due diligence obligations; Member State liability law could not, in that respect, fulfil its enforcement function (see para. 14 above). Third, the due diligence obligations are – at least also – market-regulation rules (see para. 33 above), the purpose of which cannot be achieved through the application of foreign law, since the latter is in principle not suited to regulating that Member State's own market.

III. Options open to the legislature

38 The foregoing statutory interpretation shows that Member State courts can, and should, apply the due diligence obligations in cross-border supply-chain cases as overriding mandatory provisions. It is not certain, however, that they will all reach the same conclusion when interpreting the law; given differing legal traditions and the broad margin of discretion involved, it must be expected that some courts will decline such a classification. Where Member States wish to ensure that their national law transposing the CSDDD applies irrespective of the otherwise applicable law, an express statutory rule is therefore advisable.[78] As Recital 49 of the Omnibus Directive makes clear, the deletion of the former Article 29(7) CSDDD has no preclusive effect.

39 In enacting an express rule on overriding mandatory application, Member States essentially have two options. They may designate only the due diligence obligations themselves as overriding mandatory provisions (the "narrow solution").[79] On this approach, the due diligence obligations would fix only the standard of conduct relevant to liability; the remaining requirements and consequences of liability would continue to be governed by the applicable

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[74] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels Ia"), OJ L 351/1 of 20.12.2012.
[75] In detail, Brunk, Menschenrechtscompliance (fn. 15), p. 317 et seq.; by contrast, where a company is domiciled within the Union, the general forum under Article 4(1), 63(1) Brussels Ia Regulation is always available.
[76] CJEU 5.9.2024 – HUK Coburg II (fn. 41), para. 43, 48.
[77] Similarly Van Calster, Legal opinion (fn. 34), para. 13.
[78] To the same effect Kieninger, Der Brüsseler Omnibus (fn. 5), p. 684.
[79] See Leonhard Hübner, Unternehmenshaftung für Menschenrechtsverletzungen, 2022, p. 472; Michael Stürner, in: Beck-Online, Kommentar zum LkSG, 15.6.2026, § 3 LkSG para. 114.

(foreign) law. Alternatively, Member States may create a self-standing liability regime – modelled, for example, on the former Article 29(1) CSDDD – and confer overriding mandatory status on that regime as a whole (the "broad solution").[80] Such a regime would displace the applicable (foreign) supply-chain liability law entirely. The Tribunal Judiciaire de Paris likewise adopted the "broad solution" in its *Yves Rocher* judgment when interpreting the Loi de vigilance.[81]

40 On balance, the "broad solution" appears preferable:[82] it enables Member States to implement, within the same liability regime, the further requirements of Article 29(2) to (6) CSDDD. It avoids the inconsistencies that can arise from a combined application of different bodies of law and the resulting partial intrusion into a foreign legal order.[83] At the same time, it dispenses with the laborious and costly task of ascertaining the applicable (foreign) law.[84] Finally, it gives companies and injured parties legal certainty as to the requirements and consequences of liability; it also prevents the application of a foreign liability regime that is either excessively strict or excessively permissive, and thereby achieves an appropriate balance of interests.[85]

D. Summary and recommendations

41 Following the deletion of the former Article 29(1) and (7) CSDDD, the *private enforcement* of supply-chain law now lies in the hands of the Member States. Under Recital 49 of the Omnibus Directive, they are called upon to ensure that victims of human rights violations have access to justice and an effective remedy. This is of central importance for the effectiveness of supply-chain regulation, because the public-law enforcement regime is not, on its own, sufficient to achieve the Directive's purpose. Public law – particularly in the field of supply-chain law – suffers from an enforcement deficit.[86] This follows, first, from the limited financial and human resources of supervisory authorities, which preclude comprehensive monitoring. Second, the legal authority of supervisory bodies ends at the national border, so that official investigation of the facts and enforcement of the law against foreign subsidiaries and suppliers – that is, precisely where human rights violations occur – is rarely realistic.[87] Although private enforcement, too, has significant limitations, it can complement public enforcement, offsetting some of those weaknesses and making enforcement of the law more effective overall.[88] The Directive's purpose – the protection of human rights and the environment – is therefore best achieved through a combination of both enforcement mechanisms.

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[80] Hübner, Unternehmenshaftung (fn. 79), p. 472; BeckOK/Stürner (fn. 79), § 3 LkSG para. 115.
[81] Tribunal judiciaire de Paris (fn. 54), para. 39 et seq., 75.
[82] Similarly Hübner, Unternehmenshaftung (fn. 79), p. 473 et seq., 485 et seq.; contra BeckOK/Stürner (fn. 79), § 3 LkSG para. 116.
[83] Hübner, Unternehmenshaftung (fn. 79), p. 486.
[84] Hübner, Unternehmenshaftung (fn. 79), p. 486 et seq.
[85] Similarly Van Calster, Legal opinion (fn. 34), para. 13.
[86] Wagner, Lieferkettenverantwortlichkeit (fn. 67), p. 524.
[87] Gregor Bachmann/Bastian Brunk, in: Kaltenborn/Krajewski/Rühl/Saage-Maaß, 2023, § 3 LkSG para. 124; Wagner, Lieferkettenverantwortlichkeit (fn. 67), p. 524.
[88] See OHCHR/Shift, Enforcement of Mandatory Due Diligence: Key Design Considerations For Administrative Supervision, Policy Paper, October 2021, p. 7 et seq., available online at https://www.ohchr.org/sites/default/files/2021-11/ohchr-shift-enforcement-of-mhrdd.pdf (last accessed 26.8.2026).

42 Because of the cross-border nature of supply-chain cases, the due diligence obligations can take effect in private law only if they are applicable under the conflict-of-laws rules. Given the ordinary lex loci damni rule under Article 4 Rome II Regulation, this will be the case only where supply-chain law prevails, under Article 16 Rome II Regulation, as an overriding mandatory provision over the (foreign) law otherwise designated. The interpretation of the due diligence obligations set out above has shown that they can, in principle – consistently with the case law of the CJEU – be classified as overriding mandatory provisions. Member State courts can – and should – therefore apply the due diligence obligations in liability proceedings irrespective of the law otherwise applicable under the conflict-of-laws rules.

43 In order to create legal certainty and to give companies a clear ex ante point of reference for aligning their conduct, it is nonetheless advisable to lay down the classification as an overriding mandatory provision expressly in legislation. To this end, Member States should at the very least designate the due diligence obligations as overriding mandatory provisions, thereby fixing the standard of conduct relevant to liability (the “narrow solution”). Better still is a self-standing liability regime with overriding mandatory status (the “broad solution”), which would at the same time implement the requirements of Article 29(2) to (6) CSDDD. Member States would thereby secure legal certainty as to the applicable law and achieve an appropriate balance of interests between companies and those affected.