

# ECJ Judgment in Gambazzi

The European Court of Justice (ECJ) has delivered today its judgment in *Gambazzi v. Daimler Chrysler Canada, Inc. and CIBC Mellon Trust Company*.

The case, previously known as *Stolzenberg*, had been already litigated in numerous jurisdictions (see our previous posts [here](#) and [here](#)). The defendants had sued Gambazzi in London and obtained there a *Mareva* injunction. As Gambazzi failed to comply with it, he was sanctioned by the English court and debarred from defending in the main proceedings. As a consequence, the defendants entered into a default judgment against him. They then sought enforcement of the said default judgment throughout Europe, including in Italy. The Court of Appeal of Milan referred the case to the ECJ, and asked:

*On the basis of the public policy clause in Article 27(1) of the Brussels Convention, may the court of the State requested to enforce a judgment take account of the fact that the court of the State which handed down that judgment denied the unsuccessful party which had entered an appearance the opportunity to present any form of defence following the issue of a debarring order as described [in the grounds of the present Order]? Or does the interpretation of that provision in conjunction with the principles to be inferred from Article 26 et seq. of the Convention, concerning the mutual recognition and enforcement of judgments within the Community, preclude the national court from finding that civil proceedings in which a party has been prevented from exercising the rights of the defence, on grounds of a debarring order made by the court because of that party's failure to comply with a court injunction, are contrary to public policy within the meaning of Article 27(1)?*

Following closely the conclusions of Advocate General Kokott, the ECJ ruled this morning that it could only give guidelines to national courts so that they would make a decision themselves. It held:

***the court of the State in which enforcement is sought may take into account, with regard to the public policy clause referred to in [Article 27(1)], the fact that the court of the State of origin ruled on the applicant's claims without hearing the defendant, who entered appearance before it but who was excluded from the proceedings by***

*order on the ground that he had not complied with the obligations imposed by an order made earlier in the same proceedings, if, following a comprehensive assessment of the proceedings and in the light of all the circumstances, it appears to it that that exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard.*

Clearly, this is a bit disappointing. We will have to wait longer before getting a chance to know whether nuclear weapons of English civil procedure are compatible with human rights in general, and Article 6 of the European Convention on Human Rights (ECHR) in particular.

The ECJ addressed two issues in its judgment.

First, it made it clear that English default judgments are judgments within the meaning of Article 25 of the Brussels Convention. It held that they meet the *Denilauler* test of being adversarial. This is good to know, but I am not sure this was the most interesting issue. Advocate General Kokott had also focused on whether English default judgments meet the *Solokleinmotoren* test, and this was much more questionable. AG Kokott had concluded that they did meet that test, but the Court is silent in this respect.

Second, the Court discussed whether the English default judgment was contrary to public policy. It only addressed the issue referred to it by the Milan Court, i.e. whether rendering a 'default' judgment as a consequence of debarment from defending was a violation of the right to a fair trial. Along the lines of AG Kokott's conclusions, the ECJ only gave guidelines to national courts which will have to appreciate whether, in the light of all circumstances, there was such violation. In particular, the Court insisted that they should assess whether debarment was a proportionate sanction.


33      *With regard to the sanction adopted in the main proceedings, the exclusion of Mr Gambazzi from any participation in the proceedings, that is, as the Advocate General stated in point 67 of her Opinion, the most serious restriction possible on the rights of the defence. Consequently, such a restriction must satisfy very exacting requirements if it is not to be regarded as a manifest and disproportionate infringement of those rights.*

34      *It is for the national court to assess, in the light of the specific circumstances of these proceedings, if that is the case.*

The ECJ does not discuss whether the lack of reasons of English default judgments is contrary to Article 6 ECHR. It does not discuss either whether being prevented from accessing to one's evidence because it is withheld by one's lawyer is contrary to the right to a fair trial. As we had previously reported, other courts in Europe had found that these were violations of their public policy.

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## **BIICL Fellowship in Private International Law**

The British Institute of International and Comparative Law is seeking to  appoint a Senior Research Fellow in International Private Law.

The advertisement can be found [here](#) and a full job description can be found [here](#). The post is a research post, with no teaching duties. The fellow will be appointed for five years and be expected to lead the Institute research and events programme in international private law.

The closing date for applications was March 16. This looks like a (bad) joke, but if you are interested, it might be that your application could still be considered.

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# Yearbook of Private International Law, vol. X (2008)

*I am grateful to Gian Paolo Romano, Production Editor of the Yearbook of Private International Law, for providing this presentation of the new volume of the YPIL.*

✘ **Volume X (2008) of the Yearbook of Private International Law**, edited by Prof. Andrea Bonomi and Prof. Paul Volken, and published by Sellier European Law Publishers in association with the Swiss Institute of Comparative Law (ISDC) of Lausanne, was put on the market last week.

Volume X, which celebrates the tenth anniversary of the Yearbook, is made up of 35 contributions on the most various subjects authored by scholars and practitioners of almost all continents. Its 743 pages make it one of the most considerable collections of PIL essays in English language of recent years. The volume may be ordered via the publisher's website, where the table of contents and an extract are available for download.

The **Doctrine** section includes three contributions concerning the European judicial area: a first on the revised Lugano Convention on jurisdiction and the recognition and enforcement of judgments of 30 October 2007, a second on the European jurisdiction rules applicable to commercial agents and a third on the recent decision of the European Court of Justice in *Grunkin-Paul*, a seminal case that opens new perspectives for the application of the recognition principle as opposed to classical conflict rules in the field of international family law. Other original contributions concern damages for breach of choice-of-forum agreements, accidental discrimination in conflict of laws and the recent Spanish regulation of arbitration agreements.

Two **Special sections** of this volume are devoted, respectively, to the EC Regulation on the law applicable to contractual obligations (Rome I) and to the new Hague Convention and Protocol on maintenance obligations.

- In addition to several contributions of general nature, the **special section on Rome I** includes detailed analyses of the impact that the Regulation will have on the connection of specific categories of contracts (contracts relating to intellectual and industrial property rights, distribution and

franchise contracts, financial market and insurance contracts), as well as some remarks from a Japanese perspective.

- The **special section on maintenance obligations** includes insider commentaries on the two instruments adopted by the Hague Conference on 23 November 2007: the Convention on the International Recovery of Child Support and other Forms of Family Maintenance and the Protocol, which includes rules on the law applicable to maintenance obligations and aims to replace the 1973 Hague Applicable Law Convention.

The **National Reports** section includes the second part of a detailed study on private international law before African courts, a critical analysis of the new Spanish adoption system and of the conflict of laws issues raised by the Panamanian business company, two articles on arbitration (in Israel and Romania), and several contributions concerning recent developments in Eastern European countries (Macedonia, Estonia, Lithuania and Belarus). Africa is also at the centre of the report on UNCITRAL activities for international trade law reform in that continent.

The section on **Court Decisions** includes – together with commentaries on the *Weiss und Partner* and the *Sundelind López* decisions of the ECJ – detailed analyses of a recent interesting ruling of the French *Cour de cassation* on overriding mandatory provisions and of two Croatian judgments on copyright infringements.

The **Forum Section** is devoted to the recognition of trusts and their use in estate planning, the juridicity of the *lex mercatoria* and the use of nationality as a connecting factor for the capacity to negotiate.

Here is the full list of the contributions:

## **Doctrine**

- *Fausto Pocar*, The New Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters;
- *Peter Mankowski*, Commercial Agents under European Jurisdiction Rules. The Brussels I Regulation Plus the Procedural Consequences of *Ingmar*;
- *Koji Takahashi*, Damages for Breach of a Choice-of-court Agreement;

- *Carlos Esplugues Mota*, Arbitration Agreements in International Arbitration. The New Spanish Regulation;
- *Gerhard Dannemann*, Accidental Discrimination in the Conflict of Laws: Applying, Considering, and Adjusting Rules from Different Jurisdiction;
- *Matthias Lehmann*, What's in a Name? *Grunkin-Paul* and Beyond;

## **Rome I Regulation - Selected Topics**

- *Andrea Bonomi*, The Rome I Regulation on the Law Applicable to Contractual Obligations – Some General Remarks;
- *Eva Lein*, The New Rome I / Rome II / Brussels I Synergy;
- *Pedro A. De Miguel Asensio*, Applicable Law in the Absence of Choice to Contracts Relating to Intellectual or Industrial Property Right;
- *Marie-Elodie Ancel*, The Rome I Regulation and Distribution Contracts;
- *Laura García Gutiérrez*, Franchise Contracts and the Rome I Regulation on the Law Applicable to International Contracts;
- *Francisco J. Garcímartín Alférez*, New Issues in the Rome I Regulation: The Special Provisions on Financial Market Contracts;
- *Helmut Heiss*, Insurance Contracts in Rome I: Another Recent Failure of the European Legislature;
- *Andrea Bonomi*, Overriding Mandatory Provisions in the Rome I Regulation on the Law Applicable to Contracts;
- *Yasuhiro Okuda*, A Short Look at Rome I on Contract Conflicts from a Japanese Perspective;

## **New Hague Maintenance Convention and Protocol**

- *William Duncan*, The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. Comments on its Objectives and Some of its Special Features;
- *Andrea Bonomi*, The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations;
- *Philippe Lortie*, The Development of Medium and Technology Neutral International Treaties in Support of Post-Convention Information Technology Systems – The Example of the 2007 Hague Convention and Protocol;

## **National Reports**

- *Richard Frimpong Oppong*, A Decade of Private International Law in African Courts 1997-2007 (Part II);
- *Santiago Álvarez González*, The New International Adoption System in Spain;
- *Daphna Kapeliuk*, International Commercial Arbitration. The Israeli Perspective;
- *Toni Deskoski*, The New Macedonian Private International Law Act of 2007;
- *Karin Sein*, The Development of Private International Law in Estonia;
- *Radu Bogdan Bobei*, Current Status of International Arbitration in Romania;
- *Marijus Krasnickas*, Recognition and Enforcement of Foreign Judicial Decisions in the Republic of Lithuania;
- *Daria Solenik*, Attempting a 'Judicial Restatement' of Private International Law in Belarus;
- *Gilberto Boutin*, The Panamanian Business Company and the Conflict of Laws;

### ***News from UNCITRAL***

- *Luca G. Castellani*, International Trade Law Reform in Africa;

### ***Court Decisions***

- *Pietro Franzina*, Translation Requirements under the EC Service Regulation: The *Weiss und Partner* Decision of the ECJ;
- *Marta Requejo Isidro*, Regulation (EC) 2201/03 and its Personal Scope: ECJ, November 29, 2007, Case C-68/07, *Sundelind López*;
- *Paola Piroddi*, The French Plumber, Subcontracting, and the Internal Market;
- *Ivana Kunda*, Two Recent Croatian Decisions on Copyright Infringement: Conflict of Laws and More;

### ***Forum***

- *Julien Perrin*, The Recognition of Trusts and Their Use in Estate Planning under Continental Laws;
- *Thomas Schultz*, Some Critical Comments on the Juridicity of *Lex Mercatoria*;

- *Benedetta Ubertazzi*, The Inapplicability of the Connecting Factor of Nationality to the Negotiating Capacity in International Commerce.

*(See also our previous posts on the 2006 and 2007 volumes of the YPIL)*

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# European Parliament: Resolution on Cooperation in the Taking of Evidence in Civil or Commercial Matters

The **European Parliament's Resolution** of 10 March 2009 on **cooperation between the courts of the Member States in the taking of evidence** in civil or commercial matters (2008/2180(INI)) has been published (see the Parliament's website).

The resolution constitutes the Parliament's response to the Commission's report on the application of the Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (COM(2007)0769).

The Commission's report on the application of Regulation (EC) No. 1206/2001 had been prepared on the basis of Art. 23 Regulation (EC) No. 1206/2001 stating that no later than 1 January 2007, and every five years later, the Commission shall present a report on the application of the Regulation.

## **In its report, the Commission**

- *encourages all further efforts – in particular beyond the dissemination of the practice guide – to enhance the level of familiarity with the Regulation among legal practitioners in the European Union*
- *is of the view that measures should be taken by Member States to ensure that the 90 day time frame for the execution of requests is*

*complied with*

- *is of the view that the modern communications technology, in particular videoconferencing which is an important means to simplify and accelerate the taking of evidence, is by far not used yet to its possible extent, and encourages Member States to take measures to introduce the necessary means in their courts and tribunals to perform videoconferences in the context of the taking of evidence. The importance of the further promotion of E-Justice has also been stressed by the Council (at its meeting of 12 and 13 June 2007) and by the European Council (at its meeting of 21 and 22 June 2007)*

In the **Parliament's resolution**, the delayed submission of the Commission's report on 5 December 2007 is the first but not the only point of criticism brought forward by the Parliament. The resolution rather points out several issues which are regarded as problematic with regard to the functioning of the Regulation:

The Parliament

- 1. Condemns the late submission of the above-mentioned Commission report, which, according to Article 23 of Regulation (EC) No 1206/2001, should have been submitted by 1 January 2007 but in fact was not submitted until 5 December 2007;*
- 2. Concurs with the Commission that greater efforts should be made by Member States to bring the Regulation sufficiently to the attention of judges and practitioners in the Member States in order to encourage direct court-to-court contacts, since the direct taking of evidence provided for in Article 17 of the Regulation has shown its potential to simplify and accelerate the taking of evidence, without causing any particular problems;*
- 3. Considers that it is essential to bear in mind that the central bodies provided for in the Regulation still have an important role to play in overseeing the work of the courts which have responsibility for dealing with requests under the Regulation and in resolving problems when they arise; points out that the European Judicial Network can help to solve problems which have not been resolved by the central bodies and that recourse to those bodies could be reduced if requesting courts were made more aware of the Regulation; takes the view that the assistance provided by the central bodies may be critical for*

*small local courts faced with a problem relating to the taking of evidence in a cross-border context for the first time;*

*4. Advocates the extensive use of information technology and video-conferencing, coupled with a secure system for sending and receiving e-mails, which should become in due course the ordinary means of transmitting requests for the taking of evidence; notes that, in their responses to a questionnaire sent out by the Hague Conference, some Member States mention problems in connection with the compatibility of video links, and considers that this should be taken up under the European e-Justice strategy;*

*5. Considers that the fact that in many Member States facilities for video-conferencing are not yet available, together with the Commission's finding that modern means of communication are "still used rather rarely", confirms the wisdom of the plans for the European e-Justice strategy recently recommended by Parliament's Legal Affairs Committee; urges Member States to put more resources into installing modern communications facilities in the courts and training judges to use them, and calls on the Commission to produce specific proposals aimed at improving the current state of affairs; takes the view that the appropriate degree of EU assistance and financial support should be provided as soon as possible;*

*6. Takes the view that efforts should be made in the context of the e-Justice strategy to assist courts in meeting the translation and interpreting demands posed by the taking of evidence across borders in an enlarged European Union;*

*7. Notes with considerable concern the Commission's finding that the 90-day time-limit for complying with requests for the taking of evidence, as laid down in Article 10(1) of the Regulation, is exceeded in a "significant number of cases" and that "in some cases even more than 6 months are required"; calls on the Commission to submit specific proposals as quickly as possible on measures to remedy this problem, one option to consider being a complaints body or contact point within the European Judicial Network;*

*8. Criticises the fact that, by concluding that the taking of evidence has been improved in every respect as a result of Regulation (EC) No 1206/2001, the Commission report presents an inaccurate picture of the situation; calls on the Commission, therefore, to provide practical support, inter alia in the context of*

*the e-Justice strategy, and to make greater efforts to realise the true potential of the Regulation for improving the operation of civil justice for citizens, businesses, practitioners and judges;*

*9. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.*

*Many thanks to Prof. Burkhard Hess (University of Heidelberg) for the tip-off.*

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# Swiss Institute of Comparative Law: First Book on the Rome I Regulation in French

✖ The contributions presented at the **20th Journée de droit international privé**, jointly organised in March 2008 in Lausanne by the Swiss Institute of Comparative Law (ISDC) and the Centre de droit comparé, européen et international (CDCEI) of the Law Faculty of University of Lausanne and dedicated to the Rome I Regulation, have been published by Schulthess under the editorship of *Eleanor Cashin Ritaine* and *Andrea Bonomi*: **“Le nouveau règlement européen ‘Rome I’ relatif à la loi applicable aux obligations contractuelles”**.

Here’s the table of contents (available as a .pdf file):

**Avant-propos** (*Andrea Bonomi / Eleanor Cashin Ritaine*);

**Première partie: Panorama introductif et principes généraux**

- Le Règlement Rome I: la communautarisation et la modernisation de la Convention de Rome (*Michael Wilderspin*);
- La nouvelle synergie Rome I / Rome II / Bruxelles I (*Eva Lein*);
- The New Rome I Regulation on the Law Applicable to Contractual Obligations: Relationships with International Conventions of UNCITRAL,

- the Hague Conference and UNIDROIT (*Caroline Nicholas*);
- Choice of the Applicable Law (*Stefan Leible*);
- La loi applicable à défaut de choix (*Bertrand Ancel*);

## **Deuxième partie: Quelques contrats particuliers et mécanismes spécifiques**

- Insurance Contracts in “Rome I”: Another Recent Failure of the European Legislature (*Helmut Heiss*);
- Consumer Contracts under Article 6 of the Rome I Regulation (*Peter Mankowski*);
- New Issues in the Rome I Regulation: the Special Provisions on Financial Market Contracts (*Francisco J. Garcimartín Alférez*);
- Les règles applicables aux transferts internationaux de créance à l’aune du nouveau Règlement Rome I et du droit conventionnel (*Eleanor Cashin Ritaine*);
- Le régime des règles impératives et des lois de police dans le Règlement «Rome I» sur la loi applicable aux contrats (*Andrea Bonomi*).

Title: **Le nouveau règlement européen “Rome I” relatif à la loi applicable aux obligations contractuelles. Actes de la 20e Journée de droit international privé du 14 mars 2008 à Lausanne**, edited by *Andrea Bonomi* and *Eleanor Cashin Ritaine*, Schulthess (Série des publications de l’ISDC, vol. 62), Zürich, 2009, 251 pages.

ISBN/ISSN: 978-3-7255-5799-8. Price: CHF 75,00. Available at *Schultess*.

(Many thanks to Prof. Andrea Bonomi)

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# **Articles on Rome II and Hague Convention on Choice of Court**

# Agreements

The current issue (Vol. 73, No. 1, January 2009) of the *Rabels Zeitschrift* contains inter alia two interesting articles on the Rome II Regulation and the Hague Convention on Choice of Court Agreements:

**Thomas Kadner Graziano:** “The Law Applicable to Non-Contractual Obligations (Rome II Regulation)” – the English abstract reads as follows:

*As of 11 January 2009, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) will be applicable in twenty-six European Union Member States. The Rome II Regulation applies to events giving rise to damage which occur after its entry into force on 19 August 2007 in proceedings commenced after 11 January 2009. This Regulation provides conflict of law rules for tort and delict, unjust enrichment and restitution, negotiorum gestio and culpa in contrahendo. It has a wide scope covering almost all issues raised in cases of extra-contractual liability.*

*The majority of the rules in the Rome II Regulation are inspired by existing rules from European countries. Others are pioneering, innovative new rules. Compared to many of the national systems of private international law of non-contractual obligations, Rome II will bring significant changes and several new solutions. The Rome II Regulation introduces precise, modern and well-targeted rules on the applicable law that are well adapted to the needs of European actors. It provides, in particular, specific rules governing a certain number of specific torts (e.g. product liability, unfair competition and acts restricting free competition, environmental damage, infringement of intellectual property rights, and industrial action). The provisions of the Regulation will considerably increase legal certainty on the European scale, while at the same time giving courts the freedom necessary to deal with new or exceptional situations. This contribution presents the rules designating the applicable law set out in the Rome II Regulation. The *raisons d’êtres* behind these rules are explored and ways in which to interpret the Regulation’s provisions are suggested. Particular attention is given to the interplay between Rome II and the two Hague Conventions relating to non-contractual obligations. Finally, gaps and deficiencies in the Regulation are exposed, in particular gaps relating to the law*

*applicable to violations of privacy and personality rights and traffic accidents and product liability continuing to be governed by the Hague Conventions in a number of countries, and proposals are made for filling them.*

**Rolf Wagner:** “The Hague Convention of 30 June 2005 on Choice of Court Agreements” – the English abstract reads as follows:

*In 1992 the United States of America proposed that the Hague Conference for Private International Law should devise a worldwide Convention on Enforcement of Judgments in Civil and Commercial Matters. The member states of the European Community saw in the US proposal an opportunity to harmonize the bases of jurisdiction and also had in mind the far-reaching bases of jurisdiction in some countries outside of Europe as well as the dual approach of the Brussels Convention which combines recognition and enforcement of judgments with harmonization of bases of jurisdiction (double convention). Despite great efforts, the Hague Conference did not succeed in devising a convention that laid down common rules of jurisdiction in civil and commercial matters. After long negotiations the Conference was only able to agree on the lowest common denominator and accordingly concluded the Convention of 30 June 2005 on Choice of Court Agreements (Choice of Court Convention). This Convention aims to do for choice of court agreements what the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards has done for arbitration agreements.*

*The article provides an overview of the negotiations and explains in detail the content of the Choice of Court Convention. In principle the Convention applies only to exclusive choice of court agreements. However an opt-in provision allows contracting states to extend the rules on recognition and enforcement to non-exclusive choice of court agreements as well. The Convention is based on three principles. According to the first principle the chosen court in a contracting state must hear the case when proceedings are brought before it and may not stay or dismiss the case on the basis of forum non conveniens. Secondly, any court in another contracting state before which proceedings are brought must refuse to hear the case. Thirdly, a judgment given by the chosen court must be recognized and enforced in principle in all contracting states. The European instruments like the Brussels I Regulation and the Lugano Convention will continue to apply in appropriate cases albeit with a somewhat*

*reduced scope. The article further elaborates on the advantages and disadvantages of the Choice of Court Convention and comes to the conclusion that the advantages outweigh the disadvantages. The European Community has exclusive competence to sign and ratify the Convention. The author welcomes the proposal by the European Commission that the EC should sign the Convention. Last but not least the article raises the question what has to be done in Germany to implement the Convention if the EC decides to ratify the Convention.*

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## **Tokyo International Symposium: “Intellectual Property and International Civil Litigation”**

The Copyright Group, the Industrial Property Right Group, and International Civil Procedure Group all working within the “Transparency of Japanese Law” Project are jointly organising the international symposium on the ever more challenging issues arising in the field where private international law meets intellectual property law. The sessions are classically divided into three parts: jurisdiction, applicable law, and recognition and enforcement. The presentations will focus on the CLIP proposal and the counterpart Japanese proposal, whereas the ALI Principles will be generally described in the introduction. The symposium will be held on 8 and 9 May 2009 in Tokyo, Japan.

The latest program may be retrieved [here](#). Any questions in regard to this symposium may be addressed to Professor Toshiyuki Kono (Kyushu University) at [tomeika-sympo@law.kyushu-u.ac.jp](mailto:tomeika-sympo@law.kyushu-u.ac.jp).

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# **A new Spanish Magazine: Cuadernos de Derecho Transnacional**

On March 16, 2009 the first issue of a new legal journal dedicated to Private International Law has seen the light. “Cuadernos de Derecho Transnacional”(CDT) (“TransnationalLaw Review”) is published by the Private International Law Section of the University Carlos III of Madrid, Spain. CDT is directed by Professors Alfonso-Luis Calvo and Javier Carrascosa.

The new legal journal offers high quality articles, papers and notes on the most interesting current trends of private International Law.

“Cuadernos de Derecho Transnacional” appears in a completely free on line format. No password is required. It is possible to have access to all the contents of this new legal journal from any country in the world.

All the contributions offered by CDT are presented in PDF (complete text). They all are preceded by an abstract and a set of key-words in two languages.

Articles, papers, essays and other contributions to “Cuadernos de Derecho Transnacional” can be written in any of the principal European languages. “Cuadernos de Derecho Transnacional” has a previous rigorous quality control of any contribution before it is published.

This first issue of CDT (vol. 1, 2009, number 1), contains the following contributions:

Tito Ballarino, Il Regolamento Roma I: forza di legge, effetti, contenuto, pp. 5-18.

Hilda Aguilar Grieder, Los contratos internacionales de distribución comercial en el Reglamento Roma I, pp. 19-35.

Alfonso-Luis Calvo Caravaca, Javier Carrascosa González, La Ley aplicable al divorcio en Europa: el futuro reglamento Roma III, pp. 36-71.

María del Pilar Diago Diago, El comercio internacional de diamantes: sistema de certificación del Proceso Kimberley, pp. 72-91.

Pietro Franzina, Las relaciones entre el Reglamento Roma I y los convenios internacionales sobre conflictos de leyes en materia contractual, pp. 92-101

Antonio Leandro, La legge applicabile alla revocatoria fallimentare nel Regolamento (CE) n° 1346/2000, pp. 102-111

Andrés Rodríguez Benot, La exclusión de las obligaciones derivadas del Derecho de familia y sucesiones del ámbito material de aplicación del Reglamento Roma I, pp. 112-130.

Francisco Martínez Rivas, Traslado internacional de sede social en la Unión Europea: del caso “Daily Mail” al caso “Cartesio”. Veinte años no son nada, pp. 132-142.

MaríaDolores Ortiz Vidal, El caso Grunkin-Paul: notas a la STJUE de 14 de octubre de 2008, pp. 143-151.

*Many thanks to Professor Carrascosa González for providing this brief presentation of the new magazine*

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# Webcast of the 2008 Venice Conference on the Rome I Regulation

We pointed out in a previous post the programme of the conference on the Rome I reg. hosted by the University of Venice “Ca’ Foscari” on 28 November 2008: **“La nuova disciplina comunitaria della legge applicabile alle obbligazioni contrattuali”** (The new EC regime on the law applicable to contractual obligations).

For those who could not attend the event, most of the reports were recorded and are available for viewing on the website of the Italian Society of International Law (SIDI-ISIL). Here’s the list:

## **Problemi generali (General Problems)**

- *Paul Lagarde* (University of Paris I - Sorbonne): Introduction. Considérations de méthode (*in French*);

- *Fabrizio Marrella* (University “Ca’ Foscari” of Venice): Funzione ed oggetto dell’autonomia della volontà: il problema della mancata “delocalizzazione” (Function and Object of Party Autonomy: the Issue of “delocalization”);
- *Nerina Boschiero* (University of Milan): I limiti al principio di autonomia derivanti dalle norme imperative, dall’ordine pubblico e dal diritto comunitario derivato (Limits to Party Autonomy: Mandatory Provisions, Public Policy and Secondary EC Law);
- *Ugo Villani* (University LUISS-Guido Carli of Rome): La legge applicabile in mancanza di scelta dei contraenti (Applicable Law in the Absence of Choice);

### **Questioni Specifiche (Specific Issues)**

- *Paolo Bertoli* (University of Insubria): Ambito di applicazione e materie escluse: in particolare, la responsabilità precontrattuale (Scope of Application and Excluded Matters: in particular, Precontractual Liability);
- *Paola Piroddi* (University of Cagliari): I contratti di assicurazione (Insurance Contracts);
- *Francesco Seatzu* (University of Cagliari): I contratti conclusi con i consumatori e i contratti individuali di lavoro (Consumer Contracts and Individual Employment Contracts);
- *Gianluca Contaldi* (University of Macerata): I contratti di trasporto (Contracts of Carriage);
- *Angelica Bonfanti* (University of Milan): Le relazioni con le convenzioni internazionali in vigore (Relationships with Existing International Conventions).

**Concluding remarks:** *Tullio Treves* (University of Milan; Judge, ITLOS).

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## **Discovery in Aid of Litigation Post-**

# “Intel”: The Continuing Split

Law.com just posted a good article on the follow-on litigation after the Supreme Court’s decision in *Intel Corp. v. Advanced Micro Systems, Inc.*, 542 U.S. 241 (2004). That decision, in short, held that 28 U.S.C. 1782—which empowers federal district courts to compel discovery “for use in a proceeding in a foreign or international tribunal”—could be utilized in aid of the EC Directorate-General for competition. That body was a “foreign or international tribunal” in the eyes of the Court. The next logical question, though, is “what about private arbitral tribunals?” Is that a “foreign or international tribunal” within the meaning of Section 1782?

Despite the broad guidance given by the Court in *Intel*, the lower courts remain split: two district courts in three separate districts have held that private arbitral tribunals are not included in the statute, while three others have held that they are. The authors of this article provide a good summary of the post-*Intel* case law, up to and including the most recent decision denying discovery in aid of private arbitration by the Southern District of Texas.