

Franzina on Sovereign Bonds and the Conflict of Laws

Pietro Franzina (University of Ferrara) has posted Sovereign Bonds and the Conflict of Laws: A European Perspective on SSRN.

This paper provides an account of the rules whereby courts sitting in a Member State of the European Union should decide conflict-of-laws issues relating to loans contracted by States or State-related entities involving the issue of bonds, thereby identifying the country whose legislation must govern the rights and obligations of the bondholders and of the issuing entity. After discussing the peculiar features of sovereign bonds when viewed from a conflict-of-laws perspective, the paper focuses on the choice-of-law clauses almost invariably included in the loans and on the rules governing such clauses pursuant to regulation no. 593/2008 of 17 June 2008 on the law applicable to contractual obligations (the “Rome I” regulation). The article goes on to determine the issues that must be deemed to be governed by the lex contractus and on the possible exceptions to the operation of conflict-of-laws rules, including the rules on choice of law, in accordance with the said “Rome I” regulation. In particular, the paper explores the way in which, and the extent to which, overriding mandatory provisions and the public policy exception may have a role to play in the global governance of sovereign debt crises, balancing the concerns and expectations of creditors, on the one hand, and the interests of distressed sovereign debtors and their populations, on the other.