

German Article on Rome II Regulation

Thomas Thiede and *Markus Kellner* (both Vienna) have written an article on **Forum Shopping between Rome II and the Hague Convention on the Law applicable to Traffic Accidents** in the legal journal *Versicherungsrecht* (VersR 2007, 1624 et seq.): “‘*Forum shopping*’ zwischen dem Haager Übereinkommen über das auf Verkehrsunfälle anzuwendende Recht und der Rom-II-Verordnung”.

The authors argue that Article 28 (1) Rome II, which provides as a general rule that the Regulation shall not prejudice the application of international conventions to which one or more Member States are parties and which lay down conflict-of-law rules relating to non-contractual obligations, leads to the precedence of the Hague Convention on the law applicable to traffic accidents since the exception clause of Article 28 (2) Rome II is – due to the fact that also Non-Member States are parties to the Hague Convention – not applicable.

It is submitted that the subsidiarity of the Rome II Regulation on the one side and the fact that the Hague Convention has not been ratified by some Member States on the other side entails the possibility of forum shopping. Thus, the authors argue, it would have been preferable to give priority to the Rome II Regulation over all Hague Conventions in order to ascertain – at least for intra-EU cases – the applicability of only one law.