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Recently, the March/April issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

- ***Moritz Renner/Marie Hesselbarth***: "Corporate Control Contracts and the Rome I Regulation"

The article deals with the law applicable to control contracts within a group of corporations in the sense of §§ 291 et seq. AktG. Here, the Rome I Regulation calls for a reassessment of current conflict-of-laws approaches. As the article seeks to show, applying the Rome I Regulation to corporate control contracts demands a contractual qualification of the latter. Interpreting the notions "contractual obligations" and "questions governed by the law of companies" according to EU law methods leads to an extensive definition of the former and a narrow scope of application of the latter provision. Two aspects merit special attention. First, a systematic comparison to the Brussels I Regulation has to be drawn. Under Brussels I, the ECJ has extensively interpreted the term "contractual relation", especially in contrast to company law questions. Secondly, primary EU law, namely the freedom of establishment, demands contractual freedom of choice for corporate control contracts. Domestic law provisions protecting creditors and minority shareholders can be applied as overriding mandatory provisions in the sense of art. 9 Rome I Regulation.

- ***Jürgen Stamm***: "A plea for the abandonment of the European account preservation order – Ten good reasons against its adoption"

The cross-border enforcement of claims shall be facilitated by the adoption of a European account preservation order. In view of the heterogeneous enforcement systems of the EU Member States this undertaking resembles the attempt to introduce a European enforcement law through the back door. In addition, the current draft of a Council Regulation considers neither the constitutional principles nor the system of the Council Regulation (EC) No.

44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The following article illuminates these aspects and makes suggestions to reduce obstacles to the cross-border enforcement of claims in the existing system of Council Regulation (EC) No 44/2001.

- ***Oliver L. Knöfel:*** "A new approach to EU Private International Law for seamen's employment agreements: with special reference to the employer's engaging place of business"

The article reviews a judgment of the European Court of Justice (Fourth Chamber) of 15 December 2011 (C-384/10), relating to the construction of Article 6(2)(b) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations. Dealing with labour aboard a sea-going vessel, the ECJ ruled that the concept of "the place of business through which the employee was engaged" must be understood as referring exclusively to the place of business which engaged the employee and not to that with which the employee is connected by her actual employment. Thus, the ECJ approaches a modern classic of European conflicts law in employment matters, but unfortunately takes the wrong side in a long-standing controversy between a "contract test" and a "function test". The author analyses the relevant issues of cross-border labour in the transportation sector, explores the decision's background in EU private international law, and discusses its consequences for the coherency and justice of the system of connecting factors in Art. 6 Rome Convention/Art. 8 Rome I Regulation.

- ***Herbert Roth***: "Europäischer Rechtskraftbegriff im Zuständigkeitsrecht?"– the English abstract reads as follows:

The European Court of Justice has developed an autonomous conception of substantive res judicata concerning a special question of the international jurisdiction of the courts. The claim dismissing adjudication by first instance courts comprises, inter alia, the prejudicial question of the validity of a choice-of-forum clause, which shall be binding on the Court of recognition in accordance with Art. 33 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The decision must be rejected because the interests of

the parties are not taken into account sufficiently.

- ***Nils Lund***: "Der Rückgriff auf das nationale Recht zur europäisch-autonomen Auslegung normativer Tatbestandsmerkmale in der EuGVVO"– the English abstract reads as follows:

The ECJ's decision discussed in this article concerns two provisions of the Brussels I Regulation. In the first part of its ruling the ECJ has held that the concept of "civil and commercial matters" of Art. 1(1) includes an action for recovery of an amount unduly paid by a public body in compensation of an act of persecution carried out by a totalitarian regime. The second part of the decision, that is concerning Art. 6(1), clarifies that a "close connection" between the claims exists if the defendant's pleas have to be determined on a uniform basis and that the provision does not apply to defendants domiciled outside of the EU. Regarding the approach of the court to the interpretation of the terms "civil and commercial matters" and "close connection", this article concludes that the autonomous construction of the Regulation does in certain cases allow for the recourse on national law.

- ***Reinhold Geimer:*** "Streitbeendigung durch Vergleich in Südafrika"
- ***Jan D. Lüttringhaus: "***Eingriffsnormen im internationalen Unionsprivat- und Prozessrecht: Von Ingmar zu Unamar" – the English abstract reads as follows:

Thirteen years after the landmark Ingmar case, the ECJ has again been asked to define the concept of overriding mandatory provisions and, in particular, to characterise national rules transposing Directive 86/653/EEC on commercial agents. Whereas in Ingmar the parties had chosen the law of a non-EU-Member State that did not provide for a level of protection required by European law, Unamar involves a scenario where the law designated by the parties is the law of a Member State which meets the minimum requirements laid down by Directive 86/653/EEC. The question brought before the ECJ in the case at hand is whether the court of another EU Member State may nonetheless apply its national provision as overriding mandatory rules on the grounds that the protection of a commercial agent under the lex fori goes beyond that provided for by the European Directive. Since the ECJ answers this question in the

affirmative, Unamar may have far-reaching consequences for the system of European private international law.

- ***Dirk Looschelders***: "Continuance or Extinction of Parental Responsibility after a Change of Habitual Residence"

Different legal systems provide very different rules for determining the parental responsibility of non-married parents. Therefore, if the habitual residence of the child changes, the joint responsibility of non-married parents established under the law of the child's former residence state may become extinct under the law of the new residence state. In order to avoid this unreasonable result, Article 16 (3) of the 1996 Hague Convention on the Protection of Children expressly rules that parental responsibility which exists under the law of the state of the child's habitual residence persists after a change of that habitual residence to another state. However, Article 16 (3) is not applied in German courts if the child's habitual residence changed before the Convention came into force in Germany on 1 st January 2011. In such cases, joint parental responsibility appears to cease.

The present decision of the Oberlandesgericht Karlsruhe shows that the problems usually can be solved by a judicial order awarding parental responsibility back to both parents. Nevertheless, with regard to cases of child abduction it is preferable to maintain joint parental responsibility on a continuing basis by limiting changes in the law governing parental care according to Article 21 EGBGB.

- ***Florian Eichel:*** "The application of s. 287 of the German Code of Civil Procedure (investigation and estimation of damages) within the scope of the Rome I and Rome II Regulations"

S. 287 of the German Code of Civil Procedure (dZPO) empowers a court to estimate a damage at its discretion and conviction, when the issue of whether or not damages have occurred is in dispute among the parties. The assessment is based on the court's evaluation of all circumstances. The court, therefore, may decide at its discretion whether or not – and if so, in which scope – any taking of evidence should be ordered as applied for, or whether or not any experts should be heard. Where the law to be applied is foreign law, the

question arises whether a German court may refer to s. 287 dZPO as lex fori or whether s. 287 dZPO has to be classified as substantive law preventing the court from estimating the damage when such a rule is unknown by the lex causae. Recently, two German district courts adopted a different view on this issue and, thus, produced different outcomes of two lawsuits with comparable facts. Whereas this question has been in dispute in the German doctrine of international civil procedure for decades, the Rome I/II Regulations set a new legal reference for this discussion: Due to the fact that s. 287 dZPO concerns both the law of assessment of damages and the law of procedure, not only Article 1(3) of each regulation, but also Article 12(1)(c) Rome I and Article 15(c) Rome II Regulation have to be considered. The essay argues that the application of a rule like s. 287 dZPO is neither affected by Articles 12(1)(c)/15(c) nor by Articles 18/22 Rome I/II Regulation and remains applicable pursuant to their Article 1(3).

- ***Andreas Fötschl***: "No Application of the Lugano Convention for Plaintiffs from Third States – The Decision of the Norwegian Highest Court in Raffels Shipping v. Trico Subsea AS"

The decision of the Norwegian Highest Court on 20 December 2012 deals with the question of whether a Norwegian court has jurisdiction over an international dispute, concerning a ship-broker's commission, between a plaintiff from Singapore and a defendant registered in Norway. This depended upon whether the Norwegian courts should apply the Lugano Convention in a case where the plaintiff is registered in a Third State and the dispute has no connection to the Contracting States, other than the fact that the seat of the defendant is located in the forum. The Norwegian Highest Court refused to apply the Lugano Convention and applied the Norwegian rules on international jurisdiction instead, which include a statutory requirement comparable to the doctrine of forum non conveniens.

- ***Friedrich Niggemann:*** "Eine Entscheidung der Cour de cassation zu Art. 23 EuGVVO – Fehlende Einigung, fehlende Bestimmbarkeit des vereinbarten Gerichts oder Inhaltskontrolle?" – the English abstract reads as follows:

In its decision of 29.9.2012 the French Cour de cassation held that a choice of

forum clause is void which provides for the exclusive jurisdiction of the courts at a bank's seat (Luxembourg), but allows the bank to sue its client at any other jurisdiction. The court found that the clause fails to correspond to the sense and purpose of Art. 23 of the Brussels I Regulation; it only binds the client and contains an element of arbitrary ("un element potestatif") in favor of the bank. Clauses of this kind are frequent in banking contracts and financing transactions. The Cour de cassation uses terminology of French law, which gives rise to the question whether it abides by the principle of autonomous interpretation. Further it appears to introduce into Art. 23 of the Brussels I Regulation an element of appreciation of equal rights of the parties.

- ***Hilmar Krüger:*** "Zur Anerkennung nicht begründeter ausländischer Entscheidungen in der Türkei"
- ***Hilmar Krüger:*** "Zum obligatorischen Gebrauch der türkischen Sprache in Schiedsverträgen"
- ***Florian Heindler:*** "Precedence of the 1996 Hague Child Protection Convention over the Brussels IIbis Regulation when leaving the EU"

The annotated judgement focuses on the question of international jurisdiction for parental responsibility cases. If the habitual residence of a child changes during a pending procedure in Austria, and the new place of habitual residence is in Australia (contracting state to the Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children), Art. 5 no. 2 Hague Convention 1996 shall be applied. Thus, Australian institutions have jurisdiction and contradicting Austrian decisions shall be annulled by Austrian courts. Judgements rendered before the change of the habitual residence remain in force, however, they can be replaced by courts at the child's new place of habitual residence. Contrary to Art. 5 no. 2 Hague Convention 1996, Art. 8 no. 1 Brussels IIa Regulation stipulates jurisdiction of the Member State court "over a child who is habitually resident in that Member State at the time the court is seized" (perpetuatio fori). Neglecting this provision, the Austrian Supreme Court (OGH) applied Art. 5 no. 2 Hague Convention. Hence, the decision of the appellate court had to be set aside, because jurisdiction was denied without establishing at which date the habitual residence in Australia commenced.

- ***Hilmar Krüger:*** "Zum Problem der Brautgabe im türkischen Recht"
- ***Tong XUE***: "New Rules from the Supreme People's Court: The first Judicial Interpretation of the Chinese Choice of Law Rules Act"

On 10 December 2012, the Supreme People's Court promulgated the Interpretation on issues concerning the application of the Act of the People's Republic of China on Application of law in Civil Relations with Foreign Contacts, which came into effect as of 7 January 2013. This Interpretation reconstructs the sources of law of Chinese conflict of laws rules and gives a number of detailed regulations on various specific issues, such as preliminary question, mandantory rules, party autonomy, habitual residence and proof of foreign law. Beginning with a short introduction to the background of these judicial rules this article will deliver a detailed insight into these new rules with moderate analysis.

- ***Erik Jayme:*** "Der internationale Rechtsverkehr mit den lusophonen Ländern – Jahrestagung der Deutsch-Lusitanischen Juristenvereinigung in Hamburg"