French Tax Authorities Recognize Dutch Same-Sex Marriage

Le Monde has reported this week that the French Ministry of Finance has accepted to recognize a Dutch same-sex marriage for tax purposes.

According to the article, the two Dutch men had married in Leyden in 2002. They then moved to France, probably in 2004. In 2005, they tried to file a tax return in common, which can attract significant tax benefits. First, French tax authorities refused, arguing that same-sex marriage does not exist in France.

The spouses hired a lawyer who challenged the decision on their behalf. *Le Monde* reports that he insisted "international conventions signed by France and rules of international private law" should be applied. In July 2008, the Legal Department of the Ministry of Finance eventually notified the spouses that they would be considered so for French tax purposes.

Same sex union was introduced in France in 1999 ("PACS"). It has some tax consequences. Here, the parties never tried to argue, it seems, that the Dutch marriage could be recognized as a French PACS.

The AG Opinion in West Tankers

Advocate General Kokott's Opinion in **Allianz SpA (formerly Riunione Adriatica Di Sicurta SpA) and Others v West Tankers Inc.** is out, and the House of Lords (and most common law practitioners) are not going to find it a pleasurable read.

The question, you will remember, is whether anti-suit injunctions to give effect to arbitration agreements are compatible with the Brussels I Regulation (No 44/2001), in the wake of the ECJ decisions in *Gasser* and *Turner*. The door had been closed on issuing injunctions restraining legal proceedings in other Member

States, except (as was quickly pointed out in London) perhaps where that injunction was granted in order to uphold an agreement to arbitrate. Article 1(2)(d) of the Brussels I Regulation does, after all, provide that the Regulation shall not apply to arbitration.

The reference by the House of Lords also cited (among other things) the practical effect that a negative answer would have on arbitration in London; if injunctions were no longer to be part of the judicial arsenal, then London's popularity as an arbitral seat would significantly diminish. Parties would simply choose New York, Singapore, or other arbitration centres, where injunctions could still be issued.

The exclusion argument under 1(2)(d) is given short shrift by AG Kokott:

> *56. Every court seised is therefore entitled, under the New York Convention, before referring the parties to arbitration to examine those three conditions. It cannot be inferred from the Convention that that entitlement is reserved solely to the arbitral body or the national courts at its seat. As the exclusion of arbitration from the scope of Regulation No 44/2001 serves the purpose of not impairing the application of the New York Convention, the limitation on the scope of the Regulation also need not go beyond what is provided for under that Convention.*
>
> *In its judgment in Gasser the Court recognised that a court second seised should not anticipate the examination as to jurisdiction by the court first seised in respect of the same subject-matter, even if it is claimed that there is an agreement conferring jurisdiction in favour of the court second seised. () As the Commission correctly explains, from that may be deduced the general principle that every court is entitled to examine its own jurisdiction (doctrine of Kompetenz-Kompetenz). The claim that there is a derogating agreement between the parties – in that case an agreement conferring jurisdiction, here an arbitration agreement – cannot remove that entitlement from the court seised.*
>
> *That includes the right to examine the validity and scope of the agreement put forward as a preliminary issue. If the court were barred from ruling on such preliminary issues, a party could avoid proceedings merely by claiming that there was an arbitration agreement. At the same time a claimant who has brought the matter before the court because he considers that the agreement is invalid or inapplicable would be denied access to the national court. That would*

be contrary to the principle of effective judicial protection which, according to settled case-law, is a general principle of Community law and one of the fundamental rights protected in the Community. ()

There is no indication otherwise in Van Uden. In that case the Court had to give a ruling regarding jurisdiction in respect of interim measures in a case which had been referred to arbitration in the main proceedings. In that context the Court stated that, where the parties have excluded the jurisdiction of the courts in a dispute arising under a contract and have referred that dispute to arbitration, there are no courts of any State that have jurisdiction as to the substance of the case for the purposes of the Brussels Convention. ()

That statement is certainly correct. The justification for the exclusive jurisdiction of the arbitral body specifically requires, however, an effective arbitration agreement covering the subject-matter concerned. It cannot be inferred from the judgment in Van Uden that examination of preliminary issues relating thereto is removed from the national courts.

It is also not obvious why such examination should be reserved to the arbitral body alone, as its jurisdiction depends on the effectiveness and scope of the arbitration agreement in just the same way as the jurisdiction of the court in the other Member State. The fact that the law of the arbitral seat has been chosen as the law applicable to the contract cannot confer on the arbitral body an exclusive right to examine the arbitration clause. The court in the other Member State – here the court in Syracuse – is in principle in a position to apply foreign law, which is indeed often the case under private international law.

Finally it should be emphasised that a legal relationship does not fall outside the scope of Regulation No 44/2001 simply because the parties have entered into an arbitration agreement. Rather the Regulation becomes applicable if the substantive subject-matter is covered by it. The preliminary issue to be addressed by the court seised as to whether it lacks jurisdiction because of an arbitration clause and must refer the dispute to arbitration in application of the New York Convention is a separate issue. An anti-suit injunction which restrains a party in that situation from commencing or continuing proceedings before the national court of a Member State interferes with proceedings which fall within the scope of the Regulation.

The Advocate General found the House of Lords' practical arguments similarly unconvincing. The comparison with other arbitration centres such as New York and Bermuda was rebuffed with, "To begin with it must be stated that aims of a purely economic nature cannot justify infringements of Community law." The point Lord Hoffman made about individual autonomy – the parties' choice to submit to arbitration, and not be bothered by the fuss of court proceedings – was seen as co-existing peacefully with a negative answer to the question: "proceedings before a national court outside the place of arbitration will result only if the parties disagree as to whether the arbitration clause is valid and applicable to the dispute in question. In that situation it is thus in fact unclear whether there is consensus between the parties to submit a specific dispute to arbitration." AG Kokott does, however, go on to point out the flaw in that argument:

> *If it follows from the national court's examination that the arbitration clause is valid and applicable to the dispute, the New York Convention requires a reference to arbitration. There is therefore no risk of circumvention of arbitration. It is true that the seising of the national court is an additional step in the proceedings. For the reasons set out above, however, a party which takes the view that it is not bound by the arbitration clause cannot be barred from having access to the courts having jurisdiction under Regulation No 44/2001.*

One more problem was alluded to (echoing the concerns of the House of Lords): the arbitral body (and its supporting national courts) and the courts which take subject-matter jurisdiction under the Regulation may not agree on the scope or validity of the arbitration clause. Conflicting decisions then follow. The Regulation, capable of keeping the peace between two national courts when conflicting decisions arise under Arts 27 and 28, is powerless to solve the dilemma; Article 1(2)(d), you will still remember, *excludes* arbitration. What to do, then? Kokott concludes:

> *72. A unilateral anti-suit injunction is not, however, a suitable measure to rectify that situation. In particular, if other Member States were to follow the English example and also introduce anti-suit injunctions, reciprocal injunctions would ensue. Ultimately the jurisdiction which could impose higher penalties for failure to comply with the injunction would prevail.*

> *Instead of a solution by way of such coercive measures, a solution by way of law is called for. In that respect only the inclusion of arbitration in the scheme of Regulation No 44/2001 could remedy the situation. Until then, if necessary, divergent decisions must be accepted. However it should once more be pointed out that these cases are exceptions. If an arbitration clause is clearly formulated and not open to any doubt as to its validity, the national courts have no reason not to refer the parties to the arbitral body appointed in accordance with the New York Convention.*

It may come as a disappointment to common law lawyers, but the Opinion won't really come as a surprise; the writing was on the wall post-*Gasser* and *Turner*, and it would have been extraordinary for the powers that be in Luxembourg to upset the delicate conflicts ecosystem created by those decisions (and the one in *Owusu*) by placing those cases involving a *prima facie* valid arbitration clause outside of the scope of the Regulation entirely. If you're going to produce poor decisions, one could say, you might as well do it *consistently*.

Those in civil law jurisdictions may disagree that the Opinion in *West Tankers* represents a bad day for the business of solving disputes in London – see the articles by the Max Plank Institute, for instance. Some others, however, may begin to wonder whether the European Union's pursuit of the hallowed principle of 'legal certainty' will end with the removal of any and all discretionary national court powers – indeed, the removal of common law private international law itself. The tension between common and civil law traditions is likely to continue as we proceed along the path to complete Europeanization of the conflict of laws; and at the moment, the common law is looking decidedly battered and bruised.

Conference: Arbitration and EC Law

The Heidelberg Centre for International Dispute Resolution at the Institute for Private International and Comparative Law will host a conference with the topic

“Arbitration and EC Law – Current Issues and Trends”.

The conference will focus on the relations between European civil procedure and arbitration which have been an intensely debated topic among legal scholars and practitioners for a long time. Lately the debate has been fuelled in particular by:

- the upcoming decision of the European Court of Justice which will decide on the availability of anti-suit injunctions for the protection of arbitral agreements (case C-185/07) – on September 4, 2008 GA Kokott proposed in her conclusions not to permit such remedies in the European Judicial Area,
- recent case law in several EC Member States addressing the arbitrability of EC antitrust law,
- the publication of a report, commonly known as the Heidelberg Report, analyzing – in view of the European Commission’s upcoming proposals on possible improvements of the Brussels I Regulation in 2009 – the application of the Regulation in 25 Member States, which proposes to delete the arbitration exception in article 1 no. 2d in order to bring ancillary proceedings relating to arbitration under the scope of the Brussels I Regulation

The conference will take place from 5th to 6th December 2008 in Heidelberg. Here is the **conference program**:

Friday, Dec. 5, 2 p.m.

1. Free movement of arbitral awards: European challenges

Prof. Gomez Jene, Madrid

2. West Tankers Litigation – the present state of affairs

Att. Prof. H. Raeschke-Kessler, Karlsruhe

3. Articles 81 and 82 EC-Treaty and arbitration

Prof. P. Schlosser, Munich

4. The Regulations Rome I and Rome II: Their impact on arbitration

Prof. T. Pfeiffer, Heidelberg

Dinner

Saturday, Dec. 6, 9.30 a.m.

5. Roundtable: The Brussels I Regulation and arbitration

(Chair: *Prof. H. Kronke*)

5.1 Findings and proposals of the Heidelberg Report on the Regulation (EC) 44/01

Prof. B. Hess, Heidelberg

5.2 A French reaction

Att. Alexis Mourre, Paris

5.3 An English reaction

Att. VV. Veeder, London

5.4 A Belgian perspective

Prof. H. van Houtte, Leuven

5.5 An Italian reaction

Prof. C. Consolo, Verona.

The conference will end at 12.00.

Further information, in particular on registration and accomodation, can be found at the website of the Institute for Private International and Comparative Law Heidelberg.

Third Issue of 2008's Journal du Droit International

The third issue of French *Journal du Droit International* (also known as *Clunet*) was just released. It contains two articles dealing with conflict issues.

In the first, Pierre Berlioz, who lectures at Paris I (Panthéon-Sorbonne) University, seeks to define the notion of provision of services for the purpose of article 5-1 b) of the Brussels I Regulation ("*La notion de fourniture de services au sens de l' article 5-1 b) du Règlement Bruxelles I*"). The English abstract reads as follows:

> *Article 5 N° 1 lit. b) of the Council Regulation (EC) N° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters does not define the term « provision of services », leaving the exact scope of this Article uncertain. In particular, it is not clear if the term includes : rental agreements, loans, franchising and concession agreements. It is then necessary to determine its meaning, according to the Regulation, since the simplification sought by Article 5 N° 1 lit. b) can be reached only if the characterization is made according to autonomous concepts. Therefore, this study intends to precise what is an obligation of provision of services, and under which circumstances a contract can be characterized as a such a provision.*

The second article is authored by Hélène Peroz, who lectures at Caen University. It discusses the protection of vulnerable adults going abroad ("*La cessation des mesures de protection du majeur pour éloignement géographique*"). The (short) English abstract reads:

> *Under Act n° 2007-308, March 5th 2007, reforming the legal protection of adults, the judge can end protective measures bestowed to a vulnerable person if he or she decides to go abroad. This new provision on international private law raises many issues as regarding its implementation.*

Articles of the *Journal* can be downloaded by suscribers to LexisNexis JurisClasseur.

Immunity of Foreign Central Banks Assets in Belgium

Patrick Wautelet is a professor of law at the University of Liège (Belgium).

Belgium has recently adopted a specific legislation granting immunity of enforcement to assets held by foreign central banks and international monetary institutions, such as the World Bank. The Act of 24 July 2008 provides that no attachment can be performed on assets, whatever their nature, including foreign reserves, held or maintained in Belgium by foreign central banks and international monetary institutions

With this new legislation, Belgium joins the growing club of countries which have adopted specific legislation to protect assets of foreign central banks. In the United Kingdom (Section 14(4) Sovereign Immunities Act) and the United States (§ 1611 -b (1) FSIA), the relevant acts on foreign sovereign immunity already guarantee that assets of foreign central banks cannot be attached, save in specific circumstances such as when the State has given its consent to the attachment.

As with these countries, the special immunization given by the Kingdom of Belgium to central banks aims to ensure that Belgium remains an attractive place for foreign central banks to deposit their assets and in the first place foreign reserves. For international monetary institutions, the new legislation comes on top of the immunity already enjoyed under specific agreements made with States where the bank or institution has its seat or a branch.

In other countries, judicial practice supports the existence of a principle of immunity for assets of foreign central bank. However, the immunity appears to be far from absolute. Hence, a distinction may need to be made according to the nature of the assets held. At least when foreign reserves are concerned, the

general rule seems to be that immunity from enforcement will be granted.

In the future, central banks may enjoy a privileged position if and when the Convention on Immunities prepared by the ILC enters into force. According to Article 21(1(c) of the UN Convention on State Immunities, « *property of the central bank or other monetary authority of the State* » must be immune from enforcement. Under the Convention, it appears not possible to demonstrate that such property is used or intended for use for a commercial purpose.

The immunity granted by the Belgian legislator – which only prevents execution against central banks, without guaranteeing that the banks will also enjoy immunity from the juridiction of the courts – is defined broadly : it is not restricted to a specific class of assets, nor to those owned or held by the foreign central bank for its own account. Assets held by a central bank for a third party – one can think of the gold reserves which are sometimes held by one central bank for another – also enjoy the immunity.

The law also provides that creditors may attempt to attach assets held by central banks provided they demonstrate that such assets are exclusively used for commercial purposes. In practice, creditors will probably find it very difficult to target specific assets and to demonstrate that these assets are indeed not used for typical central bank activities. In any case, this possibility is only open for creditors seeking post-judgment relief. Pre-judgment attachment appears to be always excluded.

Reference on Art. 5 No. 1 (b) Brussels I: Distinction between sales of goods/provision of services

and determination of place of performance regarding contract involving carriage of the goods

With decision of 9th July 2008, the German Federal Supreme Court (*Bundesgerichtshof*) has referred a reference to the ECJ for a preliminary ruling on the interpretation of Art. 5 No. 1 (b) Brussels I Regulation.

The German-Italian case concerns contracts for the delivery of goods to be manufactured or produced which, however, showed certain elements of a provision of services as well. Further, the contracts involved carriage of the goods in terms of Art. 31 (a) CISG.

The reference basically deals with two issues which have been discussed controversially so far:

First, the case concerns the question on how the place of performance in terms of Art. 5 No. 1 (b) Brussels I should be determined if the contract shows elements of a sale of goods as well as a provision of services and thus raises the question of the delimitation of the first and the second indent of Art. 5 No. 1 (b) Brussels I. This question has not been decided by the ECJ so far. With regard to contracts for the delivery of goods to be manufactured or produced, the *Bundesgerichtshof* tends – in view of Art. 1 (4) of the Directive on certain Aspects of the Sale of Consumer Goods and Associated Guarantees according to which also contracts for the supply of consumer goods to be manufactured or produced shall be deemed contracts of sale for the purpose of the directive – to regard certain specifications made by the ordering party e.g. on the purchasing, the processing or the guarantee of the quality of the goods not as leading necessarily to a qualification as contracts for the provision of services. Rather, the *Bundesgerichtshof* supports a qualification according to the main emphasis of the contract.

Secondly, the referring decision deals with the question of how the place of performance in terms of Art. 5 No. 1 (b) first indent Brussels I Regulation has to be determined if the contract involves carriage of the goods: Is it the place where

the goods are handed over to the buyer or the place where the goods are consigned to the first carrier for transmission to the buyer? The *Bundesgerichtshof* refers in its decision not only to the – in this respect divided – German case law, but also to Italian and Austrian decisions: While the Italian *Corte Suprema di Cassazione* regarded in its judgment of 27th September 2006 Art. 31 (a) CISG to be applicable and thus regarded the place of performance to be the place where the goods were handed over to the first carrier for transmission to the buyer, the *Oberste Gerichtshof* of Austria held in its decision of 14th December 2004 that the place of delivery was the place where the buyer actually takes the goods as a delivery in conformity with the contract. The *Bundesgerichtshof* tends to regard as the place of performance in terms of Art. 5 No. 1 (b) first indent Brussels I – also with regard to sales of goods involving carriage of the goods – the place where the buyer obtains, or should have obtained under the contract, control over the goods.

However, since both questions raised in this case have not been decided by the ECJ yet, the *Bundesgerichtshof* referred the **following questions to the ECJ for a preliminary ruling**:

1. Has Art. 5 No. 1 (b) of Regulation (EC) No. 44/2001 to be interpreted as meaning that contracts concerning the delivery of goods to be produced or manufactured have to be qualified as sales of goods (first indent) and not as provision of services (second indent) even in cases where the ordering party has made certain specifications regarding the acquisition, processing and delivery of the goods to be produced including the guarantee of the quality of manufacture, reliability of delivery and the smooth administrative processing of the order? Which criteria are decisive with regard to the delimitation?

2. In case a sale of goods has to be assumed: Has – in case the contract of sale involves carriage of the goods – the place in a Member State where, under the contract, the goods were delivered or should have been delivered, to be determined according to the place where the goods are handed over to the buyer or according to the place where the goods are consigned to the first carrier for transmission to the buyer?

(Approximate translation of the German referring decision.)

The decision of the Bundesgerichtshof of 9th July 2008 (VIII ZR 184/07) can be

found (in German) at the website of the German Federal Supreme Court.

Update: The case is pending at the ECJ under C-381/08 *(Car Trim GmbH v KeySafety Systems SRL*).

Colloquium on the Choice of Courts Convention

The Hague Convention on Choice of Court Agreements is the result of negotiations that began at The Hague Conference on Private International Law in 1992, when the United States asked for the Conference to develop a convention on jurisdiction and judgments. A more comprehensive convention, which spanned the field of civil jurisdiction, was produced in draft form in 1999, and then revised in 2001. This draft convention proved unsatisfactory to a number of countries, including the United States, and so a less ambitious convention was attempted. The Choice of Courts Convention is the result.

The Choice of Courts Convention was concluded in mid-2005. Its fundamental aim is to improve the international enforcement of judgments made by courts that have been chosen by parties to commercial transactions. As a result, the Choice of Courts Convention is a 'double convention' that gives common rules of jurisdiction and common rules for the enforcement of judgments between Convention countries. The rules of jurisdiction themselves aim to improve the effectiveness of forum selection agreements, and therefore to give greater certainty and predictability to international commercial transactions and international trade.

The Colloquium

The Choice of Courts Convention has been presented as either an important step towards securing the harmonisation of rules of jurisdiction for international commercial and trading relationships or – compared with the draft convention of 1999 – a consolation prize of limited scope and use. This Colloquium will explore

the significance of the Choice of Courts Convention, examine its implications for other areas of transnational law, and investigate legal questions that it raises – in general and specifically for Australia.

The Colloquium is being held at the **Law School, University of Southern Queensland**, Toowoomba, Australia, on **Friday 3 October 2008**. Nine scholars of private international law and transnational law will be giving papers (see the Colloquium Program below). Anyone interested in attending should contact Ms Mary Ann Armstrong: armstrog@usq.edu.au

Colloquium Program

- *The Choice of Courts Convention: Background and Negotiations* – Professor Paul Beaumont, School of Law, University of Aberdeen
- *The Choice of Courts Convention: Is it Worth Implementing?* – Professor Richard Garnett, The Melbourne Law School, University of Melbourne
- *Exceptions under the Choice of Courts Convention* – Associate Professor Mary Keyes, Law School, Griffith University
- *The Choice of Courts Convention and the Exclusion of Maritime Claims* – Dr Craig Forrest, TC Beirne School of Law, University of Queensland
- *The Choice of Courts Convention and the Vienna Convention on the International Sale of Goods (CISG)* – Dr Des Taylor, School of Law, University of Southern Queensland
- *The Choice of Courts Convention – How will it work in relation to the Internet and e-commerce?* – Associate Professor Dan Svantesson, Faculty of Law, Bond University
- *The Hague and The Ditch: The Choice of Courts Convention and the Australia-New Zealand Treaty on Jurisdiction and Judgments* – Professor Reid Mortensen, Law School, University of Southern Queensland.
- *Enforcement of Judgments under the Choice of Courts Convention* – Dr Anthony Gray, School of Law, University of Southern Queensland, Springfield
- *Res Judicata and Forum Shopping under the Choice of Courts Convention* – Mr Justin Hogan-Doran, Wentworth Cambers, Sydney

Submission of Abstracts for the 2009 NYU Conference

The *Journal of Private International Law* will hold its third major conference at New York University on April 17-18, 2009. As was the practice at the prior conferences at the University of Aberdeen in 2005 and at the University of Birmingham in 2007, we are including a "**call for papers**" to be presented at the conference with a view to having the final papers submitted for consideration for publication in the Journal. Thus, in addition to a number of previously-invited speakers, **a limited number of paper-presenters will be selected on the basis of abstracts of 500 words submitted to Professor Linda Silberman at New York University (linda.silberman@nyu.edu) and Professor Paul Beaumont at the University of Aberdeen (p.beaumont@abdn.ac.uk) by October 31, 2008**. The abstracts will be considered by Professor Silberman and the editors of the Journal, Professor Paul Beaumont and Professor Jonathan Harris, and a decision made by 1 December, 2008.

There are three specific conference panels planned over the course of the afternoon of April 17th and the full day on April 18th. They are

1. International Commercial Law
2. US and European Conflicts Methodologies: Is It Time for a U.S. Restatement?
3. Transnational Litigation and Arbitration

We will be selecting papers and presenters related to these topics. Even if your paper is not selected for presentation at the Conference given the limited number of slots, we hope you will consider submitting the paper to the Journal for eventual publication. In addition, the morning of April 17th will be devoted to presentations of papers by legal scholars at an early stage in their academic or professional careers, and we particularly encourage doctoral students, students completing fellowships, and those who have relatively recently completed their doctoral studies to offer abstracts on any aspect of private international law. We

contemplate smaller parallel sessions in order to offer opportunity for presentations by a large number of such scholars.

Also note that on April 16, 2009, there will be a day-long conference in tribute to the work of Professor Andreas Lowenfeld of New York University. Journal Conference participants may wish to attend that event as well.

Further details about both the Lowenfeld tribute and the Journal Conference will follow shortly.

Weintraub on Rome II: Simple and Predictable, Consequences-Based, or Neither?

Prof. Russell J Weintraub (University of Texas at Austin, School of Law) has published an interesting article on the Rome II Regulation in the latest issue of the *Texas International Law Journal* (Summer 2008): "**The Choice-of-Law Rules of the European Community Regulation on the Law Applicable to Non-Contractual Obligations: Simple and Predictable, Consequences-Based, or Neither?**" (43 Tex. Int'l L.J. 401).

The introductory paragraph reads as follows:

> *The European Community Regulation on the Law Applicable to Non-Contractual Obligations ("Rome II") will take effect on January 11, 2009. This regulation is part of a widespread effort to draft new choice-of-law rules. For example, in 2007 a new conflict-of-laws code took effect in Japan. China is drafting a comprehensive civil code, which includes choice-of-law rules. What should be the objectives of these drafting projects? Should the new rules, as law-and-economics scholars urge, be simple and afford clearly predictable results? Or should choice-of-law rules endeavor to select the jurisdiction that experiences the consequences when the chosen law is applied? A third possibility is to draft*

rules that provide substantial predictability and are likely to be consistent with a consequences-based approach. Rome II falls into this third category: reasonably predictable results that are likely to give effect to the policies of the jurisdiction that will experience the consequences when the chosen law is applied.

There is now an extensive law-and-economics literature devoted to choice of law. Sections II and III summarize this economics approach to drafting conflicts rules and evaluate Rome II under this perspective. Sections IV and V outline a consequences-based approach to choice-of-law and appraise the extent to which Rome II is consistent with this methodology.

And here's the conclusion:

Rome II provides reasonably foreseeable answers to choice-of-law issues. The various exceptions to the regulation's rules create the major predictability problems: (1) the cryptic "more closely connected" exception that appears in the general rule of article 4 and in several other articles, (2) the "public policy" exception of article 26, and (3) the "mandatory provisions" exception of article 16. The uncertainty caused by these exceptions can be alleviated by (1) replacing the "more closely connected" language with a reference to the country that will experience the consequences if its law is not applied; (2) providing that if a court refuses on "public policy" grounds to apply the law that Rome II selects, the court is not to seize this excuse to apply its own law, but is to dismiss without affecting the plaintiff's ability to sue elsewhere; and (3) giving some guidance as to what can qualify as internationally "mandatory" forum law.

The common residence exception to application of the law of the place of damage is partially, but insufficiently, consequences oriented. Rome II gets high marks for including time limitations and burden of proof within the scope of its rules. If it is to achieve its main purpose of making the result independent of the forum, Rome II should clearly indicate that quantification of damages is also within its scope.

The article can be downloaded from the Journal's website.

Another interesting article on Rome II has been written by *Prof. Weintraub* at an earlier stage of the regulation's legislative procedure, and was presented at a seminar hosted in March 2005 by the European Parliament's Rapporteur *Diana Wallis*: "**Discretion Versus Strict Rules in the Field of Cross-Border Torts**". It is available for download, along with papers by other prominent scholars who took part in the seminar, on Diana Wallis' website (Rome II seminars' page).

A slightly revised version, under the title "Rome II and the Tension between Predictability and Flexibility", has been also published in *Rivista di diritto internazionale privato e processuale* (2005, no. 3, p. 561 ff.).

Hamburg Lectures on Maritime Affairs

From 25 August to 20 October 2008 this year's Hamburg Lectures on Maritime Affairs, organised by the International Max Planck Research School for Maritime Affairs and the International Tribunal of the Law of the Sea (ITLOS), will take place in Hamburg.

The lectures feature renowned scholars and practitioners and address current developments in the maritime field.

Registration in advance is required.

The programme and further information is available here.