German Publication on Rome I

A very interesting collection of papers held at a symposium in Bayreuth in September 2006 on the Proposal for a Regulation on the law applicable to contractual obligations ("Rome I") has recently been published: ***Ferrari/Leible*** **(eds.), Ein neues Internationales Vertragsrecht für Europa**

An English abstract has been kindly provided by the editors:

> *There is still insecurity for transborder-trade. In spite of the Brussels I-Regulation, the rules applied to a dispute within the Community cannot always be predicted. This situation is due to the fact that the national courts will determine the applicable law in different ways. They all follow the conflict rules of their forum, which can diverge. The result is that the identical claim may be submitted to a different law in Munich and in Manchester.*
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> *To help this situation, the Member States of the EC had adopted a Convention on the law applicable to contractual obligations during a conference held in Rome in 1980. It had a considerable success in harmonizing the rules of private international law regarding contracts and contractual relationships.*
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> *Yet the days of the so-called Rome Convention will soon be over. The Commission is planning to transform it into a regulation as part of the judicial cooperation in civil matters. It has published a "Proposal for a Regulation of the European Parliament and the Council on the Law Applicable to Contractual Obligations (Rome I)", COM (2005) 650 final, in December 2005.*
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> *This proposal has been discussed during a conference in September 2006 in Bayreuth, Germany, which was jointly organized by Stefan Leible and Franco Ferrari. The conference united eminent specialists from Germany and other countries, as well as a representative of the Commission. Their papers, written in German, have now been published by Sellier. The collection is an indispensable tool for any lawyer working in the field of cross-border transactions.*

The collection includes the following contributions:

- *Matthias Lehmann* (University of Bayreuth) defines in his contribution key

notions regarding the scope of application, namely „contract“ and „pre-contractual relationship“ and shows that both terms – “contract” as well as “pre-contractual relationship” – have to be interpreted autonomously, which leads to the result that not all legal relationships which would be classified under German law as “pre-contractual” are exluded from the scope of the prospective Rome I Regulation.

- *Stefan Leible’s* (University of Bayreuth) contribution is dedicated to choice of law-clauses. He addresses in particular the requirements of an implicit choice of law, the question which law can be chosen as well as the rule provided for in Art.3 (5) Rome I Proposal according to which the choice of law shall be, in a case where the parties choose the law of a non-member State, without prejudice to the application of such mandatory rules of Community law as are applicable to the case.

- *Franco Ferrari* (University of Verona) attends to the law applicable in the absence of a choice of law-clause. He compares Art.4 Rome Convention with Art. 3 Rome I Proposal and examines the consequences of the new rule on particular contracts.

- *Dennis Solomon* (University of Tübingen) deals with consumer contracts and addresses in particular questions of the scope of application of Art. 5 Rome I Proposal.

- *Abbo Junker* (Zentrum für Arbeitsbeziehungen und Arbeitsrecht, Munich) addresses contracts in the field of labour law, in particular questions of the planned Regulation’s scope of application with regard to labour law, party autonomy (choice of law) as well as Art. 6 Rome I Proposal.

- *Karsten Thorn* (Bucerius Law School, Hamburg) tackles the notoriously known problem of mandatory rules. He turns in particular to the question how Art. 8 Rome I Proposal can be classified within the system of Rome I as well as to Art. 8 (3) Rome I Proposal, which is very controversial among the Member States.

- *Ulrich Spellenberg* (University of Bayreuth) attends to contracts concluded by agents. He examines the internal relationship (between the principal and the agent) as well as the external relationship (between the principal and third parties). Further, also questions of form as well as the

agent's liability for breach of warranty of authority are dealt with.

- *Eva-Maria Kieninger's* (University of Würzburg) and *Harry C. Sigman's* (Los Angeles, member of the Law Revision Committee on UCC Article 9 and member of the US delegation on the evolution of UNCITRAL recommendations on security interests) contribution is dedicated to assigment and statuatory subrogation. The first part, dealing with voluntary assignment and contractual subrogation (Art. 13) deals with Art. 13 (3) Rome I Proposal, which gives now an answer to the (so far) contentious problem which law is applicable to the question whether the assignment or subrogation may be relied on against a third party. Furthermore, it is dealt with questions such as the material scope of application of Art. 13. In the second part, the rule of Art. 14 dealing (only) with statutory subrogation is discussed, *inter alia* in view of Rome II.

- *Ulrich Magnus* (University of Hamburg) writes on multiple liability and set-off. With regard to statutory offsetting, regulated in Art. 16 Rome I Proposal, the legal situation under the Rome Convention – which does not contain a separate rule on the law applicable with regard to statutory offsetting – as well as the ECJ's case law and the scope of application of Art. 16 Rome I Proposal are illustrated. The second part deals with Art. 15 Rome I Proposal (multiple liability), in particular with questions of the provision's scope.

- *Ansgar Staudinger* (University of Bielefeld) attends to insurance contracts by describing in a first step the system of the Rome I Proposal with regard to insurance contracts which is criticised in view of the coexistence of two regimes: Rome I on the one side and directives on the other side. Thus, in a second step an alternative approach is developed according to which only the choice of law rules of the prospective Rome I Regulation should be applied.

As the contents show, the book includes contributions on the most important and most discussed issues with regard to Rome I and can therefore be highly recommended.

Further information can be found on the publisher's website, where it can also be purchased.

See also the report on the conference by *Robert Freitag* (University of Hamburg) which has been published in the latest issue of the Praxis des Internationalen Privat- und Verfahrensrecht (IPRax 2007, 269).