

The Tango Between Brussels Ibis Regulation and Rome I Regulation under the Beat of Package Travel Directive

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In the field of European private international law, Brussels Ibis Regulation and Rome I Regulation are dancing partners that work closely with different roles. When it comes to consumer protection, Brussels Ibis Regulation is the leader and Rome I Regulation is the follower, since special protective rules over consumer contracts were first introduced in Articles 13-15 Brussels Convention^[1] and then followed by Article 5 Rome Convention.^[2]

1. Package travel in Article 17(3) Brussels Ibis and Article 6(4)(b) Rome I

Package travel tourists are explicitly protected as consumers under Article 6(4)(b) Rome I, but not under Article 17(3) Brussels Ibis since it does not expressly mention the term 'package travel'. Instead, the term used in Article 17(3) Brussels Ibis is the same as that in Article 5(5) Rome Convention, which has been abandoned by its successor Article 6(4)(b) Rome I. Such discrepancy is widened with the replacement of Directive 90/314 by Directive 2015/2302 with the enlarged notion of package travel. This means that when Article 6(4)(b) Rome I Regulation is dancing under the beat of Directive 2015/2302, Article 17(3) Brussels Ibis Regulation is still dancing under the beat of Article 5(5) 1980 Rome Convention.

2. A uniform concept of package travel under Directive 2015/2302

The CJEU clarified in the *Pammer* judgment that the concept ‘a contract which, for an inclusive price, provides for a combination of travel and accommodation’ in Article 15(3) Brussels I should be *interpreted in line with* Article 6(4)(b) Rome I by reference to Directive 90/314.^[3] The CJEU did not follow the opinion of the Advocate General, according to which the concept prescribed in Article 15(3) Brussels I *has to be interpreted in exactly the same way as* the term ‘package’ enshrined in Article 2(1) Directive 90/314.^[4] The court stated that the concept in Article 15(3) Brussels I is ‘close to’^[5] the notion package in Directive 90/314. The wording ‘close to’, instead of ‘identical’ or ‘the same as’, indicates that the CJEU did not intend to interpret such two terms as having exactly the same meaning.

Since Article 15(3) Brussels I remains unchanged in its successor Article 17(3) Brussels Ibis, this article argues that Art.17(3) Brussels Ibis Regulation has been two steps behind Art.6(4)(b) Rome I when it comes to the protection of consumers in package travel contracts. In order to close the gap, a uniform concept of package travel should be given. It is suggested that Art.17(3) Brussels Ibis should adopt the concept of package travel provided in Directive 2015/2302.

3. Deleting package travel contracts from the exception of transport contracts

Despite the adoption of a uniform concept, Article 17(3) Brussels Ibis and Article 6 Rome I only cover packages containing transport, as an exception of transport contracts. Packages not including transport do not fall under the exception of transport contracts. Since all package travel contracts should be protected as consumer contracts, regardless of containing transport or not, it is more logical to delete package travel contracts from the exception of transport contracts in Art.6(4)(b) Rome I as well as Art.17(3) Brussels Ibis and establish a separate provision to regulate package travel contracts.

To this end, Article 17(3) Brussels Ibis and Article 6(4)(b) Rome I can be simplified as ‘This Section/article shall not apply to a contract of transport/carriage’, whereas package travel contracts are expressly regulated as consumer contracts in a separate provision. In this regard, the framework in Article 5 Rome Convention is a better solution, according to which package travel

contracts can be expressly included in Article 17 Brussels Ibis/Article 6 Rome I as follows:

Notwithstanding Article 17(3) Brussels Ibis/Article 6(4)(b) Rome I, this Section/article shall apply to a contract relating to package travel within the meaning of Council Directive 2015/2302/EU of 25 November 2015 on package travel and linked travel arrangements.

^[1] The predecessor of Articles 17-19 Brussels Ibis Regulation.

^[2] The predecessor of Article 6 Rome I Regulation.

^[3] Joined cases C-585/08 and C-144/09 *Pammer and Hotel Alpenhof*, ECLI:EU:C:2010:740, para. 43

^[4] Joined cases C-585/08 and C-144/09 *Pammer and Hotel Alpenhof*, ECLI:EU:C:2010:273, opinion of advocate general, para. 49.

^[5] Case C-585/08 *Pammer*, ECLI:EU:C:2010:740, para. 36.