New Service Regulation Applicable in EU – In Denmark, as well?

Starting from yesterday, 13 November 2008, new Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (see our previous posts here and here) **is applicable in the Member States** (see its Art. 26).

Pursuant to Art. 25 of the new Service Reg., "**Regulation (EC) No 1348/2000 shall be repealed as from the date of application of this Regulation**" and "[r]eferences made to the repealed Regulation shall be construed as being made to this Regulation and should be read in accordance with the correlation table in Annex III".

While **the new rules are applicable in the United Kingdom and Ireland**, since these two States took part in the adoption of the Regulation (see Recital no 28), **the position of Denmark appears at the moment quite controversial**.

The latter State, as it is the rule in respect of measures taken under Title IV of the TEC, did not take part in the adoption of the new Service Regulation and "is not bound by it or subject to its application" (see Recital no 29). Nonetheless, **in the two "parallel" agreements concluded between the European Community and the Kingdom of Denmark** to extend to the latter the provisions of Reg. No 44/2001 and Reg. No 1348/2000, **a simplified procedure was established in order to implement future amendments** to such instruments also in respect of Denmark: according to Art. 3(2) of the Agreement on the service of documents

> *Whenever amendments to Council Regulation (EC) No 1348/2000 are adopted, Denmark shall notify to the Commission of its decision whether or not to implement the content of such amendments. Notification shall be given at the time of the adoption of the amendments or within 30 days thereafter.*

As stated by this document available on the European Judicial Atlas in Civil Matters (*emphasis added*)

> *In accordance with Article 3(2) of the Agreement,* ***Denmark has by***

> ***letter of 20 November 2007 notified the Commission of its decision to implement the contents of Regulation (EC) No 1393/2007****. In accordance with Article 3(6) of the Agreement, the Danish notification creates mutual obligations between Denmark and the Community. Thus, Regulation (EC) 1393/2007 constitutes amendment to the Agreement and is considered annexed thereto.*
>
> *In accordance with Article 3(4) of the Agreement, the necessary administrative measures will take effect on the date of entry into force of Regulation (EC) No 1393/2007.*

Quite surprisingly, **this important document *seems* not to have been published in the OJ**; furthermore, **the related pages of the European Judicial Atlas in English, French, Italian and German version** are out-of-date, and **contain no mention of it** (**while the Spanish one does**, as pointed out by our friend Federico Garau over at the Conflictus Legum blog).

It is thus questionable whether, at the moment, the provisions of Reg. No 1393/2007 are applicable in Denmark (at least, if one refers to the official text of it). Any further information is welcome.

Daimler Chrysler v Stolzenberg, Part 9: Luxembourg

The *Stolzenberg* case will also be litigated before the European Court of Justice! Last year, the Court of Appeal of Milan, Italy, referred two questions to the ECJ on the interpretation of the public policy clause of Article 27(1) of the 1968 Brussels Convention.

The ECJ was one of the few major courts in the western world which was missing in this judicial odyssey. It has now lasted for more than 15 years. And it is not over.

Part 1: Canada

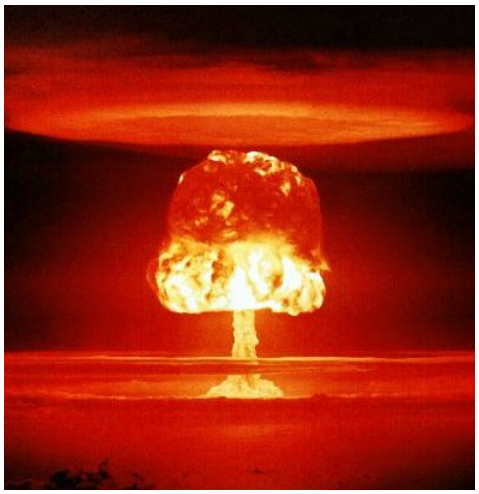
The case began in the early 1990s with the collapse of an investment company incorporated in Montreal, Castor Holdings. A bankruptcy was opened in 1992 in Canada. It has been presented by many as the largest ($ 1.5 billion) and the longest bankruptcy in Canadian history.

Essentially, the bankruptcy proceedings were about the auditors, Coopers & Lybrand (as they were then). In August 2008, the action against them was still pending. However, proceedings had also been initiated against the directors of the company for distributing $ 15.5 million of dividends in 1991, in the suspect period. Some of the directors settled with the bankruptcy, but five did not. In August 2008, the latter were eventually sentenced to pay $ 9.7 million. Among the five were the president of Castor, a German national named Stolzenberg, and a Swiss national named Gambazzi.

Part 2: England

Meanwhile, however, a small group of investors had brought proceedings before English courts. In 1996, Daimler Chrysler Canada and its pension fund, CIBC Mellon Trust Co., initiated proceedings against the directors and close to forty other corporate entities. They claimed that their loss in the Castor bankruptcy was the result of wrongful conduct by the directors, including Stolzenberg and Gambazzi.

A key issue in the litigation was the jurisdiction of English courts. None of the 40 defendants had any connection with England, except Stolzenberg, who had once owned a house in London, but, it seems, did not own it anymore when the proceedings were served on the defendants. The case went all the way up the House of Lords, which held in 2000 in Canada Trust Company v. Stolzenberg, Gambazzi and others that what mattered was whether there was one defendant who was domiciled in England when the claim was issued by the English court, not when it was served on the defendants (8 months later).



Since the start of the English proceedings, the defendants had been subjected to a world wide *Mareva* injunction (now freezing order). As a result, they were under a variety of duties of disclosure that, they thought, were unacceptably far reaching. Some never appeared before English courts, but some did and complied for a while. At some point, however, they refused to provide any more information on their assets (which were situated abroad). They did not live in England, so there was not much the English court could do. But the Mareva injunction has been called one of the two nuclear weapons of English civil procedure. The English court pressed the nuclear button. Because they were not complying, the defendants were debarred from defending any action in England. This included the action *on the merits*. The English court then entered into a default judgment for close to € 400 million. There had been no trial, no assessment of the merits of the case. There was only a procedural sanction: you do not comply, your opponent will get whatever he asks for.

The Stolzenberg litigation entered into a new stage. It was not anymore about what had happened in Canada. It was about whether such a default judgment could be enforced abroad, where the defendants had assets.

Part 3: Germany

Stolzenberg had fled England early on. He was then, and is still now, believed to be living in Germany. Enforcement proceedings were initiated there, but I do not know much about them.

Part 4: New York

One of the corporate defendants in the English proceedings owned a hotel in mid-town Manhattan. In May 2000, enforcement proceedings of the English judgment were initiated in New York. Eventually, the matter came before the New York Court of Appeals (that is, I understand, the supreme court of the state of New York).

In a judgment of May 8, 2003, the Court confirmed that the judgment could be recognised in New York. It held that the English judgment was not incompatible

with the requirements of due process of law. Indeed, the court endorsed previous statement of American courts saying that *"[c]onsidering that our own jurisprudence is based on England's, a defendant sued on an English judgment will rarely be in a position to defeat it with such a showing*", and "*any suggestion that [England's] system of courts 'does not provide impartial tribunals or procedures compatible with the requirements of due process of law' borders on the risible*".

Not only the Queen, but also the English, can do no wrong.

Part 5: France

Stolzenberg had some assets in Paris. Enforcement proceedings were thus initiated in France. In a judgment of 30 June 2004, the French Supreme Court for Private and Criminal Matters (*Cour de cassation*) confirmed the enforceability in France of both the *Mareva* injunction and the English default judgment. Although Stolzenberg's lawyers raised the issue of the compatibility of the judgement with French public policy, they did not insist on the fact that the default judgment was obtained as a consequence of the unwillingness of the defendants to comply with the *Mareva* injunction. The judgement of the *Cour de cassation* is thus silent on the issue.

Part 6: Switzerland

A Swiss lawyer, Gambazzi had obviously assets in his home country. Enforcement proceedings were initiated there as well. But it was reported that, unlike American and French courts, Swiss courts found that the English judgments were a breach of process and thus denied recognition. More precisely, according to the same report, the Swiss Federal Court would have ruled twice on the case in 2004, as enforcement had been sought against the Swiss assets of two former directors of Castor (Gambazzi and Banziger) in two different Swiss *cantons*, and would only have denied recognition for the purpose of enforcement against Gambazzi's assets.

Part 7: Strasbourg

Of course, from the perspective of the defendants, this seemed like a perfect case for the European Court of Human Rights. Are nuclear weapons compliant with Article 6 and the right to a fair trial? This really looks like a good question to ask

the Strasbourg court. So, in the early 2000s, some of the defendants to the English proceedings brought an action against the United Kingdom, arguing, inter alia, that being debarred from defending did not comply with Article 6 of the Convention.

Quite remarkably, the action was declared inadmissible by the ECHR at the earliest stage, as "manifestly ill-founded". The Court did not give any reasons for this decision, which is noteworthy when one knows that the court considers that judgments lacking reasons do not comport with the right to a fair trial.

The defendants would have to wait for another opportunity to have their day in (a European) court.

Part 8: Italy

It seems that Gambazzi also had assets in Italy, as enforcement proceedings were also initiated in Milan. His lawyers challenged the enforceability of the English judgment, arguing that it was contrary to Italian public policy. As the 1968 Brussels Convention governed the enforcement of such judgement, they relied on the public policy clause of Article 27. On 22 August 2007, the Court of Appeal of Milan decided to refer two questions of interpretation of Article 27 to the European Court of Justice.

Part 9: Luxembourg

And here we are now in Luxembourg.

The Court of Milan referred the two following questions (Case C 394/07):

> *1. 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 the opportunity to present any form of defence following the issue of a debarring order as described [in the grounds of the present Order]?*
>
> *2. 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 issued 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)?

So it seems that (some of) the defendants might eventually have their day in a European court.

Italian Conference on the Rome I Reg.: "La nuova disciplina comunitaria della legge applicabile alle obbligazioni contrattuali"

A very interesting conference on the Rome I Regulation will be hosted by the University of Venice "Ca' Foscari" on Friday 28 November 2008: "**La nuova disciplina comunitaria della legge applicabile alle obbligazioni contrattuali**" (The new EC regime on the law applicable to contractual obligations). The symposium is organised in the frame of a research project carried on by several Italian universities (Milan, LUISS-Guido Carli of Rome, Cagliari, Venice and Macerata) and cofinanced by the Italian Ministry of Research and University (MIUR). Here's an excerpt of the programme (*our translation; the sessions will be held in Italian, except otherwise specified*):

Welcome and opening remarks: *Pierfrancesco Ghetti* (Rector, University "Ca' Foscari" of Venice); *Carmelita Camardi*, (Director, Department of Law, University "Ca' Foscari" of Venice); *Mauro Pizzigati* (President of the Bar Council of Triveneto).

PROBLEMI GENERALI (GENERAL PROBLEMS) (9:30 – 13:00)

Chair: *Nerina Boschiero* (University of Milan)

- *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);
- *Andrea Bonomi* (University of Lausanne): Le norme di applicazione necessaria (Overriding Mandatory Provisions);
- *James Fawcett* (University of Nottingham): UK Perspective on Rome I Regulation *(in English)*.

Debate.

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QUESTIONI SPECIFICHE (SPECIFIC ISSUES) (14:30 – 16:00)
Chair: *Laura Picchio Forlati* (University of Padova)

- *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).

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SHORTER REPORTS (16:10 – 16:50)

- *Francesca Villata* (University of Milan): I contratti relativi a strumenti finanziari (Contracts on Financial Instruments);
- *Zeno Crespi Reghizzi* (University of Milan): Le conseguenze della nullità del contratto (Consequences of Nullity of the Contract);
- *Nerina Boschiero* (University of Milan): I contratti di proprietà intellettuale tra Roma I e Roma II (Contracts on Intellectual Property Rights between Rome I and Rome II Regulations).

Debate.

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

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Due to organisational issues, participation to the conference is restricted to a limited number of invited scholars. Anyway, **the sessions will be recorded and made available afterwards on the website of the Italian Society of International Law** (SIDI), so that interested parties unable to attend may follow the conference. In addition, **the papers presented at the colloquium will be published both in English and Italian edition**. Further information will be provided on our site as soon as available.

(Many thanks to Prof. Nerina Boschiero)

Latest Issue of "Praxis des

Internationalen Privat- und Verfahrensrechts" (6/2008)

Recently, the November/December issue of the German legal journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was released.

It contains the following **articles/case notes (including the reviewed decisions)**:

- ***B. Hess***: "Rechtspolitische Überlegungen zur Umsetzung von Art. 15 der Europäischen Zustellungsverordnung – VO (EG) Nr. 1393/2007" – the English abstract reads as follows:

The article deals with article 15 EC Regulation on Service of Documents as revised by Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The author recommends to extend the application of cross border direct service of documents within the EU under German law and in this context makes a concrete proposal for the implementation of article 15 into a revised article 1071 German Code of Civil Procedure.

- ***C. Heinze***: "Beweissicherung im europäischen Zivilprozessrecht" – the English abstract reads as follows:

Measures to preserve evidence for judicial proceedings are of vital importance for any claimant trying to prove facts which are outside his own sphere of influence. The procedural laws in Europe differ in their approach to such measures: while some regard them as a form of provisional relief, others consider these measures to be part of the evidentiary proceedings before the court. In European law, evidence measures lie at the intersection of three different enactments of the Community, namely Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and (in intellectual property disputes) Art. 7 of Directive 2004/48/EC on the enforcement of intellectual property rights. As a result of the

European Court of Justice's judgment in Case C-104/03, St. Paul Dairy Industries v. Unibel Exser BVBA, most commentators believe that evidence measures fall exclusively under the evidence regulation (EC) No 1206/2001 and not under the more general Brussels I Regulation (EC) No 44/2001. Taking into consideration the ECJ's decision in St. Paul and the opinion of Advocate General Kokott in Case C-175/06, Alessandro Tedesco v. Tomasoni Fittings Srl and RWO Marine Equipment Ltd. (removed from register before judgment), the following article discusses the application of both regulations on measures to preserve evidence. It comes to the conclusion that measures to secure evidence fall under the evidence Regulation No 1206/2001 if they involve an act of judicial cognizance in taking evidence in another Member State which is directly relevant for the decision of the case (no fishing expedition). The article further proposes a supplementary application of the Brussels I Regulation (EC) No 44/2001 for those matters which are not covered by the evidence regulation.

Such matters firstly include the jurisdiction of the court requesting to take evidence, secondly the jurisdiction of the court where the evidence is located to secure this evidence if a party directly applies to that court without making use of the cross-border procedures of the evidence regulation, as well as the cross-border enforcement of substantive information rights without any act of judicial cognizance in the other Member State.

In those situations, it seems convincing to regard evidence measures which at least partially aim at securing evidence as a sub-category of provisional and protective measures and therefore apply the twofold system for provisional measures laid down in the van Uden judgment of the Luxembourg court (Case C-391/95, van Uden Maritime BV v. Kommanditgesellschaft in Firma Deco-Line and Another).

- ***U. Weinbörner***: "Die Neustrukturierung und Aktualisierung des Länderteils der Rechtshilfeordnung für Zivilsachen (ZRHO)" – the English abstract reads as follows:

A statute has transferred matters of international judicial assistance in civil law to the Federal Office of Justice (BfJ) in Bonn. The BfJ is now also responsible for processing individual cases of reciprocal mutual assistance with other countries in civil, commercial and administrative matters. Accordingly, since January 1,

2007, the BfJ is also in charge of editing the foreign country section of the Civil Judicial Assistance Ordinance (ZRHO). This section is an administrative directive. It governs how reciprocity in mutual assistance proceedings takes place. The working directives of the ZRHO, which appear in a loose-leaf collection and are only updated once a year, are no longer up-to-date in many parts.

A Working Group (made up of representatives of the federal government and the German states) was established on the basis of a resolution by the 2007 Conference of Civil Representatives in Hamburg. Under the leadership of the BfJ, it has drawn up a new standardised structure for the foreign country section, which is intended to guide the user in a clear and easily understandable way and provides additional information in the explanations of the individual requests.

With the set-up of a procedure for permanent online updating, including the IR-online database of the Ministry of Justice of North Rhine-Westphalia, the backlog in updates can be dealt with and new information can be published quickly. The online offer portrayed below is produced by the BfJ and the Ministry of Justice of North Rhine-Westphalia. It reflects the agreement already achieved between the federal government and the German states concerning the instructions for specific countries. It can be used as a basis for the administrative orders of the foreign country section as a whole. The complete update will take at least another two years. That is due to two factors: the amount of work needed for the regular update of the information, and the re-structuring of the foreign country section.

- ***U. P. Gruber:*** "Die Brüssel IIa-VO und öffentlich-rechtliche Schutzmaßnahmen"
- ***A. Staudinger***: "Gemeinschaftsrechtlicher Erfüllungsortgerichtsstand bei grenzüberschreitender Luftbeförderung"
- ***P. Schlosser***: "Nichtanerkennung eines Schiedsspruchs mangels gültiger Schiedsvereinbarung"
- ***R. Geimer***: "Enge Auslegung der Ausnahmeklausel des Art. 34 Nr. 2 EuGVVO – Der EuGH marginalisiert den 'Federstrich' des Reformgesetzgebers"
- ***H. Roth:*** "Zur verbleibenden Bedeutung der ordnungsgemäßen

Zustellung bei Art. 34 Nr. 2 EuGVVO"

- ***E. Jayme/C. F. Nordmeier:*** "Multimodaler Transport: Zur Anknüpfung an den hypothetischen Teilstreckenvertrag im Internationalen Transportrecht – Ist § 452a HGB Kollisions- oder Sachnorm?"
- ***T. Domej:*** "Negative Feststellungsklagen im Deliktsgerichtsstand"
- ***P. Oberhammer/M. Slonina:*** "Konnexität durch Kompensation?"
- ***T. Struycken/B. Sujecki:*** "Das niederländische Gesetz zur Regelung des internationalen Sachenrechts" – the English abstract reads as follows:

On 1 May 2008, the new Dutch Act on Conflict of Laws in cases of Property (Wet Conflictenrecht Goederenrecht) came into force. This Act is the latest one in a series of legislative measures in the field of Private International Law in the Netherlands. In this Act the Dutch legislator incorporated the most important Dutch case law in the field of international property law. Additionally, some principle provisions were introduced which affect the classical topics in the field of international property law. This article will give a short overview of the key issues of this new Act.

Further, this issue contains the following **materials**:

- Niederlande: Gesetz vom 25.2.2008 über die Regelung des Kollisionsrechts der sachenrechtlichen Verhältnisse von Sachen, Forderung, Aktien sowie den Effektengiroverkehr (Gesetz über das Kollisionsrecht des Sachenrechts) Staatsblad 2008, Nr. 70

As well as the following **information**:

- ***M. Tamm***: "Tagungsbericht zum Symposium anlässlich des 65. Geburtstags von Prof. Dr. Harald Koch – Thema: `Nationale und internationale Perspektiven für ein soziales Privat- und Prozessrecht`"
- ***H. Krüger***: "Syrien: Neues Schiedsrecht"

Ontario Court Orders Children Returned to United Kingdom

In *Courtney v. Springfield* (available here) the parties had cohabitated as a same-sex couple for nine years in the United Kingdom and the defendant had adopted two children (the couple could not legally adopt them as a couple). The defendant separated from the plaintiff in 2003 and moved to Ontario with the children in 2007. The plaintiff sought the return of the children, based on the Hague Convention on the Civil Aspects of International Child Abduction. She won: the court ordered the return of the children to the United Kingdom.

The case concerns the following issues: (a) did the plaintiff, who had not adopted the children, have "rights of custody" over the children; (b) was the plaintiff exercising those rights at the time of removal (since the parties had been separated for four years), (c) were there other reasons the court should nonetheless decline to order the return of the children. The answers: yes, yes, and no. The most complex analysis is on the first of these issues, and the case contains several interesting factual wrinkles.

French Case on Lis Pendens under Brussels II bis Regulation

The French Supreme Court for Private and Criminal Matters (*Cour de cassation*) handled an interesting decision earlier this year on lis pendens under Regulation 2201/2003 of 27 November 2003 (Brussels IIbis).

In this case, two spouses initiated divorce proceedings in England and France **the same day**. The spouses were French nationals who had married in 1996 before moving to England in 2004 with their child (born in Japan). On March 24, 2005, the husband introduced an action in France under Article 3(b) of the Regulation (common nationality of the spouses). On the same day, the wife introduced an

action in England under Article 3 (a) of the Regulation (habitual residence).

Which court, then, was to retain jurisdiction?

The wife provided evidence of the time when her husband was served with the English relevant documents: 12:30 pm, at his work place. French trial judges found that, by contrast, the husband was unable to provide evidence of the time when the French court had been seized.

In a judgment of 11 June 2008, the *Cour de cassation* held that he had the burden of proof, and that it was therefore for him to prove that the French court had been seized earlier than the foreign court on the relevant day. As a consequence, the court ruled that the English court had been seized first, and that the French court had been right to stay its proceedings.

In any case, in the meantime, the English High Court had actually ruled on the merits in a judgment of 13 July 2007. It seems that its jurisdiction was not challenged, as the defendant did not enter into appearance in England.

Impossible n'est pas francais

Unlike other French proceedings, divorce proceedings are not initiated by serving the other party, but by filing with the court. In the present case, this raises two issues.

First, it is somewhat paradoxical to ask the husband to provide evidence to a court of the time when *that* court was seized. One would have hoped that the court would know. And it is even more paradoxical to tell him that he looses if he cannot bring such evidence.

Second, none of the French courts involved in that case cared for the fact that there was no mechanism to certify the time when the proceedings were filed. I suspect that the standard receipt mentions only the day. The argument was put forward that, as a consequence, parties in different states were not put on an equal footing. Indeed, if most French courts are unable to provide evidence of the time when they are seized, this will mean that other courts of the EU which can provide such evidence will always be seized first, at least from a French perspective.

New Publication: Kruger on EU Jurisdiction Rules and Third States

T. Kruger, *Civil Jurisdiction rules of the EU and their impact on third States*, Oxford University Press, 2008, 442p.

This new publication by the South African author Dr Thalia Kruger examines the civil jurisdiction rules of the EU, contained in Council Regulations 44/2001 (Brussels I), 2201/2003 (Brussels II*bis*), and 1346/2000 (Insolvency Regulation) through the lens of third States. The Regulations have been created for EU Member States and cases with elements in two or more of these States. However, in practice questions have arisen about which of the national civil jurisdiction rules can still be used when parties from third States are concerned. There were the cases of *Turner*, *Owusu*, and the *Lugano Opinion*, to mention just those that have reached the European Court of Justice. These cases have shown that the demarcation between EU law and national law in the sphere of civil jurisdiction is not always clear-cut.

The book is built around four cornerstones, which are used for the determination of the regulations' applicability. The first is the defendant and his, her, or its domicile, nationality, habitual residence, or, in the case of the Insolvency Regulation, centre of main interests: what is the effect if that is in a third State? This part of the book also examines bases of jurisdiction linked to the place of the performance of a contract or the commission of a delict or tort and how the domicile of the defendant is relevant in finding whether or not the regulations should be applied. The second cornerstone is exclusive jurisdiction, such as that based on immoveable property. Here it is not some aspect of the defendant that determines applicability of the regulations, but rather the property or other exclusive element. The third cornerstone is the choice by the parties of where they want their dispute to be heard. The fourth cornerstone is a procedural one and deals with the rules of *lis pendens*, *forum non conveniens*, related actions,

and anti-suit injunctions. The book concludes with recommendations for the amendment of Brussels I to take the situation of third States into account more explicitly.

This book is published in the Private International Law Series of Oxford University Press. It is a reworked version of Thalia Kruger's PhD thesis, completed in 2005 at the Katholieke Universiteit Leuven under Professor Hans Van Houtte's supervision.

Publication: Heidelberg Report on the Application of Regulation Brussels I

The General Report of the Study on the Application of Regulation Brussels I in the (former) 25 Member States (Study JLS/C4/2005/03) has recently been published:

"The Brussels I Regulation 44/2001
Application and Enforcement in the EU"
edited by *Burkhard Hess*, *Thomas Pfeiffer* and *Peter Schlosser*

The study has been conducted under the direction of *Prof. Dr. Burkhard Hess*, *Prof. Dr. Thomas Pfeiffer* (both Heidelberg) and *Prof. Dr. Peter Schlosser* (Munich) on behalf of the European Commission.

The report is based on interviews, statistics and practical research in the files of national courts and includes several recommendations with regard to a future improvement of the Regulation. In particular, the report proposes to delete the arbitration exception in Article 1 No. 2 (d) in order to bring ancillary proceedings relating to arbitration under the scope of the Brussels I Regulation which will be one of the topics discussed at the forthcoming **Conference on Arbitration and EC Law** taking place in Heidelberg from 5th to 6th December.

The Table of Contents is available here.

More information on the book can be found at the website of Hart Publishing as well as the Beck Verlag.

ISBN: 9781841139012; Sept 2008; 256pp; £66; US$138
Customers in the UK, Europe and Rest of World can place orders directly with Hart Publishing, Oxford, UK
Customers in the US can place orders with International Specialised Book Services, Portland, Oregon

See for more information on this study also our previous posts which can be found here , here and here.

Publication: Festschrift Jan Kropholler

Recently, the Festschrift in honor of *Prof. Dr. Jan Kropholler* titled

“Die richtige Ordnung
Festschrift für Jan Kropholler zum 70. Geburtstag”

(The Right Order. Festschrift for Jan Kropholler on his 70th birthday) edited by *Dietmar Baetge*, *Jan von Hein* and *Michael von Hinden* has been published.

The English abstract reads as follows:

> *The present collection of essays in honor of Jan Kropholler celebrates a scholar of international distinction who has exerted a decisive influence on the development of conflict of laws and the international unification of private law in the past decades. The volume contains contributions that span the whole range of Kropholler’s academic interests, from the harmonization of substantive private law to general questions of private international law, specific areas (family law, contracts, non-contractual obligations) and, in particular,*

international civil procedure. A recurrent theme is the rapidly growing Europeanization of these subjects.

The Festschrift includes the following contributions:

- *Claus-Wilhelm Canaris:* Teleologie und Systematik der Rücktrittsrechte nach dem BGB
- *Axel Flessner:* Friktionen zwischen der internationalen und der europäischen Vereinheitlichung des Privatrechts
- *Herbert Kronke:* Transnational Commercial Law: General Doctrines, Thirty Years On
- *Stephan Lorenz und Frank Bauer:* Rücktritt und Minderung bei erfolgreicher Nacherfüllung? Zugleich zur Gefahrtragung während der Nacherfüllung
- *Dietmar Baetge:* Auf dem Weg zu einem gemeinsamen europäischen Verständnis des gewöhnlichen Aufenthalts. Ein Beitrag zur Europäisierung des Internationalen Privat- und Verfahrensrechts
- *Peter Hay:* Comments on Public Policy in Current American Conflicts Law
- *Christian Heinze:* Bausteine eines Allgemeinen Teils des europäischen Internationalen Privatrechts
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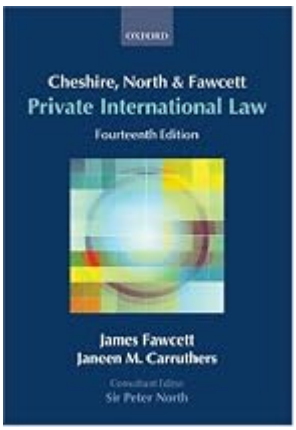
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