Köhler on Overriding Mandatory Provisions in European Private International Law

Andreas Köhler from the University of Passau has written a book on overriding mandatory provisions in European Private International Law (*Eingriffsnormen – Der 'unfertige Teil' des europäischen IPR*, Tübingen, Mohr Siebeck 2013). The author has kindly provided us with the following summary:

> *After a detailed dogmatic analysis of the so-called "mandatory rules problem", Andreas Köhler shows that, with the enactment of the Rome I and II Regulations, European Law on the conflicts of law now governs exclusively the applicability of provisions compliance with which is crucial for a country to protect its public interests, such as its political, social or economic system.The application of those provisions depends on a special conflict of law rule – originating from European Law – which must be developed modo legislatoris within the scope of the general clauses codified by Article 9 Rome I resp. Article 16 Rome II; in this sensethe so-called "mandatory rules problem" could be considered as Franz Kahn´s "unfinished part" of the – henceforth European – Private International Law. Based on this premise, the author develops a model for a coherent approach to mandatory rules (and to those protecting the socially weaker party) furthering the important objective of harmonizing judicial decisions in Europe but still subject to review by the European Court of Justice. One important consequence of Köhler's approach is an unconditional obligation to apply mandatory rules of other member states, since the special conflict of law rule regardingsuch provisions originates from European Law and therefore binds all member state courts. In addition Köhler proves that the application of any foreign mandatory rules is not affected by the restrictive requirements of Article 9 III Rome I. Hence, it is possible to create a multilateral system for suchprovisions in European conflicts law.*

Further information is available on the publisher's website (in German).