French Judgment on Article 5(1) of the Brussels I Regulation, Part IV

On March 5, 2008, the French supreme court for private matters (*Cour de cassation*) confirmed its previous case law characterizing exclusive distribution agreements as contracts which are neither sales nor provisions of services for the purposes of article 5(1) of the Brussels I Regulation.

In this case, German company Wolman had awarded French company Cecil the exclusive distribution of its products (wood) in France. After Wolman terminated the contract in 2002, Cecil sued before a French commercial court in Isère.

The Court of Appeal of Grenoble ruled in a judgment of November 16, 2006 that French courts had jurisdiction over the dispute, as the distribution contract ought to be characterized as a provision of service, which had taken place in France.

The *Cour de cassation* reversed. It held that it was no provision of service for the purpose of article 5, and that the lower courts ought to have identified the obligation in question and found where it was meant to be performed according to the law governing the contract.

As usual, no reasons are given by the *Cour de cassation* in support of its solution.

Related posts:
French Judgment on Article 5(1) of the Brussels I Regulation, Part I
French Judgment on Article 5(1) of the Brussels I Regulation, Part II
French Judgment on Article 5(1) of the Brussels I Regulation, Part III

Conferences: Organized by ERA

Spring/Summer 2008

The Academy of European Law (ERA) organizes a number of private international law related conferences, seminars and courses during the spring and summer of 2008:

3rd European Forum for In-house Counsel, *Brussels, 24-25 Apr 2008*

- Description from the ERA website: For the third consecutive year, ERA and ECLA are organising the European Forum for In-House Counsel, combining the pragmatism of an in-house lawyer association with the expertise of a first-class European training institute. The European Forum for In-House Counsel provides a forum for the exchange of practical experience, knowledge and views between all in-house counsel and other lawyers involved in business affairs. The aim is to provide in-house counsel, through expert input, with a comprehensive overview of and a practical insight into issues of European Community law with which an in-house counsel is confronted. The latest developments and the recent relevant case law of the Community courts in areas such as European competition law, European company law, European private law, as well as the topic of legal privilege, will be analysed during the forum. Interaction among participants will be encouraged through periods of discussion and case studies.
- Target audience: In-house counsel and lawyers specialised in business affairs

Cross-Border Debt Recovery, *Trier, 15-16 May 2008*

- Description from the ERA website: Dr Angelika Fuchs (ERA) and Professor Burkhard Hess (University of Heidelberg) are organizing a conference on Cross-Border Debt Recovery. Freezing or "attaching" a debtor's bank account(s) is a very effective way for creditors to recover the amount owed to them. Most Member States have legislation, which provides for the attachment of bank accounts. Debtors can, however, transfer funds very quickly to other accounts that the creditor may not know about. The creditor is often not able to block such movements of funds as quickly and therefore loses a powerful weapon against

recalcitrant debtors. The European Commission feels that problems of cross-border debt recovery are an obstacle to the free movement of payment orders within the European Union and to the proper functioning of the internal market. Late payment and non-payment are a risk for businesses and consumers alike. The Commission therefore proposes the creation of a European system for the attachment of bank accounts. The consultation process initiated by the Green Paper on the attachment of bank accounts has inspired a vivid debate among practitioners, governments and academics. Furthermore, a second Green Paper on measures enhancing the transparency of the debtor's assets will be published soon.

- Target audience: Lawyers in private practice, in-house lawyers, stakeholders, representatives of national authorities and academics specialised in civil procedure and banking law

Recent Developments in Private International Law and Business Law, *Trier, 5-6 Jun 2008*

- Description from the ERA website: Dr Angelika Fuchs, ERA, organizes a seminar on recent developments in private international law and business law. Private international law and business law continue to be characterised by growing Europeanisation. The purpose of this seminar will be to present the latest developments in both legislation and jurisprudence in the following areas: Brussels I Regulation and anti-suit injunctions; Intellectual property and conflict of laws; New Regulation (EC) No. 1393/2007 on the service of documents; New Directive on certain aspects of mediation in civil and commercial matters; New Regulation (EC) on the law applicable to contractual obligations ("Rome I"); New Regulation (EC) No. 864/2007 on the law applicable to non?contractual obligations ("Rome II"); Trends in European company law: from Daily Mail to Sevic and Cartesio; Major decisions on cross-border insolvency.

- Target audience: Lawyers in private practice, in-house counsel in companies, associations, ministries and other public authorities, judges, notaries, academics

Summer Course: European Company Law, *Trier, 18-20 Jun 2008*

- Description from the ERA website: Tomasz Kramer, ERA, organizes a summer course on European company law. For the second time European company law will feature in ERA's series of summer courses in Trier. The impact of enlargement and globalisation on the internal market creates a special context for individuals and companies that operate across borders. The European Commission has launched a wide-ranging strategy to adapt and harmonise European company law to meet these new challenges. European law has considerably influenced the shape of modern company law in EU member states. Directives and the case law of the European Court of Justice have helped to harmonise national laws and regulations have introduced new legal forms for businesses. The 'Europeanisation' of company law continues apace. This course will offer an introduction to the principles and framework of European company law. It will provide a comprehensive overview of subjects including the formation of different types of companies, corporate governance and management options, capital requirements, shareholders' rights and insolvency. In addition, topics such as corporate restructuring and mobility as well as the characteristics of transnational financial vehicles will be addressed, albeit taking into consideration national particularities. The course will address current challenges and the latest legislative proposals. The analysis of ECJ case law will be an essential element of the course. Participants will have the opportunity to take a preparatory online e-learning module.
- Target audience: Young lawyers in private practice, public administration or in-house counsel, as well as advanced or postgraduate students, academics, economists or auditors seeking a detailed introduction to European company law

Summer Course: European Private Law, *Trier, 30 Jun-4 Jul 2008*

- Description from the ERA website: Nuno Epifânio, ERA, organizes a summer course on European private law. The purpose of this course is to introduce lawyers to European private law. Among the areas covered during the seminar will be: European Civil Procedure; Private International Law; Contract Law; Insolvency Law; Financial Services; Consumer Protection. This course should prove of particular interest to lawyers who wish to specialise in or acquire an in-depth knowledge of European private law. A general knowledge of EU law is suitable but no

previous knowledge or experience in European Private Law is required to attend this course. Participants will be able to deepen their knowledge through case-studies and workshops. The course includes a visit to the European Court of Justice in Luxembourg. Participants will have the opportunity to take a preparatory onlinee-learning module.

- Target audience: Lawyers in private practice, in-house counsel, representatives of national authorities and academics

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Max-Planck Events Spring 2008

During the spring of 2008, the Max Planck Institute for Comparative and International Private Law will organize several events:

On 29 March 2008 the Max Planck Institute and the Claussen Simon Foundation will hold a **colloquium on the Education of Jurists and Judges**.

On 31 March 2008 Prof. Dr. Lu Song (Director, Institute of International Law, China Foreign Affairs University) will present a lecture titled **"Introduction to the New Conflict Rules for Foreign-related Contracts in China — Judicial Interpretation by the Chinese Supreme Court"**.

On 14 April 2008 Professor Dr. Joseph Thomson from the Scottish Law Commission, Edinburgh will hold a guest lecture titled, **"Some Thoughts about Loss"**.

On 19 and 20 May 2008 the Institute will host **the second Max Planck Postdoc Conference on European Private Law** at which junior researchers from throughout Europe will be invited to present and discuss their research work.

For further information, have a look at the MPI website.

First issue of 2008's Journal du Droit International

The first issue of French *Journal du Droit International* (also known as *Clunet*) will be released shortly. It contains four articles dealing with conflict issues.

The first is authored by Pascal de Vareilles-Sommieres, who teaches at Paris I University, and Anwar Fekini, who is a practising lawyer in Paris and Tripoli. It discusses The New International Oil Exploration and Sharing Agreements in Libya (*Les nouveaux contrats internationaux d'exploration et de partage de production pétrolière en Libye. Problèmes choisis*). The English abstract reads:

> *The article intends to study the legal regime of the exploration and production sharing agreements (EPSAs) entered into by the Libyan National Oil Company with foreign oil companies since 2005. In this first part, the authors focus on legal sources governing Libyan EPSAs. Though admitting the prominent part of Libyan law chosen by the parties in a choice of law provision among these sources, the authors wonder whether the parties simultaneously intended to get other possible legal sources combined with it. A possible choice of public international law is first examined. Scrutinising the parties intention, the article comes to the conclusion that no sign pointing to an internationalisation of the EPSAs appears in the agreements. As a consequence, international contract law is not to be combined with Libyan law as far as the legal regime of the EPSAs is concerned. The study then looks for possible hints of the parties intention to get the lex mercatoria involved in the regulation of their agreement along with Libyan law. Several signs are brought to the light showing the parties' common intention to let international trade usages interfere with Libyan law to be combined with it in order to finally make up the lex contractus.*
>
> *The second part of this study will be published this year in a forthcoming issue of this Journal.*

The second article is a study of the Rome II Regulation (*Le règlement (CE) n° 864/2007 du 11 juillet 2007 sur la loi applicable aux obligations non contractuelles (« Rome II »)*). It is authored by Carine Briere, who lectures at

Rouen University. Here is the English abstract:

> *The aim of this article is to present Regulation (EC) n° 864/2007 known as « Rome II », which is the result of a long process of elaboration. Codecision procedure has been used to adopt this text which harmonises rules of conflict of laws regarding noncontractual obligations to improve predictability concerning the law applicable. It constitutes a new step towards the construction of a private international community law. The Regulation follows current private international law trends that give competence to the law of the country in which the damage arises. Nevertheless, an escape clause introduces a flexible approach when the lex loci damni seems to be inappropriate. Specific rules for certain torts and restitutionary obligations are also laid down. They derogate the general rule. Moreover, the Regulation upholds in an extensive way the choice of law principle and determines the link with other norms such as the Hague Conventions on which it does not take precedence.*
>
> *However, this Regulation, adopted in order to facilitate correct workings of the internal market, shall not prejudice the application of internal market legislation.*

The third article from Moustapha Lô Diatta from HEI in Geneva presents the Evolution of Bilateral Treaties on Migratory Workers (*L'évolution des accords bilatéraux sur les travailleurs migrants*). The abstract reads:

> *Bilateral labour agreements represent not only the oldest but also the most important source of international migrant workers law. Since their appearance in earlier twentieth century, they have been changing at contracting parties' will, by reference to the political and economic context, the developments of international labour migration and the progress made by international legislation in protecting migrant workers. The purpose of this study is to show to what extent the lessons that can be drawn from this evolution could contribute to the ongoing debate and consultations within the international bodies to establish a multilateral framework in which international labour migration would be mutually beneficial.*

Finally, Philippe Roussel Galle from Dijon University presents a Few Ideas on the Interpretation of Regulation 1346/2000 on Insolvency Proceedings after the

French Circular of 15 December 2006 (*De quelques pistes d'interprétation du règlement*
(CE) n° 1346/2000 sur les procédures d'insolvabilité : la circulaire du 15 décembre 2006).

> *The entry into force of law n° 2005-845 of 26 July 2005 which institutes, among other things, a safeguard procedure, combined with the first court decisions enforcing regulation (EC) n° 1346/2000 on insolvency proceedings, have lead the French Ministry of Justice to repel and replace the circular of 17 March 2003 regarding the implementation of the regulation. The new circular, enacted on December 15th 2006, gives precisions and interpretation guidelines on the European text and brings, notwithstanding sovereign judicial appreciation, solutions to the difficulties its implementation might create in France.*

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts"

Recently, the March issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was released.

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

- ***R. Wagner/B. Timm*** on the German ministerial draft bill on the law applicable to companies, juristic persons and associations ("Der Referentenentwurf eines Gesetzes zum Internationalen Privatrecht der Gesellschaften, Vereine und juristischen Personen"). The English abstract reads as follows:

> *Companies that operate across borders need clarity with regard to which respective national law applies to them. There are some decisions of the*

European Court of Justice on the right of settlement according to the Treaty which touch this matter. However, no uniform picture has yet emerged in the European Union. A uniform European regulation would be desirable, but the EU-Commission has not taken up this question yet. In order to promote legal certainty, the German Federal Ministry of Justice has therefore presented a ministerial draft bill on the law applicable to companies, juristic persons and associations. The bill might later on serve as the basis for work on a European regulation. As a general rule, the ministerial draft bill provides for the "law of establishment", i.e. the law at the place of registration, as the law applicable to companies, legal persons and associations. For non-registered companies, legal persons and associations, the applicable law is to be that under which they are organised. Furthermore, the proposed bill clarifies the scope of "the law of establishment" and contains regulations regarding the law applicable to cross-border reorganisations, the change of applicable law and other aspects of cross-border cases.

- ***J. Fingerhuth/J. Rumpf*** on the consequences of the German MoMiG for cross-border relocations of German entities ("MoMiG und die grenzüberschreitende Sitzverlegung – Die Sitztheorie ein (lebendes) Fossil?"). Here is the English abstract:

The German government rendered a top-to-bottom reform of the German Law on Limited Liability Companies ('GmbHG') with the governmental draft of the MoMiG dated 23 May 2007. The reform also covers the German law on Stock Corporations ('AktG') and general corporate law matters. It is intended by the reform to abandon the required concurrence of statutory seat and seat of the head office of a company and, therefore, to allow German GmbHs and AGs to move their head office to another country (cross-border relocation). Both GmbH and AG will have the same opportunities as entities from countries, where the incorporation theory is applicable. The article discusses the consequences of the MoMiG for cross-border relocations of German entities. In particular, by using the example of the GmbH & Co KG, the authors illustrate problems arising from the intentions of the MoMiG and the 'real seat' theory as it is currently applied in Germany. Furthermore, the authors discuss the need for German entities to completely apply the incorporation theory in Germany. The

article comes to the conclusion that the 'real seat' theory will be entirely abandoned by the MoMiG becoming effective. The authors finally encourage the legislator to express this consequence literally within the reasoning of the MoMiG.

- ***A.-K. Bitter*** on the interpretative connection between the Brussels I Regulation and the (future) Rome I Regulation ("Auslegungszusammenhang zwischen der Brüssel I-Verordnung und der künftigen Rom I-Verordnung")
- ***A. Kampf*** on the implications of the European directive on services on PIL ("EU-Dienstleistungsrichtlinie und Kollisionsrecht"). The abstract reads:

On 28 December 2006, after a period of almost three years of debate and political manoeuvring, the European directive on services (2006/123/EC) came into force. It will have to be implemented by the Member States by 28 December 2009 at the latest. The directive applies to a wide range of service activities based upon the case law of the European Court of Justice relating to the freedom of establishment and the free movement of services. In order to make it easier for businesses to set up in other Member States or to provide services across-border on a temporary basis, each Member State shall set up Points of Single Contact. These shall ensure that providers have access to all necessary information and can complete the formalities necessary for doing business in other Member States. Moreover regulatory and authorization bodies across the EU are meant to cooperate more effectively. The directive is expected to engender consumer confidence in cross-border services through access to information. Restrictive legislation and practices shall be abolished after having been screened. A rather neglected aspect in public discussion are the directive's implications on private international law. Nevertheless they should be examined for both practical and systematic reasons.

- ***A. Fuchs*** on the question of international jurisdiction for direct actions against the insurer in the courts of the Member State where the injured party is domiciled ("Internationale Zuständigkeit für Direktklagen"), (ECJ, 13.12.2007, C-463/06 (*FBTO Schadeverzekeringen N.V. v. Jack Odenbreit)*; Higher Regional Court Karlsruhe, 7.9.2007 – 14 W 31/07;

Local Court Bremen, 6.2.2007 – 4 C 251/06). This is the English abstract:

The injured party may bring an action directly against the insurer in the courts of the place in a Member State where the injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State. This follows, according to the judgment of the ECJ, from the reference in Article 11 (2) of the Brussels I Regulation to Article 9 (1) (b). The previous judgment of the first instance court in Bremen was based on the same argument. However, according to a judgment of the court of appeal in Karlsruhe, courts at the place of domicile of the injured party lack international jurisdiction under the Lugano Convention. Fuchs argues that neither the wording nor the historic interpretation support the assumption of jurisdiction of the courts in the state where the injured party is domiciled. This situation has not been altered in the course of the transfer of the Brussels Convention into a regulation. The main argument in favour of admitting direct claims before the courts of the injured party's domicile can be drawn from the systematic interpretation. However, this additional place of jurisdiction will have undesirable consequences such as forum shopping and race to the court. In case of Article 11 (3), it will lead to unforeseeable results for the policyholder or the insured. Furthermore, it may have a negative economic impact for drivers in relatively poor Member States. The author criticizes the European legislator for not having discussed these issues openly in the context of the Brussels I Regulation.

- ***A. Staudinger*** on a decision of the German Federal Supreme Court on the scope of the head of jurisdiction of Art. 15 (2) Brussels I Regulation ("Reichweite des Verbrauchergerichtsstandes nach Art. 15 Abs. 2 EuGVVO"), (Federal Supreme Court, 12.6.2007 – XI ZR 290/06)
- ***E. Eichenhofer*** on a decision of the Higher Labour Court Frankfurt (Main) dealing with the question of international jurisdiction regarding contribution claims of German social security benefits offices against employers having their seat in another EU Member State ("Internationale Zuständigkeit für Beitragsforderungen deutscher tariflicher Sozialkassen gegen Arbeitgeber mit Sitz in anderen EU-Staaten"), (Higher Labour Court Frankfurt (Main), 12.2.2007 – 16 Sa 1366/06)
- ***J. von Hein*** on the concentration of jurisdiction regarding appeals in

cross-border cases according to § 119 (1) No. 1 lit. b GVG ("Die Zuständigkeitskonzentration für die Berufung in Auslandssachen nach § 119 Abs. 1 Nr. 1 lit. b GVG – ein gescheitertes Experiment?"), (Federal Supreme Court, 19.6.2007 – VI ZB 3/07 and 27.6.2007 – XII ZB 114/06)

- ***D. Henrich*** on the question of renvoi in PIL of names occurring due to a different qualification by foreign law ("Rückverweisung aufgrund abweichender Qualifikation im internationalen Namensrecht"), (Federal Supreme Court, 20.6.2007 – XII ZB 17/04)

- ***B. König*** on the requirements of due information as well as the scope of application of the Regulation creating a European Enforcement Order for uncontested claims ("EuVTVO: Belehrungserfordernisse und Anwendungsbereich"), (Regional Court Wels, 5.6.2006 – 1 Cg 159/06m, Higher Regional Court Linz, 4.7.2007 – 1 R 124/07x)

- ***A. Laptew/S. Kopylov*** on the requirement of reciprocity with regard to the enforcement of foreign judgments between the Russian Federation and Germany (Yukos Oil Company) ("Zum Erfordernis der Gegenseitgkeit bei der Vollstreckung ausländischer Urteile zwischen der Russischen Föderation und der Bundesrepublick Deutschland (Fall Yukos Oil Company)"), (Federal Commercial District Court Moscow, 2.3.2006 – KG-A40/698-06P)

- ***H. Krüger*** on the recognition and enforcement of foreign titels in Cameroon ("Zur Anerkennung und Vollstreckung ausländischer Titel in Kamerun")

- ***A. Jahn*** on PIL questions in the context of withdrawals of wills due to marriage in anglo-american legal systems ("Kollisionsrechtliche Fragen des Widerrufs eines Testamentes durch Heirat in anglo-amerikanischen Rechtsordnungen")

- ***C. Jessel-Holst*** on the Statute of Private International Law of the Republic of Macedonia ("Zum Gesetzbuch über internationales Privatrecht der Republik Mazedonien")

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

- Statute of Private International Law of the Republic of Macedonia of 4

July 2007 ("Gesetz über internationales Privatrecht – Gesetz der Republik Mazedonien vom 4.7.2007")

- Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock – signed in Luxembourg on 23 February 2007 ("Protokoll von Luxemburg zum Übereinkommen über internationale Sicherungsrechte an beweglicher Ausrüstung betreffend Besonderheiten des rollenden Eisenbahnmaterials – unterzeichnet in Luxemburg am 23.2.2007")

As well as the following **information**:

- ***H.-G. Bollweg/K. Kreuzer*** on the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock ("Das Luxemburger Eisenbahnprotokoll – „Protokoll zum Übereinkommen über internationale Sicherungsrechte an beweglicher Ausrüstung betreffend Besonderheiten des rollenden Eisenbahnmaterials" vom 23. 2. 2007")

- ***E. Jayme*** on the (critical) debate in France about the Community's competence in PIL which was made public by French PIL professors by means of open letters on this issue ("Frankreich: Professorenstreit zum Europäischen IPR – einige Betrachtungen")

- ***E. Jayme*** on the convention of the Ludwig-Boltzmann-Institutes in Vienna ("Kodifikation des IPR, des grenzüberschreitenden Zivilrechts und Zivilverfahrensrechts in der Europäischen Union – Tagung der Ludwig-Boltzmann-Institute in Wien")

- ***C. Gross:*** report on the 40th UNCITRAL session ("Bericht über die 40. Sitzung der Kommission der Vereinten Nationen zum internationalen Handelsrecht (UNCITRAL)")

For recent information on PIL see also the website of the Institute for Private International Law, Cologne.

(Many thanks to Prof. Dr. Heinz-Peter Mansel, editor of the journal (University of Cologne) for providing the English abstracts.)

European Commission adopts Green Paper on Effective Enforcement of Judgments in the EU

On 6 March, the European Commission adopted the Green Paper

"Effective Enforcement of judgments in the European Union: The Transparency of Debtor assets".

As stated in the press release, Vice-President *Franco Frattini*, Commissioner responsible for Justice, Freedom and Security declared:

> *"The objective of this Green paper is to find possible measures at a European level to improve the transparency of debtors' assets and the right of creditors to obtain information whilst at the same time respecting the principles of protection of the debtor's privacy which counterbalances the creditor's right to efficient recovery" .*

The press release continues as follows:

> *Problems in cross-border debt recovery represent an obstacle to the free circulation of payment orders within the European Union and may impede the proper functioning of the Internal Market. Late payment and non-payment jeopardise the interests of businesses and consumers alike. This is particularly the case when the creditor and the enforcement authorities have no information about the debtor's whereabouts or his assets.*
>
> *The search for the debtor's address and/or for information about his financial situation is often the starting point of enforcement proceedings. At present, transparency of debtors' assets is generally achieved at a national level through different sources of information, in particular through registers and the*

debtor's declaration. While the basic structures of the national systems appear similar, there are considerable differences in the conditions of access, the procedures for obtaining information, the content and the overall efficiency of the systems. The cross-border recovery of debts is hampered by the differences between the national legal systems and by insufficient knowledge on the part of creditors about the information structures in other Member States. However, the similarity of the underlying structures of the legal systems of the Member States could provide a basis for approximation.

This Green Paper aims to launch a broad consultation among interested parties on how to improve the transparency of debtors' assets which can be provided through registers and by the debtor's declaration. The Commission believes that it is worth taking into account a number of measures that might improve the current situation, helping to ensure that the creditor obtains reliable information on his debtor's assets within a reasonable period of time, and in particular:

- *Drawing up a manual of national enforcement laws and practices*
- *Increasing the information available in and improving access to registers (Commercial registers – Population registers – Social security and tax registers).*
- *Exchange of information between enforcement authorities*
- *Measures relating to the debtor's declaration (a Community instrument setting out the obligation of Member States to introduce a procedure for the taking of a debtor's declaration or the introduction of a uniform "European Assets Declaration).*

The Green Paper, the full press release as well as information on the submission of comments to the Green Paper can be found at the website of the European Judicial Network.

See in this context also the Study JAI/A3/2002/02 on making more efficient the enforcement of judicial decisions within the European Union which has been prepared by the University of Heidelberg under the direction of Prof. Dr. Burkhard Hess on behalf of the European Commission.

New Publication: Principles, Definitions and Model Rules of European Private Law

Recently, **Principles, Definitions and Model Rules of European Private Law**, prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), has been published. The abstract reads as follows:

> *In this volume the Study Group and the Acquis Group present the first academic Draft of a Common Frame of Reference (DCFR). It is based in part on a revised version of the PECL and contains Principles, Definitions and Model Rules of European Private Law in an interim outline edition. It covers the Books on contracts and other juridical acts, obligations and corresponding rights, certain specific contracts and non-contractual obligations. One purpose of the text is to provide material for a possible "political" Common Frame of Reference (CFR) which was called for by the European Commission's "Action Plan on A More Coherent European Contract Law" of January 2003.*

More information, in particular the table of contents as well as an extract can be found at the publisher's website.

Fourth Issue of 2007's Revue

Critique de Droit International Privé

The last issue of *Revue Critique de Droit International Privé* for 2007 was just released. It contains two articles dealing with conflict issues.

The first is authored by Fabien Marchadier who lectures at the Law Faculty of Limoges University. It discusses the Contribution of the European Court of Human Rights to the Efficacy of the Hague Conventions on Judicial and Administrative Cooperation (*La contribution de la CEDH à l'efficacité des conventions de La Haye de coopération judiciaire et administrative*). The English abstract reads:

> *The first encounters between the Hague Conventions and European human rights law have revealed in particular that there is an issue of compatibility of transnational cooperation with the ECHR. While the Hague Conventions aim to implement various rights and freedoms of which the Court of Strasbourg is the guardian, they are exposed at the same time to requirement of conformity, thereby providing the Court with the opportunity of ensuring the respect by national public authorities both of their reciprocal obligations to cooperate and of individual fundamental rights. Thus, the Court participates in the efficiency and effectiveness of the Hague Conventions by exercising an international control, otherwise lacking, over the compulsory nature of the cooperation and its effective implementation.*

The second article is authored by Maria Lopez de Tejada (Paris II University) and Louis D'Avout (Lyon III University). It is a study of Regulation 1896/2006 creating a European order for payment procedure (*Les non-dits de la procédure européenne d'injonction de payer*). Here is the English abstract:

> *After evoking successively the genesis of the Regulation which introduces into the Common judicial area an injunction to pay, the needs which this procedure is intended to cover and the means it has chosen to attain procedural uniformity, the study of this novelty, on the one hand, highlights the inadequate content of the new instrument, which rests on rules which are both incomplete*

and insufficiently attentive to the protection of the addressee of the injunction as far as notification and jurisdiction ar concerned, and on the other hand, detects a number of deficiencies affecting the use of this procedure, linked to the defective definition of its scope or a short-sighted view of its practical follow-up.

Nova Scotia Court of Appeal on Substance-Procedure Distinction

In *Vogler v. Szendroi* (available here) the plaintiff, resident in Nova Scotia, was injured in a car accident in Wyoming. Three years later he issued legal process in Nova Scotia. This was inside the four-year Wyoming limitation period, which applied as part of the substantive law applicable to the claim (under the place of the tort rule in *Tolofson v. Jensen*). However, he did not serve the defendant for another three years.

Under Wyoming law, an action is commenced by filing process with the court (the same is true in Nova Scotia), but if service is not made within 60 days of filing, the action is not considered to have been commenced until the date of service (Nova Scotia has no similar provision).

The issue therefore was whether the specific rule of Wyoming law focusing on the date of service was substantive, and so applied in the Nova Scotia litigation, or procedural, and so did not apply. The lower court held that the rule was "integral" to the Wyoming limitations rule and was therefore substantive. But the Court of Appeal reversed and characterized it as procedural.

The court's analysis is quite lengthy – longer than necessary for this issue. But it does contain some useful comments about the substance-procedure distinction (at paras. 17-22 and 26). It also relies on a useful academic source on this specific issue by Professor Janet Walker (at paras. 37-39). Ultimately the court concludes the Wyoming rule is not bound up in its limitations rule, and is rather a separate

procedural rule.

International Reach of French Attachments

Can attachments reach foreign bank accounts? For the French, the answer had always been clearly negative, until the French supreme court for private matters (*Cour de cassation*) held in a judgment of 14 February 2008 that a French attachment could reach a bank account in Monte Carlo.

In this case, a creditor had carried out an attachment on the bank account of its debtor, Société Exsymol. The account had been opened at the Monte Carlo branch of French bank BNP Paribas, but the creditor chose to carry out the attachment in Paris. The issue arose as to whether the attachment had reached the Monte Carlo account. The *Cour de cassation* held that it had.

French *saisies attribution*

The attachment was a *saisie attribution*. It is only available to creditors who have enforcement titles such as judgments or arbitral awards declared enforceable. Such attachments purport to transfer the property of the monies from the debtor to the creditor. They thus clearly belong to the enforcement of decisions. They are no freezing orders.

It should also be underlined that they are available to judgment creditors without any judicial intervention or even leave. Any French judgment creditor may directly hire an enforcement officer (*huissier de justice*) who will carry out the attachment on his behalf.

Scope of the rule

The Court insisted that the French *saisie* had reached the foreign account because it was held by a branch of the bank. It is ruled that the rationale of the solution is that *saisies* reach all assets owned by the corporate entity, irrespective of their location. It seems clear thus, that they would not reach assets held by a foreign subsidiary of the bank. But it also seems to follow that whether the bank had its headquarters in France is irrelevant.

Was European law relevant?

The judgment does not mention the Brussels I Regulation. Was it indeed irrelevant? I think so. I would argue that the regulation governs the jurisdiction of courts, not the power (jurisdiction?) of other state bodies such as enforcement officers to act internationally.

Additionally, Monte Carlo does not belong to the European Union. In enforcement matters, wouldn't the regulation apply only to the enforcement on the territories of member states? Would the enforcement here be the action of the French *huissier* in Paris or the transfer of ownership of the assets, thus taking place outside of the EU?

Is enforcement strictly territorial?

BNP Paribas is The bank for a Changing World. Changing it is indeed! In French legal circles, enforcement had always been regarded as strictly territorial. It was argued that it would be an infringment of the sovereignty of the foreign state to carry out enforcement on assets situated on its territory. It seems that the *Cour de cassation* is not convinced anymore.

All comments welcome! I would also love to hear from similar experiences in other jurisdictions.