

The law applicable to agency: German legislature adopts choice of law rule

On June 11 the German legislature has adopted a new choice of law rule for the law of agency. It is largely based on a proposal of the 2nd Commission of the German Council for Private International Law headed by our co-editor Jan von Hein.

The new Article 8 of the German Introductory Law to the German Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch - EGBGB) reads as follows (private translation):

(1) A contract between principal and agent shall be governed by the law chosen by the principal before the agency is exercised, if the choice of law is known to both agent and third party. Principal, agent and third party are free to choose the applicable law at any time. The choice of law according to Sentence 2 of this paragraph takes precedence over Sentence 1.

(2) In the absence of a choice under Paragraph 1 and if the agent acts in exercise of his commercial activity, a contract between principal and agent, shall be governed by the law of the country in which the agent has his habitual residence at the time he acted, unless this country is not identifiable by the third party.

(3) In the absence of a choice under Paragraph 1 and if the agent acts as employee of the principal, a contract between principal and agent shall be governed by the law of the country in which the principal has his habitual residence, unless this country is not identifiable by the third party.

(4) If the agent does not act in a way described by Paragraph 2 or 3 and in the absence of a choice under Paragraph 1, a permanent contract between principal and agent shall be governed by the law of the country, in which the agent usually exercises his powers, unless this country is not identifiable by the third party.

(5) If the applicable law does not result from Paragraph 1 through 4, a contract between principal and agent shall be governed by the law of the country in which the agent acts in exercise of his powers. If the third party and the agent must have been aware that the agency should only have been exercised in a particular country, the law of this country is applicable. If the country in which the agent acts in exercise of his powers is not identifiable by the third party, the law of the country in which the principal has his habitual residence at the time the agent exercises his powers, is applicable.

(6) The law applicable for agencies on the disposition of property or the rights on property is to be determined according to Article 43 Paragraph 1 and Article 46.

(7) This Article does not apply to agencies for exchange or auction.

(8) The habitual residence in accordance with this Article is to be determined in line with Article 19, Paragraph 1 and 2, first alternative of Regulation (EG) No. 593/2008, provided that the exercise of the agency replaces contract formation. Article 19, Paragraph 1 and 2, first alternative of Regulation (EG) No. 593/2008 does not apply, if the country according to that Article is not identifiable by the third party.

The original German version is available [here](#).