10% Discount on the Journal of Private International Law

A substantial proportion of the people receive our content via email or RSS, rather than visiting the site directly, and thus may not have noticed a new banner at the top of the screen (decorated in shades of yellow and orange) that entitles readers of this site to a **10% discount** when subscribing to the Journal of Private International Law.

Prospective subscribers can view the contents (with abstracts for each article) of the last three volumes on the Hart website. Be sure, however, to use the order form available from this website in order to receive your 10% off.

Workshop: Conflict of Laws and Laws of Conflict in Europe and Beyond – Patterns of Supranational and Transnational Juridification

The one-day workshop titled "Conflict of Laws and Laws of Conflict in Europe and Beyond – Patterns of Supranational and Transnational Juridification" is hosted by the Law Department of the European University Institute and organized by Dr. Rainer Nickel of the University of Frankfurt am Main. It receives support under the FP 6, and makes part of the RECON project which seeks to clarify whether democracy is possible under conditions of pluralism, diversity and complex multilevel governance.

Although, in a view of the topics, this worshop is not a typical conflict of laws

event, it might be of interest for the users of this blog too. The workshop website is accessible here and the program containing the list of speakers and topics as well as members of the discussion panel and some other participants is available here.

The workshop is scheduled for 21 September 2007 and will take place in a beautiful venue in of the Florence European University Institute, Conference Room, Villa La Fonte, San Domenico di Fiesole. The registration is possible with Marlies Becker (marlies.becker@eui.eu).

The Cost of Transnational Accidents: Evolving Conflict Rules on Torts

Antonio Nicita (Professor of Economic Policy at University of Siena) and *Matteo Winkler* (LLM, Yale Law School; Ph.D., Bocconi University) have written an interesting paper on the economic analysis of the conflict of laws rules concerning transnational accidents, in particular domestic and supranational rules on tort liability. A preliminary version of the paper ("**The Cost of Transnational Accidents: Evolving Conflict Rules on Torts**") was presented on September 13th at the annual conference of the European Association of Law & Economics (EALE), held in Copenhagen.

An abstract has been kindly provided by the authors:

> *The paper is divided into two parts. In the first part, the authors show the main conflict rules concerning torts at the domestic level: loci commissi delicti (place of accident), lex loci laesionis (place of injury), forum shopping and forum non conveniens, parties' freedom of choice (before and after the accident), victim's freedom of choice. Then, the authors describe the problems pertaining to each of these rules. In the second part, they analyse two cases, Bhopal and Amoco Cadiz, and conclude that when State courts are called to settle disputes*

concerning transnational accidents, they tend to protect their own community from the accident's consequences, if negative, or alternatively, to discharge the accident's negative externalities to other States' community. Both approaches raise problems from the standpoint of externalities regulation: they lead either to underregulation or overregulation.

In particular, Nicita and Winkler maintain that when, like in Bhopal, State courts strictly enforce the lex loci rule, they might both favor the flux of investment towards developing countries – although the damages in favor of these countries' victims are likely to be undercompensated, or protect the delocalized activities of multinational enterprises, while when courts refer to the lex loci laesionis rule, they are likely to regulate the transnational activity and therefore to increase the costs of compliance borne by multinational enterprises.

As a third case study, finally, the authors examine the EC Regulation on the law applicable to torts, Rome II. According to this Regulation, they point out that there are some underlying policies, that attempt to supersede the policies enforcement by State courts.

The paper is available on the EALE Conference's website, and will be revised by the authors according to the observations coming from the conference's public.

On the economic analysis of conflict of laws, see also some of our previous posts at the following links: 1, 2, 3, 4, 5, 6, 7.

Rome I: EP Rapporteur's Compromise Amendments and Council's Working Text

In the first meeting held by the **European Parliament's JURI Committee** after

the summer break (10/11 September), the Rapporteur for Rome I, *Cristian Dumitrescu*, presented a **new set of 43 compromise amendments** to the initial Commission's Proposal, to be discussed within the Committee in order to adopt a final text of the Report for the Parliament's plenary session. While taking into account the previous works of the JURI Committee on Rome I (see our post here), the Rapporteur drafted these new amendments in view of the final text of the Rome II Regulation and the current discussion on Rome I in the Council (see below). As he states in the justification to amendment n. 2,

> *[t]he proposed compromise amendments set out in this paper have several aims. First, they are intended to bring the Regulation more closely into line with Rome II as adopted. Secondly, they seek to introduce changes already accepted in the Council working group and hence aim at reaching an agreement with the Council. Thirdly, they propose solutions in areas where the Council has not yet been able to reach agreement. Fourthly, they are designed to facilitate ecommerce by positing solutions lying outside the area of private international law to difficulties which conflict-of-laws rules cannot resolve in themselves. Lastly, the amendments are intended to bring into the public domain, and hence make available for public debate in a democratic assembly, technical changes discussed so far only within the Council. The rapporteur has presented them in order to foster debate within the Committee and negotiations with the Council.*

As regards the conflict rules, see compromise amendments n. 21 (Art. 3), n. 22 (Art. 4), n. 23 (**new Art. 4a on contracts of carriage**), n. 26 (a new, complex **Art. 5a dealing with insurance contracts**) and n. 27 (Art. 6 on individual employment contracts). **Art. 7 on contracts concluded by an agent is deleted** (see amendment n. 28).

Consumer contracts (Art. 5) are dealt with in the new package only as regards the scope of the exclusions (Art. 5(3): see amendments nn. 24 and 25), but the whole provision was redrafted by the Rapporteur in a separate compromise amendment presented in June (compromise amendment n. 1: see our post here). However, the Rapporteur remains quite sceptical as regards the effectiveness of the protection afforded by a conflict rule, and he states in new Recital 10a (compromise amendment n. 14) that

> *[w]ith […] reference to consumer contracts, recourse to the courts must be regarded as the last resort. Legal proceedings, especially where foreign law has to be applied, are expensive and slow. The introduction of a mechanism to deal with small claims in cross-border cases is a step forward. However, the protection afforded to consumers by conflict-of-laws provisions is largely illusory in view of the small value of most consumer claims and the cost and time consumed by bringing court proceedings. It is therefore considered that, particularly as regards electronic commerce, the conflicts rule should be backed up by easier and more widespread availability of appropriate online alternative dispute resolution (ADR) systems. The Member States are encouraged to promote such systems, in particular mediation complying with Directive …/…, and to cooperate with the Commission in promoting them.*

As it was the case for Rome II, some controversial issues have been moved by the Rapporteur in the Recitals accompanying the Regulation: see for instance compromise amendments nn. 5 and 6 (new Recitals 7a and 7b) on the choice of non-State bodies of law as the applicable law, and compromise amendment n. 19 (Recital n. 15) on the relationship between the Regulation and Community law.

On the Council's side, a complete text of the Rome I Regulation has been recently made publicly available in the Register (doc. n. 11150/07 of 25 June 2007). It was drafted in June by the outcoming German Presidency and the Portuguese Presidency on the basis of the meetings of the Committee on Civil Law Matters during the first semester 2007 and the comments made by delegations.

It contains the text of the compromise package agreed by the Council in April 2007 (doc. n. 8022/07 ADD 1 REV 1: see our post here) and a proposed wording for the provisions that were left over. The latter include Art. 4a on contracts of carriage – three options are proposed as regards carriage of passengers -, Art. 5 on consumer contracts, Art. 5a dealing with insurance contracts, Art. 8 on overriding mandatory provisions, Art. 13 on voluntary assignment and contractual subrogation.

For better readability, the compromise package is presented in italics; a number of footnotes completes the text, highlighting doubts raised by the delegations and provisions which need further discussion or clarification.

The adoption of the Report on the Rome I Proposal is expected in the EP's JURI Committee in one of the forthcoming meetings. According to current forecasts (subject to frequent changes: please refer to the Rome I OEIL page), the vote at first reading in the Parliament's plenary session is scheduled on 28 November 2007; a political agreement on common position is expected in the Council in the last JHA session under the Portuguese Presidency, on 6 December 2007.

Conference: Community Trademarks and Designs – Significant Recent Developments

From the conference website: The seminar will focus on significant developments since 2005, when the last ERA seminar was held at the Office for Harmonisation in the Internal Market (OHIM).

In the field of designs, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enabling the international registration of community designs and to which the European Union has just acceded will be presented and its consequences discussed. Concerning spare parts, progress on discussions relating to the proposal for a Directive amending Directive 98/71/EC on the legal protection of designs (COM(2004)582) will be analysed.

Concerning trademarks, the seminar will focus on conflicts of laws, in particular within the framework of the Internet. The implications of the Rome II proposal on the law applicable to non-contractual obligations will form an integral part of the discussions.

At a jurisprudential level, the most significant community case law on invalidity decisions concerning trademarks and designs will be presented.

The last part of the seminar will be dedicated to the mechanisms aiming to

reinforce intellectual property rights. The conference will provide an overview of the transposition of the Enforcement Directive 2004/48/EC. The implications of the proposed directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM(2005)276 final) will also be discussed. Experts from OHIM, academics and practitioners will be invited to give their point of view.

Target audience: Lawyers in private practice and in-house counsel, civil servants of national and European authorities responsible for trademarks and designs, judges, academics

This conference to be held in Alicante, 22-23 November 2007, is organised by ERA. The conference programme can be downloaded from the conference website.

Conference: Second Forum on EU Immigration and Asylum Policy – The Hague Programme and the Way Forward

From the conference website: In 2004 the Hague Programme set the direction for the EU in the second phase of its development of a common policy on asylum, migration and borders. Two years later, in June 2006, with a comprehensive package of Communications, the European Commission took stock of the progress made and assessed the level of implementation of the Hague Programme at EU and national level. In presenting this package of measures, the Commission wished to stimulate and structure the discussion with the Member States and the other Institutions on new policy initiatives and on possible ways to improve the functioning of Freedom, Security and Justice policies.

This forum will look at the challenges presented by these measures in the field of

Asylum and Immigration. It will discuss the perceived need for the EU to manage migration flows more effectively with special emphasis on the global approach to migration. The continuing attempts to set up a common asylum policy acceptable to all EU member states will also be discussed. Furthermore, the role and powers of the Frontex agency in combating illegal migration will be scrutinised with reference to specific problems concerning the management of operational cooperation at national level. Whilst looking mainly to the future, the seminar will also review from a legal perspective the achievements of EU immigration and asylum policy since Tampere in 1999. The present forum follows the pattern of the "First Forum on Asylum and Immigration: Challenges of the Hague Programme" in Rome on 25-26 November 2005, which was co-ordinated by ERA and the Italian Ministry of the Interior.

Target audience: Asylum and immigration lawyers and judges, ministry officials, academics, NGO's.

This conference to be held in Milan, 9-10 November 2007, is organised by ERA in cooperation with Prof. Bruno Nascimbene, University of Milan. The conference programme can be downloaded from the conference website.

Conference: The European Traffic Law Days

From the conference website: The European Traffic Law Days have established themselves as a forum for professional training and the exchange of experience between traffic law experts. The congress will provide experts in liability and insurance law with an opportunity to obtain a comprehensive overview of current developments in European traffic law relevant to daily practice.

The main emphasis of this year's event will be on the development of case law in the European Union on punitive damages. A working group will be set up, initially to determin the status quo, on the basis of which the fundamental problems involved in punitive damages will be discussed. Further topics are: Experience of

the implementation of the fifth Directive; Elements of a sixth Directive (discussion on the progress achieved with the suggestions made during Trier VII); Minor accidents (improved enforcement of low-value claims involving traffic accidents abroad); The statute of limitations (European Parliament initiative); Rome II, the Regulation that governs the law applicable to traffic accidents abroad; The introduction of the recording of accident data Europe-wide; Simpler registration of motor vehicles abroad. Finally, current developments in European law and initiatives and developments in the harmonisation of European civil law will be discussed.

Target audience: All persons professionally involved in traffic law.

This conference to be held in Trier, 17-19 October 2007, is organised by ERA in cooperation with the Institute for European Traffic Law. This event will take place for the eighth time and will continue to be organised on an annual basis. The conference programme can be downloaded from the conference website.

Conference on Current Developments in European Family Law and Law of Succession

From the conference website: Lawyers are required to deal ever more with legal questions arising from cross-border family and parental responsibility cases. The following topics will be discussed:
Parental responsibilities: The application of the Brussels II Regulation in judicial practice in the Member States; Hague Convention on protection of children and Brussels II bis; Family mediation; Opportunities and limitations of cross-border mediation in family matters.
Cross-border supervision: Hague Convention on international protection of adults. **Current developments in the member states:** Divorce and its consequences; Descent and custody; Recognition of formalised same-sex

relationships in Europe; Current issues in Europe; New legal framework for marriage issues in the EU; Regulation of matrimonial property regime on the Community level; Developments in European law of succession.

Target audience: Lawyers, especially those specialising in family law and law of succession, notaries, judges, academics.

This conference to be held in Trier, 1-2 October 2007, is organised by ERA. The conference programme can be downloaded from the conference website.

Conference on European Civil Procedure for Civil Law Notaries

From the conference website: The conference will be devoted to the practical analysis of certain Community legislative instruments and initiatives of great importance for notary practice, such as: The "Brussels I" Regulation on the jurisdiction, recognition and enforcement of judgements in civil and commercial matters; The Regulation creating a European Enforcement Order for Uncontested Claims; The European Judicial Network in Civil and Commercial Matters; The Network of the Notariats of the European Union; The Regulation on the service of documents and the Regulation on the cross-border taking of evidence in Europe; The proposed "Rome I Regulation" on the law applicable to contractual obligations; Mediation in civil and commercial matters and the role of civil law notaries. Target audience: Civil law notaries of all EU Member States.

This conference to be held in Trier, 12-13 November 2007, is organised by ERA in cooperation with in cooperation with the Council of the Notariats of the European Union (CNUE). The conference programme can be downloaded from the conference website.

Workshop on Cross-border Security over Receivables and Comparative and Private International Law Issues

From the conference website: This workshop will provide an in-depth examination of financing based on receivables – both assignments and transfers for security, a subject of increasing importance in Europe and around the world. The case-study method will be used to highlight differences and similarities among more than half a dozen European countries. Leading writers in the field, prominent academics and experienced practitioners will present specific national solutions to domestic and cross-border assignment of receivables encountered in current commercial practice. Important current developments in relevant private international law issues, including the issue of assignment in the context of the future Rome I Regulation, will be discussed. Participants at this interactive workshop from all over Europe will be invited to raise questions, share their experience and provide information about the law of additional jurisdictions. This programme will assist market participants and their counsel to understand better cross-border security over receivables and relevant private international law rules of their own and other countries and assist those involved in national, EU and global law reform efforts. The cases will be devised especially for this workshop by Eva-Maria Kieninger and Harry C. Sigman.

This conference to be held in Trier, 25-26 October 2007, is organised by ERA in cooperation with Eva-Maria Kieninger, Würzburg and Harry C. Sigman, Los Angeles. The conference programme can be downloaded from the conference website.