ECJ Judgment in West Tankers

The European Court of Justice delivered its judgment in *West Tankers* this morning (we had previously reported on the conclusions of Advocate General Kokott in this case).

The issue before the court was, in the words of the court,

> *19. … essentially, whether it is incompatible with Regulation No 44/2001 for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement, even though Article 1(2)(d) of the regulation excludes arbitration from the scope thereof*

The ECJ answers that it is indeed incompatible:

> *It is incompatible with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement.*

In order to reach this conclusion, the Court offers a reasoning in two steps. First, the Regulation applies. Second, the Regulation excludes anti-suit injunctions.

Scope of Regulation 44/2001

This was arguably the key issue. The Regulation excludes arbitration from its scope. Yet, the Court finds that the Regulation still controls:

> *In that regard it must be borne in mind that, in order to determine whether a dispute falls within the scope of Regulation No 44/2001, reference must be made solely to the subject-matter of the proceedings (Rich, paragraph 26). More specifically, its place in the scope of Regulation No 44/2001 is determined by the nature of the rights which the proceedings in question serve to protect*

(Van Uden, paragraph 33).

Proceedings, such as those in the main proceedings, which lead to the making of an anti-suit injunction, cannot, therefore, come within the scope of Regulation No 44/2001.

However, even though proceedings do not come within the scope of Regulation No 44/2001, they may nevertheless have consequences which undermine its effectiveness, namely preventing the attainment of the objectives of unification of the rules of conflict of jurisdiction in civil and commercial matters and the free movement of decisions in those matters. This is so, inter alia, where such proceedings prevent a court of another Member State from exercising the jurisdiction conferred on it by Regulation No 44/2001.
It is therefore appropriate to consider whether the proceedings brought by Allianz and Generali against West Tankers before the Tribunale di Siracusa themselves come within the scope of Regulation No 44/2001 and then to ascertain the effects of the anti-suit injunction on those proceedings.

In that regard, the Court finds, as noted by the Advocate General in points 53 and 54 of her Opinion, that, if, because of the subject-matter of the dispute, that is, the nature of the rights to be protected in proceedings, such as a claim for damages, those proceedings come within the scope of Regulation No 44/2001, a preliminary issue concerning the applicability of an arbitration agreement, including in particular its validity, also comes within its scope of application. This finding is supported by paragraph 35 of the Report on the accession of the Hellenic Republic to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36) ('the Brussels Convention'), presented by Messrs Evrigenis and Kerameus (OJ 1986 C 298, p. 1). That paragraph states that the verification, as an incidental question, of the validity of an arbitration agreement which is cited by a litigant in order to contest the jurisdiction of the court before which he is being sued pursuant to the Brussels Convention, must be considered as falling within its scope.

Regulation 44/2001 excludes anti-suit

injunctions

Once the Regulation was found applicable, it could certainly be expected, in the light of *Turner*, that the Court would not allow anti-suit injunctions:

> *It follows that the objection of lack of jurisdiction raised by West Tankers before the Tribunale di Siracusa on the basis of the existence of an arbitration agreement, including the question of the validity of that agreement, comes within the scope of Regulation No 44/2001 and that it is therefore exclusively for that court to rule on that objection and on its own jurisdiction, pursuant to Articles 1(2)(d) and 5(3) of that regulation.*
>
> *Accordingly, the use of an anti-suit injunction to prevent a court of a Member State, which normally has jurisdiction to resolve a dispute under Article 5(3) of Regulation No 44/2001, from ruling, in accordance with Article 1(2)(d) of that regulation, on the very applicability of the regulation to the dispute brought before it necessarily amounts to stripping that court of the power to rule on its own jurisdiction under Regulation No 44/2001.*
>
> *It follows, first, as noted by the Advocate General in point 57 of her Opinion, that an anti-suit injunction, such as that in the main proceedings, is contrary to the general principle which emerges from the case-law of the Court on the Brussels Convention, that every court seised itself determines, under the rules applicable to it, whether it has jurisdiction to resolve the dispute before it (see, to that effect, Gasser, paragraphs 48 and 49). It should be borne in mind in that regard that Regulation No 44/2001, apart from a few limited exceptions which are not relevant to the main proceedings, does not authorise the jurisdiction of a court of a Member State to be reviewed by a court in another Member State (Case C?351/89 Overseas Union Insurance and Others [1991] ECR I-3317, paragraph 24, and Turner, paragraph 26). That jurisdiction is determined directly by the rules laid down by that regulation, including those relating to its scope of application. Thus in no case is a court of one Member State in a better position to determine whether the court of another Member State has jurisdiction (OverseasUnion Insurance and Others, paragraph 23, and Gasser, paragraph 48).*
>
> *Further, in obstructing the court of another Member State in the exercise of the powers conferred on it by Regulation No 44/2001, namely to decide, on the*

basis of the rules defining the material scope of that regulation, including Article 1(2)(d) thereof, whether that regulation is applicable, such an anti-suit injunction also runs counter to the trust which the Member States accord to one another's legal systems and judicial institutions and on which the system of jurisdiction under Regulation No 44/2001 is based (see, to that effect, Turner, paragraph 24).
Lastly, if, by means of an anti-suit injunction, the Tribunale di Siracusa were prevented from examining itself the preliminary issue of the validity or the applicability of the arbitration agreement, a party could avoid the proceedings merely by relying on that agreement and the applicant, which considers that the agreement is void, inoperative or incapable of being performed, would thus be barred from access to the court before which it brought proceedings under Article 5(3) of Regulation No 44/2001 and would therefore be deprived of a form of judicial protection to which it is entitled.

Consequently, an anti-suit injunction, such as that in the main proceedings, is not compatible with Regulation No 44/2001.

Verona Conference on the Rome I Regulation

The Faculty of Law at Verona are hosting a conference on the Rome I Regulation on 19-20 March 2009. The conference flyer describes its scope thusly:

Since it is believed that the proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-laws rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought, it cannot surprise that efforts have been made to draft uniform European conflict-of-laws rules in the area of contract law as well. This conference will examine in detail the result to which these efforts have led, namely the Regulation (EC) No

593/2008 of the European Parliament and the of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

The programme itself, along with details on how to register, can be found on the flyer.

Volume 4, Issue 3, Journal of Private International Law

The latest issue of the *Journal of Private International Law* is out, and the contents are:

- **Understanding the English Response to the Europeanisation of Private International Law** by *Jonathan Harris*
- **Licences and Assignments of Intellectual Property Rights Under the Rome I Regulation** by *Paul LC Torremans*
- **Matrimonial Property on Divorce: All Change in Europe** by *CMV Clarkson*
- **A Defence of the Established Approach to the Grave Risk Exception in the Hague Child Abduction Convention** by *Peter Ripley*
- **Cross-Border Recognition and Enforcement of Foreign Judgments in Vietnam** by *Ngoc Bich Du*
- **The Damage of Damages: *Agreements on Jurisdiction and Choice of Law*** by *CJS Knight*

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Respect for Algerian/Moroccan Children's Origin

I am grateful to Horatia Muir Watt to have accepted to react to my post on Adoption of Algerian/Moroccan Children in France.

I certainly agree with Gilles Cuniberti that the prohibition resulting from article 370-3 of the Civil Code certainly lacks nuance. In many cases, it seems clearly contrary to the interests of a child who has been abandoned at birth in her country of origin and is growing up in France with a foster parent under a *kefala*, to refuse to allow the adoption. As Gilles Cuniberti points out, the lower courts are very often ready in such cases to overlook the prohibitive content of the personal law of the child and the *Cour de cassation*'s own approach before the legislative reform in 2001 was to facilitate adoption whenever the natural parents or guardians of the child were fully aware of the radical consequences of an "adoption plénière" under French law, which cuts off all blood-ties between the child and its natural family.

Beyond the policy of discouraging financial transactions between prosperous prospective adoptive parents and young women from poor countries who are ready to conceive and abandon a child for money (a problem not specific to cases involving children from countries where adoption is unknown or prohibited), which is more generally that of the 1993 Hague Convention (under the aegis of which, henceforth, the 2001 channels the flow of inter-country adoptions), the 2001 reform was designed to defer to the refusal of other legal systems to accept adoption, either for religious reasons, or to avoid a generation of children from being drained from developing economies towards Western homes.

This "cultural deference" argument was not based on mere diplomatic considerations – as such it would not have passed muster under the New York Convention, which requires the interest of the child (not of governments) to be paramount – but was formulated in the name of the superior interest of the child. The idea was that the potential trauma linked, in the context of any adoption (whether domestic or inter-country, legal or illegal), to the fact that the child, whose own birth may often already be accompanied by psychologically damaging circumstances, is severed from her natural parents, is likely to be accentuated by

ignoring the cultural content of the child's personal status. "Respect for the child's origins" meant respect for the prohibition contained in the child's national law.

This metaphor must of course be taken seriously. Adoption can be psychologically difficult for the child in any circumstances, however loving and understanding the adoptive parents may be, and when the child has been displaced from a very different cultural environment (be it exclusively pre-natal), involving far-reaching linguistic, religious, social and economic changes in her life, the consequences should not be under-estimated. One may wonder however whether the refusal to go against the prohibitive content of the child's personal status is not taking the (very legitimate) desire to "respect the child's origins" much too far. Forcing the consent of the child's mother, which should of course be severely sanctioned and is so under the Hague regime, is one thing; deferring to the content of the child's national law notwithstanding the present interest of the child is clearly another! This is, at any rate, what the French lower courts seems to think. Particularly when, as seems frequent in practice, the authorities of the country of origin allow the child (who may well not have a family to reclaim it) to leave the territory with a guardian by virtue of a *kefala*, knowing full well that the guardian may later ask for an adoption in France.

It is true that the prohibition contained in article 370-3 is only effective when the child is actually born in the country which prohibits adoption. When a foreign child is abandoned at birth in France, she will be given French citizenship and a brand new personal status (article 19 of the Code Civil). But does it make sense to treat a child differently according to the place in which he has the fortune, or the misfortune, of being abandoned? Of course, if the child grows up in France, she may also accede to French nationality on her majority (article 21-7 of the Civil Code). But is it really worthwhile to maintain the barrier during her childhood? The child will grow up with a status which is not in line with reality. The case-law to which Gilles Cuniberti refers tends to show that the difficulty is very real. It seems to me that an eminently respectable idea such as "respect for the child's origins" should not be used to justify the rigid application of a prohibitive personal status when the child is growing up in France, with the full consent of her natural parent(s), if any, and the tacit approval of the authorities of the country of origin.

No Adoption in France for Algerian/Moroccan Children

Children from Algeria or Morocco may not be adopted in France. This is because under French law, the law of the child controls the issue of whether adoption is possible at all. Thus, children from countries where adoption is unknown are unadoptable. As there is no adoption in Islam, children from countries such as Algeria and Morocco may not be adopted.

The rule is not new. It is the result of a statutory intervention of 2001, which has amended the Civil Code.

Article 370-3 of the Civil Code now provides:

> *The requirements for adoption are governed by the national law of the adopter or, in case of adoption by two spouses, by the law which governs the effects of their union. Adoption however may not be ordered where it is prohibited by the national laws of both spouses.*
>
> *Adoption of a foreign minor may not be ordered where his personal law prohibits that institution, unless the minor was born and resides usually in France.*
>
> *Whatever the applicable law may be, adoption requires the consent of the statutory representative of the child. Consent must be free, obtained without any compensation, subsequent to the birth of the child and informed as to the consequences of adoption, specially where it is given for the purpose of a plenary adoption, as to the entire and irrevocable character of the breaking off of the pre-existing parental bond.*

The law is crystal clear, but this does not prevent French couples or individuals to try to adopt Algerian or Moroccan children. They find the children in Algeria or Morocco, come back to France, ask a French court to grant the adoption, and … win before lower courts, including courts of appeal! French prosecutors then appeal to the supreme court for private and criminal matters (*Cour de*

cassation), which allows the appeal and sets aside the judgment granting the adoption.

Only last summer, the *Cour de cassation* allowed the appeal against a judgment of the court of appeal of Limoges. The adopter was a Franco-Algerian woman who had found the child in Algeria where it had been abandoned at birth. The woman obtained from Algerian authorities the right to look after the child (*kafala*), came back to France and sought a judgment of adoption. She won before the first instance court of Limoges, then before the Court of appeal. In a judgment of July 8, 2008, the *Cour de cassation* held that *kafala* was not an adoption, and that, as the Court of appeal had noticed in its judgment, Algerian law does not allow adoption. The judgment and the adoption were set aside. On October 10, 2006, the *Cour de cassation* had already made the same decision in respect of an Algerian and a Morrocan *kafala*. In each of these cases, the lower courts had resisted and granted the adoption.

So, here are, on the one hand, tons of French couples who cannot have children, are trying to adopt, and cannot find what they are looking for. On the other hand, it is likely that there are quite a few, if not very many, children in Algeria or Morocco who have been abandoned by their parents and would have a much better life with these couples. If these couples could adopt these children, everybody would be happy. This may well appear clearly to French judges all over France, since so many lower courts just look for a way to allow the adoption. And indeed, it might be that the *Cour de cassation* does not disagree, since its case law before the reform was precisely that, as long as the person in charge of the child in the foreign country had actually understood and consented to the change of parenthood, whether the law of origin of the child allowed was irrelevant.

But now, the law has changed, and the *Cour de cassation* probably thinks that it does not have the legitimacy to challenge the will of the French parliament.

How could the French society end up with a rule which, in most cases, so patently hurts the interests of all the persons involved?

Uruguay – Case on Carrier's Liability

I am grateful to Henry Saint Dahl, the President of the Inter-American Bar Foundation, for contributing this report on this case from Uruguay.

On October 10, 2008, the Civil Court of Appeals in Montevideo, Uruguay, affirmed the decision of the 14th Civil Court of Montevideo in *Royal & Sun Alliance Seguros Uruguay Sociedad Anónima v. Panalpina, Pantainer Express Line* holding that in a multimodal transportation contract between Guatemala and Montevideo, Guatemalan law exempted the carrier from liability when the carrier had followed instructions from the owner, which lead to the cargo being stolen from the place where it was left in custody.

The court applied Art. 2399 of the Uruguayan Civil Code and, as the most important conflict rule, Art. 34 (4) (b) of the 1889 Montevideo Civil International Law Treaty (Tratado sobre Derecho Internacional Civil de 1889), which states that

> *… contracts concerning things certain are ruled by the law of the place where they are situated at the time the contract is made … if the effects of such contracts relate to a special place, those contracts are ruled by the law of such place.*

The court held that the effect of the contract related to Guatemala, which made Guatemalan law applicable. In its turn, Art. 817 of the Guatemalan Commercial Code relieved the carrier from liability when the total or partial loss of the cargo resulted from "an act or instructions given by the owner or his representative." Interestingly, domestic Uruguayan law would have lead to the opposite result since it imposes strict liability on the carrier (obligación de resultado). The mere fact that the cargo did not arrive to its final destination would have made the carrier liable.

In support of the applicability of Guatemalan law, the judgment stressed that the relevant events (instructions given and cargo stolen) took place in Guatemala.

The text of the decision was provided by Uruguayan attorney Eduardo Lapenne.

Reference from Irish Supreme Court to ECJ: Same Proceedings Pending in a non European State

I am grateful to Michelle Smith de Bruin BL for preparing the following report on a recent reference from the Irish Supreme Court to the European Court of Justice.

On 30 January 2009, the Irish Supreme Court decided in *Goshawk Dedicated Limited and Kite Dedicated Limited formerly known as Goshawk Dedicated (No. 2) Ltd, and Cavell Management Services Ltd, and Cavell Managing Agency Ltd v. Life Receivables Ireland Limited* ([2009] IESC 7) to refer to the European Court of Justice the question of whether the Brussels I Regulation has mandatory application in circumstances where there are pre-existing proceedings between the same parties in a non-Member State.

Facts

The defendant was incorporated in Ireland and had its principal place of business in Ireland. The plaintiffs were companies incorporated in England and had their principal places of business in London. In June 2005 the defendant purchased a partnership interest in a Delaware partnership known as Life Receivables II LLP in which the defendant and Life Receivables Holdings are the only partners but in which the defendant would appear to be the only partner with a financial stake. The partnership is, in turn, a beneficiary of Life Receivables Trust whose commercial value derives from trust property, being life insurance policies purchased in the early years of this decade together with a contingent cost insurance issued by Goshawk in respect of those policies. The defendant, as plaintiff in the U.S. proceedings, alleged that it was induced into buying into the partnership as a result of misrepresentation on the part of the defendants in the U.S. proceedings. The defendant has commenced proceedings in Georgia, U.S.A.,

against the plaintiffs and a number of others who were involved in a series of transactions which were at the heart of the dispute between the parties.

Briefly, the complaint in those proceedings alleges securities fraud, common law fraud, negligent misrepresentation and conspiracy to commit fraud in connection with a transaction valued at a figure in excess of U.S.$14 million. The primary jurisdiction invoked is in respect of the securities fraud pursuant to United States law, and a supplemental jurisdiction is alleged of the common law claims, again pursuant to United States law, on the grounds that the same facts and circumstances give rise to all claims. Apart from the securities claims, one of the major allegations made is that Goshawk, relying on material furnished through or by an actuarial company located in Atlanta, Georgia, American Viatical Services, made representations appearing on the face of the life policies, to persons including Life Receivables, the defendant in the Irish proceedings. It is also alleged that Cavell, acting through one of its principals, devised a run off scheme to commute Goshawk's obligations to, *inter alia*, Life Receivables. It is alleged that at certain times that principal, acting on behalf of both Goshawk and Cavell, made material misrepresentations and omissions.

Proceedings

The proceedings commenced by the defendant in Georgia, U.S.A., on the 29th June, 2007, were first in time. The plaintiffs commenced the Irish proceedings which seek declarations that the plaintiffs did not make the misrepresentations, together with other similar relief, on the 6th September 2007. The Irish proceedings are a mirror image of the Georgia proceedings, except that none of the additional co-defendants in Georgia are parties in the Irish proceedings. On the 5th September, 2007, the plaintiffs in the Irish proceedings moved, in the U.S. District Court, by motion, to dismiss the defendant's complaint, on the basis that that court lacks "subject matter jurisdiction" over the defendants because the transactions in issue in the case are "predominantly foreign" and lack the necessary domestic conduct or effects to permit the application by that court of American securities laws. The defendant in these proceedings resisted that motion, and a ruling by the US District Court was awaited, at the time of the appeal to the Irish Supreme Court.

Judgments of Irish Courts

The High Court considered the doctrine of forum non conveniens and lis pendens (including the decision in Owusu) and held that, under the Brussels I Regulation,

as and between Member States, a strict application of the doctrine of *lis pendens* applies. Courts of one jurisdiction are precluded from exercising jurisdiction over a dispute until the courts of a jurisdiction first seised with that dispute have dealt with the question of whether that court first seised has jurisdiction. The Supreme Court agreed with this.

Another issue was whether the recognition afforded to both the doctrine of *lis pendens* and the appropriateness of affording recognition, in accordance with private international law of the relevant Member State, to third party state judgments, is sufficient to warrant a departure from what seems to be the clear mandatory language of Article 2, as interpreted by the European Court of Justice Owusu.

The High Court concluded that there was no basis for staying the proceedings. There is nothing wrong with negative declaratory proceedings. The Court held that a court in Ireland retains and must exercise the mandatory jurisdiction conferred on it by Article 2, notwithstanding the fact that there may be proceedings in a non-Member State.

Reference

Approximately eleven grounds of appeal were made to the Irish Supreme Court. The Supreme Court ultimately decided to refer two questions to the ECJ. The exact form and wording is still to be finalised, but the two principal issues are:

(i) If a defendant is sued in its country of domicile, is it inconsistent with Regulation 44/2001 for the court of a Member State to decline jurisdiction or to stay proceedings on the basis that proceedings between the same parties and involving the same cause of action are already pending in the courts of a non-Member State and therefore first in time?

(ii) What criteria is to be applied by a Member State in coming to a decision whether to stay pending proceedings in a Member State, depending on the response to the first, primary, question to be posed.

Consumer Protection: Directive 2008/122/EC

A Directive on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, repealling Directive 94/47/EC, has been published today (OJ, L, nº 33). The new Directive aims to update Directive 94/47/EC, covering new holiday products similar to timeshare that did not exist in 1994, and also some transactions related to timeshare that were not regulated by the old Directive.

The new text differs significantly from the old one. Directive 94/47/EC contained (art. 11) a minimum harmonisation clause, that is, Member States could adopt stricter rules in order to improve consumer protection. The outcome of doing so was a fragmented regulatory framework across the Community that caused significant compliance cost when entering into cross border transactions. The new Directive provides for full harmonisation, though only for certain aspects (sale and resale of timeshares and long-term holiday products, as well as the exchange of rights deriving from timeshare contracts), in which Member States are not allowed to maintain or introduce national legislation diverging from the Directive. Where no harmonised provisions exist, Member States remain free; due to this fact, conflict of laws rules are still needed. In this sense, Whereas 17 specifies that

> *The law applicable to a contract should be determined in accordance with the Community rules on private international law, in particular Regulation (EC) nº 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).*

In spite of this caution, it is still disputable whether consistency with Regulation (EC) nº 593/2008, Rome I, has really been respected. Actually, due to the differences regarding their respective juridical consequence, a careful job of delimitation is to be made between art. 6 of the Regulation (remember para. 1 and 2 shall not apply to a contract relating to a right in rem in immovable property or a tenancy of immovable property *other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC),* and Art. 12 of Directive 2008/122/EC, establishing that "2. Where the applicable law is that of a third country, consumers shall not be deprived of the protection granted by this Directive, as implemented in the Member State of the forum if:

– any of the immovable properties concerned is situated within the territory of a Member State or,
– in the case of a contract not directly related to immovable property, the trader pursues commercial or professional activities in a Member State or, by any means, directs such activities to a Member State and the contract falls within the scope of such activities." Whilst art. 6 Rome I points to the protection provided by the law of the country of the consumer habitual residence, the Directive leans on the law of the forum.

Art. 3.4 of the Regulation, providing for the application of provisions of Community law that cannot be derogated from by agreement, when the parties have chosen as applicable law other than that of a Member State and *all other elements relevant to the situation* are located in one or more Member States, may also be a source of confusion.

The new instrument will enter into force on the 20th day following its publication; Member States shall adopt and publish, by 23 February 2011, the laws, regulations and administrative provisions necessary to comply with the Directive; they will apply from the same date.

Rome I: Commission Decision on the UK's Opt-In Published in the OJ – Response to the UK Government's Consultation

Following the publication in the OJ (no. L 10 of 15 January 2009, p. 22) of the formal **Commission Decision of 22 December 2008 on the request from the United Kingdom to accept the Rome I reg.** (see our previous post on the Commission opinion), **the UK government has published the response to the public consultation** launched in April 2008.

There were 37 responses to the consultation (see the detailed list in Annex A to

the document), from the academic sector (5), commercial, financial and insurance organisations (18), consumer organisations (2), the legal sector (11) and the transport sector (1). **The overwhelming majority of the respondents (95%) agreed that the UK should participate in the Regulation.**

Here's an excerpt from the conclusion (see also, on pp. 16-38, the article-by-article analysis, with the points raised by the respondents and the government response, as well as the comments on various issues relating to EC action in PIL matters, such as the UK's position in future EU dossiers, the role of the ECJ and the Danish government's ambition to put its opt-outs to a referendum):

> *104. The majority of respondents to the consultation were of the view that, given the satisfactory outcome of the negotiations, there was an advantage to British business if the rules determining the governing law were uniform throughout the EU. Aligning UK law in this respect to that in the rest of the EU would reduce legal expense and transaction costs. In addition, some respondents expressed the view that our original decision to opt out of the Regulation had helped to achieve the final positive result. However, they also made the point that if the UK did not participate in Rome I now, having achieved such a good result, it could significantly weaken the effectiveness of our right to not participate in future and damage our negotiating strength in relation to other EU dossiers.*
>
> *105. […] The European Commission adopted a decision to extend the application of the Rome I Regulation to the United Kingdom on 22 December 2008. The Ministry of Justice, the Department for Finance & Personnel (Northern Ireland) and the Scottish Executive will shortly progress implementation planning for the Regulation. The UK will be required to implement the Regulation by 17 December 2009.*
>
> *106. By opting in to the Regulation, it shall be binding and directly applicable to the UK. The Regulation will apply to the UK (England, Northern Ireland, Scotland and Wales) and also to Gibraltar. The UK's participation in the Regulation does not, however, undermine the UK's future use of the Protocol to Title IV of the EC Treaty.*

(Many thanks to Federico Garau, Conflictus Legum blog, and to Andrew Dickinson)

Article: “Extra-territorial Application of Antitrust – The Case of a Small Economy (Israel)”

Michal Gal (University of Haifa, NYU School of Law) has on the NELLCO Legal Scholarship Repository posted a paper titled “Extra-territorial Application of Antitrust – The Case of a Small Economy (Israel)”, which also analyses legal aspects of private international law. This paper is part of a book on Cooperation, Comity And Competition Policy (Andrew Guzman ed., Oxford University Press, 2009).