

German Article on Abusive Choice of Court Clauses in European Law

Stefan Leible and Erik Roeder (both Bayreuth) have published an article on abusive choice of court clauses in European law in the German legal journal *Recht der Internationalen Wirtschaft* (RIW 2007, 481-487):

Missbrauchskontrolle von Gerichtsstandsvereinbarungen im Europäischen Zivilprozessrecht

An abstract has been kindly provided by the authors:

In their article, Leible and Roeder analyze whether and to what extent the European Procedural Law allows to review unfair forum selection agreements. In particular, the authors try to answer the question whether an agreement under Art. 23 of the Brussels I Regulation (Council Regulation 44/2001) may be declared void by a national court because in concluding the agreement one party has abused its dominant economic position.

In the first part of the article, Leible and Roeder refute the arguments put forward to reject any review of jurisdiction agreements. As the authors show, the competence of the ECJ to interpret the Brussels Regulation does not foreclose such a review because the ECJ has not decided on the issue so far. A review of choice of forum-clauses would neither put legal certainty at risk, nor would it discriminate against courts of other Member States.

In the second part of the article, Leible and Roeder argue for a review of forum selection clauses within the scope of Art. 23 of the Brussels I Regulation. An agreement on jurisdiction that was obtained by abuse of economic predominance does not truly reflect the autonomous will of the parties. The possibility of a review by the courts of the Member States allows to settle individual cases in accordance with equity. In order to ensure legal certainty, the notion of “abuse of economic predominance” must be defined autonomously by the ECJ.