Rome III: EP LIBE Committee's Draft Report on the Commission's Proposal

On 9 January 2008 *Evelyne Gebhardt*, Rapporteur in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), has released her **Draft report on the Commission's Proposal for a Council regulation amending regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters** (COM(2006)399 of 17 July 2006).

Pursuant to Rule 47 of the European Parliament's Rules of Procedure (16th edition – November 2007), the Rome III regulation is subject to the procedure with associated committees, since its subject matter 'falls almost equally within the competence of two committees' (as determined in Annex VI to the Rules of Procedure), and it is under the primary responsibility of the LIBE Committee, while the Committee on Legal Affairs (JURI) has been asked for an opinion. *Carlo Casini*, draftsman for the JURI Committee, presented a Draft opinion on 4 December 2007, that was discussed in the meeting of 19 December 2007.

The 'Rome III' file currently being examined by the LIBE Committee is thus formed by the following documents, besides the initial Commission's Proposal and Annexes – SEC(2006)949 and SEC(2006)950 – of 17 July 2006:

- a **Draft report** prepared by Rapporteur Gebhardt, containing 27 amendments to the text proposed by the Commission;
- an interesting **Working document on the law applicable in matrimonial matters**, prepared by the Rapporteur;
- a **Draft opinion delivered by the JURI Committee** (draftsman: Carlo Casini).

Once the Report is adopted in the LIBE Committee, the exam of the Rome III regulation is scheduled in the plenary session of the European Parliament on 22 April 2008 (see the OEIL page on the status of the procedure).

It must be stressed that, pursuant to Art. 67(5) of the EC Treaty, the **Rome III**

regulation is subject to the consultation procedure, so the Council is not bound by Parliament's position. The latest Council's document publicly available on the matter is a text drafted in June by the German and Portuguese Presidency on the basis of the meetings of the Committee on Civil Law Matters and of the comments of Member States' delegations (doc. n. 11295 of 28 June 2007). The latest 'Summary of discussions' (doc. n. 5753/08, currently not accessible) was prepared by the Committee on Civil Law Matters on 28 January 2008.

A political agreement is expected to be reached in the Council by the end of the Slovenian Presidency (June 2008). For further information on the Rome III regulation, see the dedicated section of our site.

Austrian Reference for a Preliminary Ruling on the Brussels I Regulation

The Austrian Supreme Court of Justice (*Oberster Gerichtshof*) has referred the following questions to the ECJ for a preliminary ruling:

> *1. Is a contract under which the owner of an incorporeal right grants the other contracting party the right to use that right (a licence agreement) a contract regarding 'the provision of services' within the meaning of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation)?*
>
> *2. If Question 1 is answered in the affirmative:*
>
> *2.1. Is the service provided at each place in a Member State where use of the right is allowed under the contract and also actually occurs?*
>
> *2.2. Or is the service provided where the licensor is domiciled or, as the case*

may be, at the place of the licensor's central administration?

2.3. If Question 2.1 or Question 2.2 is answered in the affirmative, does the court which thereby has jurisdiction also have the power to rule on royalties which result from use of the right in another Member State or in a third country?

3. If Question 1 or Questions 2.1 and 2.2 are answered in the negative: Is jurisdiction as regards payment of royalties under Article 5(1)(a) and (c) of the Brussels I Regulation still to be determined in accordance with the principles which result from the case-law of the Court of Justice on Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the Brussels Convention)?

The reference can be found at the website of the ECJ – *Falco Privatstiftung and Thomas Rabitsch v Gisela Weller-Lindhorst* (Case C-533/07).

Urgent Procedure Adopted for Preliminary Rulings in the Area of Freedom, Security & Justice

The excellent EU Law Blog has noted the adoption of an urgent procedure for preliminary rulings in the area of freedom, security and justice. Their post, in part, states,

Some time ago we posted a note about future amendments to the Rules of Procedure of the Court of Justice to provide for an urgent procedure for preliminary rulings in the areas of freedom, security and justice.

Those amendments have now been adopted and published.

The Protocol on the Statute of the Court of Justice is now amended by Council Decision 2008/79, published today, which allows for the possibility of an urgent procedure in the areas covered by Title VI of the EU Treaty and Title IV of the EC Treaty.

The Rules of Procedure of the Court of Justice are amended accordingly by inserting a new Article 104b that sets out the new urgent procedure. The referring national court may request that the urgent procedure be applied or the Court of Justice may decide to apply it of its own motion in exceptional cases.

Hop over to the EU Law Blog to **read the full post**. The statement by the Court of Justice on how the new procedure will be implemented can be found here. Readers may also be interested in our recent **Guest Editorial by Andrew Dickinson**, which highlights (amongst other things) some of the ECJ's current procedural deficiencies.

PIL at law teachers' conference in Pretoria

PIL abstracts of law teachers' conferenceA special session on Private International Law was held at the conference of the Society for Law Teachers of Southern Africa, held in Pretoria from 21 to 24 January 2008.

The following papers were delivered:
• Classification and liberative prescription in private international law by Jan Neels
• The role of Private International Law in International Trade by Eesa A Fredericks
• Could a South African court be expected to apply the CISG by virtue of article

1(1)(b)? by Marlene Wethmar-Lemmer
• The Strict Approach to Party Autonomy and Choice of Law in E-contracts in South Africa: Does the Approach Render South Africa an Unacceptable Jurisdiction? by Omphemetse Sibanda
• Regional organisations and the jurisdiction of their dispute settlement bodies by Thalia Kruger

(Follow the link at the top for the abstracts and contact details of the authors.)

Max-Planck Event: Brussels Jurisdiction and Common-Law Jurisdiction

Max Planck Institute for Comparative and International Private Law organizes on 4 February 2008 (17:00) a guest lecture to be given by Professor Adrian Briggs (University of Oxford, UK).

Professor Briggs' lecture is titled "**Brussels Jurisdiction and Common Law Jurisdiction: understanding and misunderstanding what courts may be asked to do**".

Essay Competition in Private International Law

We are pleased to announce

The CONFLICT OF LAWS .NET Essay Competition in Private International

Law
Sponsored by Clifford Chance LLP and Hart Publishing

The Competition is open to any student of a higher education institution anywhere in the world, writing in English on any aspect of private international law.

First prize: **$500**, plus **$300** worth of Hart Publishing books.
Second prize: **$250**, plus **$150** of Hart Publishing books.
Third prize: **$150**, plus **$100** of Hart Publishing books.
(All figures are in US dollars)

The best essays will also be submitted for consideration to the Journal of Private International Law.

Deadline: **1 September 2008 at 6pm GMT**. All entries, and any questions, should be **submitted by email** to essay@conflictoflaws.net.

For more information, including the rules on eligibility, format and length, please see the **Essay Competition homepage** (https://conflictoflaws.de/essay-competition).

Conference: The new European Choice-of-Law Revolution – Lessons for the United States?

On **Saturday 9th February 2008**, *Duke University School of Law* will host an international conference entitled, "The New European Choice-of-Law Revolution: Lessons for the United States." Here's the blurb:

> *In a globalizing world of interdependent legal systems, determining which laws apply to international private transactions is crucial. Choice of Law, the field that deals with these questions, was once so vibrant in the U.S. that we spoke of a veritable choice-of-law-revolution in the sixties and seventies. At that time,*

Europeans watched, with a mixture of fascination and disdain, these developments at the forefront of scholarship in this field.

Now, the pendulum has swung. The field is in a crisis in the United States, unattractive to scholars, and disliked by courts. By contrast, it is thriving in Europe. The most important choice-of-law questions are being addressed wholesale in the European Union. Rules are being unified in Europe-wide codifications, especially two regulations promulgated in 2007 and 2008 dealing with contractual and non-contractual obligations, respectively.The European Court of Justice is rendering important decisions and academics are engaging in active discussions and debates.

After the American choice-of-law revolution in the sixties and seventies, are we now observing a new European choice-of-law revolution? Can European developments incite reforms and rekindle excitement in the U.S., as earlier American developments incited reforms in Europe? Alternatively, are European developments a model of how things should not be done?

This conference brings together leading scholars from both the United States and Europe to engage in debate and comparative examination of approaches taken in Europe and the United States, with an eye towards renewing interest here in the United States. Methodological issues to be discussed include, federalization of choice of law, choice of law as an instrument of market regulation and methodological approaches. Substantive issues include choice of law in family, tort, contract, and corporate law. There will be ample time for the panelists to field questions and discuss these issues with those attending.

Sponsored by Duke University Center for International & Comparative Law in collaboration with the Tulane Law Review. Students are encouraged to attend.

The programme:

Saturday, February 9, 2008
Registration and Continental Breakfast 8:30 – 9:00

Welcome and Opening Remarks 9:00 – 9:15
Dean David Levi (Duke Law School)
Ralf Michaels (Center for International and Comparative Law)

Haller Jackson (Tulane Law Review)

Part I – Specific Areas of Law
Contract and Tort Law 9:15 – 10:45
Panelists:
Patrick Borchers, Professor of Law, Vice-President for Academic Affairs, Creighton University School of Law
Jan von Hein, Professor of Law, Universität Trier
Dennis Solomon, Professor of Law, Universität Tübingen
Symeon Symeonides, Professor of Law, Dean, Willamette College of Law

Family Law 11:00 – 12:15
Panelists:
Katharina Boele-Woelki, Professor of Law, Universiteit Utrecht
Marta Pertegás, Associate Professor International Private Law, Universiteit Antwerpen
Linda Silberman, Martin Lipton Professor of Law, New York University School of Law

Lunch Break: 12:15-13:30

Corporate Law 13:30 – 14:45
Panelists:
Larry Catá Backer, Professor of Law, Penn State Dickinson School of Law, Visiting Professor of Law, Tulane University Law School
Jens Dammann, Assistant Professor of Law, University of Texas School of Law
Onnig Dombalagian, Associate Professor of Law, Tulane University Law School

Part II -Methodology
Methods and Approaches 14:45 – 16:15
Moderator: TBA
Panelists:
Richard Fentiman, Solicitor, Reader in Private International Law, University of Cambridge Faculty of Law
Ralf Michaels, Professor of Law, Duke University School of Law
William A. Reppy Jr., Charles L. B. Lowndes Emeritus Professor of Law, Duke University School of Law
William M. Richman, Professor of Law, The University of Toledo College of Law

Internal and External Conflicts, Federalism and Market Regulation 16:30 – 18:00
Panelists:
Mathias W. Reimann, Hessel E. Yntema Professor of Law, University of Michigan Law School
Jürgen Basedow, Professor of Law, Max Planck Institute for Comparative and International Private Law
Horatia Muir Watt, Professor of Law, Université Paris I, Panthéon-Sorbonne
Erin O'Hara, Professor of Law, Vanderbilt University Law School
Larry Ribstein, Mildred Van Voorhis Jones Chair in Law, University of Illinois College of Law
Closing Discussion: 18:00 – 18:30

More information can be found on the conference website.

New Law on International Adoption in Spain

The Spanish Parliament has adopted a new statute on international adoption on 28 December 2007.

Professor Alegría Borrás reports on the site of the French Society of Comparative Legislation (in French).

The Spanish text can be found here.

Article Challenges Canadian Approach to Jurisdiction

Professor Tanya Monestier of Queen's University has published an article challenging the approach in some of the leading cases, including *Muscutt v. Courcelles*, to the taking of jurisdiction over defendants outside the forum: see Tanya J. Monestier, "A 'Real and Substantial' Mess: The Law of Jurisdiction in Canada" (2007) 33 Queen's L.J. 179 (available to those with access to a database containing this journal).

Professor Monestier argues that "By superimposing onto the jurisdictional framework a multiplicity of considerations that are unrelated to the connection between the forum and the action, *Muscutt* has essentially transformed the question of whether a court *can* hear a case (jurisdiction *simpliciter*) into the question of whether a court *should* hear a case (*forum non conveniens*)."

In her conclusions Professor Monestier stresses the importance of certainty in the jurisdictional inquiry and argues, in the (in)famous language of *Tolofson v. Jensen*, for "order" over "fairness".

New French Books on the Conflict of Laws

For long, scholars interested in the French conflict of laws had to refer to a few traditional books, in particular the treaty of Batiffol and Lagarde (8th edition 1993), but also the manuals of Loussouarn and Bourel (9th edition 2007, with professor Pascal de Vareilles-Sommières), of Pierre Mayer (9th edition 2007, with professor Vincent Heuzé), and of Bernard Audit (3rd edition 2006).

In 2005 and in 2007, three new books covering the whole field of conflicts have enriched French private international law. They all bear the title *Droit*

International Privé.

The first was published in 2005 by professor Thierry Vignal, who lectures at Cergy-Pontoise University. The publisher is Armand Colin.

The second was published in 2007 by professor Marie-Laure Niboyet and professor Geraud de Geouffre de la Pradelle, who lecture at Paris X (Nanterre) University. The publisher is LGDJ.

The third was published in 2007 by professor Dominique Bureau, who lectures at Paris II (Pantheon-Assas) University, and professor Horatia Muir Watt, who lectures at Paris I (Pantheon-Sorbonne) University. The publisher is PUF.