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The second issue of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht (www.nipr-online.eu)* includes the following contributions on Party autonomy in Rome I and II; Art. 5(3) Brussels I (Zuid-Chemie case); Scope of the Service Regulation; Enforcement in the Netherlands; and Implementation of the European Order for Payment Procedure in the Netherlands:

- Symeon C. Symeonides, Party autonomy in Rome I and II: an outsider's perspective, p. 191-205. The introduction reads:

The principle that contracting parties should be allowed, within certain limits, to pre-select the law governing their contract (party autonomy) is almost as ancient as private international law itself, dating back at least to Hellenistic times. Although this principle has had a somewhat checkered history in the United States, it has been a gravamen of continental conflicts doctrine and practice, at least since the days of Charles Dumoulin (1500-1566). The latest codified expression of party autonomy in European private international law is found in the European Union's Rome I Regulation of 2008 on the Law Applicable to Contractual Obligations, which replaced the 1980 Rome Convention, as well as in the Rome II Regulation of 2007 on the Law Applicable to Non-Contractual Obligations. In the meantime, most other legal systems have recognized the principle of party autonomy, making it 'perhaps the most widely accepted private international rule of our time'. Nonetheless, disagreements remain in defining the modalities, parameters, and limitations of this principle. These disagreements include questions such as: (1) the required or permissible mode of expression of the contractual choice of law; (2) whether the chosen state must have a specified factual connection with the parties or the transaction; (3) which state's law should define the substantive limits of party autonomy; (4) whether the choice must be limited to the law of a state or whether it can also include non-state norms; and (5) whether the choice may encompass non-contractual issues. This essay offers an outsider's limited textual assessment of some of the modalities and limitations of party autonomy under the Rome I and Rome II Regulations and a comparison with the prevailing practice in the United States.

- H. Duintjer Tebbens, Het '*forum delicti*' voor professionele productaansprakelijkheid en het Europese Hof van Justitie: een initieel antwoord over initiële schade, Hof van Justitie EG 16 juli 2009, zaak

C-189/08 (*Zuid-Chemie/Philippo's Mineralenfabriek*), p. 206-209. The English abstract reads:

The author offers a critical analysis of the latest judgment of the European Court of Justice in a line of cases concerning the proper interpretation of 'the place where the harmful event occurred' (here: the initial damage) for the purposes of the allocation of jurisdiction in tort under Article 5(3) of the Brussels Convention and its successor, the Brussels I Regulation. In Zuid-Chemie v. Philippo's Mineralenfabriek*, C-189/08, on a reference by the Dutch* Hoge Raad*, the Court had to answer the principal question whether, in a dispute between commercial parties concerning liability arising out of a contaminated chemical product used for the production of fertilizer, the place where the initial damage occurred was where the product was delivered or the place where, as a result of the normal use of the product, (material) damage was caused to the fertilizer. The referring court further asked whether, if the second alternative was correct, this would also extend to the hypothesis that the initial damage consisted of pure economic loss. As to the procedural treatment of this reference the Note questions the wisdom of having resort in the present case to the accelerated procedure for preliminary rulings, which implies that the Advocate General does not deliver an Opinion. On the principal question concerning interpretation of Article 5(3), the author agrees with the decision of the European Court which further develops earlier case law, in particular its ruling in Marinari, C-364/93. Nevertheless, he criticizes some parts of the reasoning of the Court as well as certain points of terminology. He notes that the European Court made its own assessment of what kind of damage was at issue in the case, i.e. material damage to the fertilizer produced by the claimant, which did not completely match the findings of fact by the* Hoge Raad*. This explains why the European Court did not deal with the second question referred by the Dutch court whose point of departure was that the initial damage consisted of pure economic loss. The author concludes that it is still an open question whether Article 5(3) offers a forum if the initial damage is purely of a pecuniary nature, for example in the case of losses from financial transactions.*

- Chr.F. Kroes, Kantoorbetekening zet de Bet.-Vo. buiten spel oordeelt de Hoge Raad, Enige kanttekeningen bij Hoge Raad 18 december 2009, nr. 09/03464 (*Demerara/Karl Heinz Haus*), p. 210-214. The English abstract reads:

On December 18, 2009, the Supreme Court handed down a decision that will be dear to the hearts of pragmatists. The Supreme Court found that the possibility of service pursuant to Article 63(1) of the Code of Civil Procedure renders the Service Regulation (EC 1393/2007) inapplicable. The Supreme Court's decision is based on one of the recitals of the Service Regulation and information in the parliamentary papers that accompanied the proposal for the Dutch Execution Act on the new Service Regulation. Therefore, its judgment seems to fail to take into account the case law of the ECJ.

Pursuant to that case law, the Service Regulation should be interpreted autonomously. Statements of the Council may not be used to interpret the Service Regulation, if they are not reflected in the provisions of the Regulation itself. The recitals may not be used to arrive at a restrictive interpretation of the scope of application of the Regulation. Therefore, it is difficult to see how information in the Dutch parliamentary papers supports an interpretation that restricts the application of the Service Regulation.

- Niek Peters, Bevoegdheid van de Nederlandse rechter bij een exequaturprocedure en een *actio iudicati*, p. 215-222. The English abstract reads:

In the Netherlands it is not possible for a creditor to simply enforce a foreign monetary judgment against a debtor. A creditor must first of all obtain a Dutch enforcement order For this purpose, he must either file an application for leave for enforcement (exequatur) – pursuant to Articles 38 et seq. Brussels I Regulation and Articles 985 et seq. DCCP respectively – or alternatively file a claim pursuant to Article 431 paragraph 2 DCCP. However, the jurisdiction of the Dutch courts over such an application or claim is not necessarily ensued, when a debtor has his place of domicile outside of the Netherlands. This is essentially due to the fact that a Dutch court may not assume jurisdiction if a creditor merely states that the enforcement will (or could) be required in his district. For instance, in a procedure for ordering enforcement (exequatur procedure), a creditor must make a plausible argument that a debtor has, or could have, assets in said district. In case of a claim pursuant to Article 431 paragraph 2 DCCP, a Dutch court may not have jurisdiction until after a prejudgment attachment has been (successfully) levied. As a consequence, it is possible that a creditor cannot obtain an enforcement order in the Netherlands, even though he may have a justifiable interest in obtaining such order. Therefore, it would be recommendable if there is at least a court that has jurisdiction over an application for leave of enforcement or, respectively, a claim pursuant to Article 431 paragraph 2 DCCP.

- Mirjam Freudenthal, Perikelen rond de uitvoering van de Verordening van een Europees betalingsbevel, p. 223-225. The English abstract reads:

The Netherlands 2009 Act adapting Dutch civil procedure to the Regulation for a European Order for Payment did not include an effective provision on the referral of the order for payment procedure to a regular court procedure once the order for payment was objected to by the defendant. Recently the government published a Bill with adjustments to the 2009 Act, in which it proposed to concentrate all order for payment procedures in the The Hague court and a new provision was introduced regulating all aspects of this referral of the ex parte order for payment procedure to the regular court. In this article the consequences of the Bill's proposals are discussed and measures to

improve the referral procedure are suggested.

If you are interested in contributing to this journal, please contact the editing assistant Wilma van Sas-Wildeman, w.van.sas-wildeman@asser.nl, or the editor-in-chief Xandra Kramer, kramer@frg.eur.nl