

Ius Commune Conference 2020

Workshop: Company Law

Thursday, 26 November (14.00 – 17.00)

Theme: The Corporate Purpose and Fiduciary Duties

In this year's company law workshop, we will focus on the topic of the corporate purpose in its links to the fiduciary duties of the company and how changes in the corporate purpose may induce change for the form, substance and enforcement of individual duties of directors. The impetus for focusing on this topic are the recent developments in policy and business practice that suggest a gradual re-definition of the corporate purpose and related legal regulatory initiatives. In the U.S., the [Statement of the Business Roundtable in 2019](#) has received considerable attention as a potential milestone in changing the corporate purpose towards stronger responsibility, but has equally been heavily [criticized](#) as a way by which managers seek to re-define their duties and escape control by the shareholders. In the EU, the question on the corporate purpose and the related duties of directors is currently debated as part of the regulatory initiatives for corporate sustainability and human rights due diligence of companies (see the tendered studies by the EU Commission on [due diligence requirements throughout the supply chain](#) and [directors' duties and sustainable corporate governance](#)).

The workshop will look at two elements related to corporate purpose and director's duties: First, the foundations of linking the corporate purpose to directors' duties and related discussions on changing the corporate purpose and hereby affecting director's duties and, second, questions related to the enforcement of a breach of director's duties and the corporate purpose.

Organisation: Because of this year's online setting, we have opted for short input presentations of about 10 minutes followed by a discussion.

Chairs: Dr. Anna Beckers & Prof. Mieke Olaerts (both Maastricht University)

14.00 – 14.10 **Opening**

Panel I: Foundations of Corporate Purpose and Director's Duties

The nature and purpose of companies has been heavily debated over the years and has recently attracted a lot of attention. In the U.S., the roots of this debate can be traced back to the Berle/Dodd debate and in the Continental legal systems, it is closely linked to the question on the content of the "corporate interest" (vennootschappelijk belang) that influences corporate decision-making. In the first panel, we discuss the corporate purpose and the interlinkage with the concept of fiduciary duties.

Input Presentations

- 14.10 – 14.20 **Prof. Bastiaan Kemp** (Maastricht University)
The Corporate Purpose
- 14.20 – 14.30 **Prof. David Cabrelli** (Edinburgh University)
Dissecting the Ernst & Young Study on Directors' Duties and Sustainable Corporate Governance: An Opportunity Missed?
- 14.30 – 14.40 **Mr. Bram Van Baelen** (KU Leuven)
To B Corp or not to B Corp, that's the Question. The Ecosystem for Purpose-Driven Companies in Belgium and the Netherlands
- 14.40 – 15.15 **Discussion**
- 15.15 – 15.30 **Break**

Panel II: Enforcement

The second panel will center around the enforcement mechanisms in case there has been a breach of the fiduciary duties or in case the company acts in violation of the proclaimed corporate purpose. Such enforcement ranges from the “classical” derivative action suits and shareholder activism to the establishing of new links to tort liability or administrative penalties (both currently discussed for due diligence legislation). For this panel, we invite presentations that focus specifically on questions related to enforcement mechanisms.

- 15.30 – 15.40 **Prof. Beate Sjøfjell** (University of Oslo)
Sustainable Value Creation as a Duty of the Board: the Key to Legal Certainty and Effective Enforcement?
- 15.40 – 15.50 **Dr. Maddalena Neglia** (Int. Fed. of Hum Rights/FIDH)
Civil Liability and Corporate Due Diligence Obligations with a View to the EU Developments and the French Law
- 15.50 – 16.00 **Dr. Marleen van Uchelen** (University of Amsterdam)
Corporate Purpose: Remember the Promise you Made Enforcement of Purpose in Dutch Social Enterprises
- 16.00 – 16.40 **Discussion**
- 16.40 – 16.50 **Closing**