


Article on the Eurofood Case

Matteo M. Winkler, an Italian scholar and practising lawyer in Milan, has  recently published an article on the *Eurofood* case in the Berkeley Journal of International Law: *From Whipped Cream to Multibillion Euro Financial Collapse: The European Regulation on Transnational Insolvency in Action*.

The author has kindly provided the following abstract:

Determining the most competent court for the adjudication of a transnational insolvency case is an old problem and different theories – i.e., universalism, territorialism, modified universalism and cooperative territorialism – have been applied by courts and scholars in the past in order to adjudicate and solve the disputes concerning the insolvency of debtors having their assets in more than one country. Although different in some sense, all four theories aim to balance the same interests: domestic adjudication of foreign assets, efficiency of the bankruptcy proceedings, and protection of local investors and markets.

Significantly, the difficulties arising from the application of these theories are rooted in the current international trade system. First, states differ as to their bankruptcy procedures, especially with regard to the nature of the bankruptcy itself, the remedies available to debtors and creditors, and the priorities of creditors over the debtor's assets. Second, the differences among the various legal regimes generate competition between courts, which makes the prospect of an international treaty very difficult.

In analysing the outcomes of Eurofood, I argue that, in determining the centre of the debtor's main interests (COMI) pursuant to article 3 of the EC Regulation No. 1346/2000 on transnational insolvency, the European Court of Justice actually maintained an hyperflexible definition of COMI, which favours the creditors or the debtors' race to national courts in order to find the best conditions in filing for bankruptcy. The race to national courts is well-illustrated by the European courts practice, which, instead of enforcing the spirit of cooperation and reciprocal reliance which underlies in the EC Regulation, actually backs national interests. From this standpoint, European institutions are convinced that the issue has been settled, while in reality, much work has yet to be done.

Matteo Winkler has also published two other articles on this topic in Italian, which can be found respectively in *Int'l Lis*, 2007, at 15, and in 21 *Diritto del commercio internazionale*, 2007, pp. 527-536.