Call for Participants: Quo Vadis Preferential Law Approach? A Survey on the Interpretation of Article 6(2) Rome I Regulation Across EU Member States

Benedikt Schmitz (University of Groningen) has shared the following call for participants with us:

Quo Vadis Preferential Law Approach? A Survey on the Interpretation of Article 6(2) Rome I Regulation Across EU Member States

Project description:

The Rome I Regulation plays a crucial role in determining the applicable law in cross-border consumer contracts within the European Union. Article 6(2) Rome I Regulation allows parties to choose the governing law while ensuring that consumers do not lose the protection granted by mandatory provisions of the law that would apply in the absence of such a choice. Despite its significance, the interpretation of this provision varies across Member States, leading to questions about its practical coherence and effectiveness.

Existing research on Dutch and German law suggests diverging approaches in legal scholarship. In the Netherlands, academic literature strongly relies on the protection principle approach, which means that the non-derogable rules of the consumer's habitual place of residence apply at all times – regardless of their content. German scholars, by contrast, follow the preferential law approach that requires a comparison between the chosen law and the consumer's home law to determine the most protective outcome. The non-derogable rules of the consumer's habitual place of residence only apply in so far as they protect the consumer better than the chosen law. However, it remains unclear whether these trends are unique to these jurisdictions or reflect broader tendencies across the EU.

This preliminary phase of a potentially larger study aims to map how Article 6(2) Rome I Regulation is understood in academic literature across all EU Member States. Through a structured review of national legal scholarship, it will identify prevailing interpretations, key theoretical arguments, and the extent to which doctrinal debates align or diverge across jurisdictions. The main research questions include:

- How do scholars across the EU interpret Article 6(2) Rome I Regulation?
- Is there a dominant academic preference for the preferential law approach, the protection principle approach, or another framework?

If the findings indicate that Member States follow different approaches, the study will be expanded to include an in-depth examination of national case law.

Interested in participating?

Legal scholars across the EU are invited to contribute from their respective jurisdictions. **The results of this preliminary phase will provide a foundation for potential further collaborative research which may then result in a joint publication and/or workshop examining the role and future of Article 6(2) Rome I Regulation.**

At this preliminary phase of the study, actual time commitments are limited. Participants will be provided a questionnaire (click here) with three questions:

- How does national scholarship interpret Article 6(2) Rome I Regulation?
- Please list at least five national scholarly works supporting your previous answer.
- Do divergent scholarly opinions exist? If so, please explain and provide references.

Please contact the coordinator of this study directly to express interest in participating (see below).

Academic outcomes

As mentioned previously, this preliminary phase merely aims at mapping the current national legal landscape around Article 6(2) Rome I Regulation. **If the**

submitted results differ to an appreciable extent, the goal is to work on a joint report on all EU MS, including a review of national literature and national case law.

Contact and coordination

This study is coordinated by Benedikt Schmitz.

If you have any questions about the study or want to participate by providing a country report, please contact him directly.

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