A.G. Saugmandsgaard on the recognition of private (Sharia) divorces under Rome III

It does not happen too often that (the notion of) European Private International Law hits the front pages of the daily news. But on Friday it did: Germany's foremost (conservative) newspaper, the Frankfurter Allgemeine Zeitung (FAZ), addressed A.G. Saugmandsgaard's recent opinion on the recognition of private (Sharia) divorces under the Rome III Regulation. In so doing the FAZ expressly pointed out, on page 1, that it was unclear whether "European rules on choice of law ("Europäisches Kollisionsrecht") actually applied in the case at bar.

The A.G.'s full opinion according to which the Rome III Regulation (if it applies at all) does not allow a private divorce to be recognized as valid where the applicable foreign law is discriminatory, is available here (in a number of languages, but not yet in English). The official press release can be downloaded here.

Rome I Regulation – Magnus/Mankowski Commentary

The advance of the English language article-of-article commentary gathers ever more momentum. The series of European Commentaries on Private International Law (ECPIL), edited by Ulrich Magnus and Peter Mankowski, welcomes the publication of its second volume addressing the Rome I Regulation. It assembles a team of prominent authors from all over Europe. The result is the by far most voluminous English language commentary on the Rome I Regulation, the prime pillar of European private international law and the fundament of cross-border

trade with Europe. Its attitude is to aspire at leaving virtually no question unanswered. Parties' choice of law, the tangles of objective connections under Art. 4, consumer contracts, employment contracts, insurance contracts, form and all the other topics of the Rome I Regulation attract the in-depth analysis they truly deserve.

Conference: "Le successioni internazionali in Europa" (International Successions in Europe) – Rome, 13 October 2016

The Faculty of Law of the **University of Rome "La Sapienza"** will host a German-Italian-Spanish conference on **Thursday, 13th October 2016, on International Successions in Europe**. The conference has been convened for the **presentation of the volume "The EU Succession Regulation: a Commentary"**, edited by Alfonso-Luís Calvo Caravaca (University "Carlos III" of Madrid), Angelo Davì (University of Rome "La Sapienza") and Heinz-Peter Mansel (University of Cologne), published by Cambridge University Press, 2016. The volume is the product of a research project on "The Europeanization of Private International Law of Successions" financed through the European Commission's Civil Justice Programme.

Here is the programme (available as .pdf):

Welcome addresses: *Prof. Enrico del Prato* (Director, Department of Legal Sciences, University "La Sapienza"); *Prof. Paolo Ridola* (Dean, Faculty of Law, University "La Sapienza"); *Prof. Angelo Davì* (University "La Sapienza").

First Session

Chair: *Prof. Ugo Villani* (University of Bari, President of SIDI-ISIL – Italian Society

for International Law)

- *Prof. Javier Carrascosa González* (University of Murcia): La residenza abituale e la clausola di eccezione (Habitual Residence and Exception Clause);
- *Prof. Cristina Campiglio* (University of Pavia): La facoltà di scelta del diritto applicabile (Choice of the Applicable Law by the Testator);
- *Prof. Erik Jayme* (University of Heidelberg): Metodi classici e nuove norme di conflitto: il regolamento relativo alle successioni (Traditional Methods and New Conflict Rules: the EU Regulation Concerning Succession);
- *Prof. Claudio Consolo* (University "La Sapienza"): Il coordinamento tra le giurisdizioni (Coordination between Jurisdictions).

Second Session

Chair: *Prof. Sergio Maria Carbone* (University of Genova)

- *Prof. Peter Kindler* (University of Munich): I patti successori (Agreements as to Succession);
- Round Table: The European Certificate of Succession
  Introduction: *Prof. Claudio Consolo* (University "La Sapienza");
  Participants: *Dr. Ana Fernández Tresguerres* (Notary in Madrid); *Dr. Paolo Pasqualis* (Notary in Portogruaro); *Dr. Fabian Wall* (Notary in Ludwigshafen).

Concluding remarks: *Prof. Sergio Maria Carbone* (University of Genova).

(Many thanks to Prof. Fabrizio Marongiu Buonaiuti, University of Macerata, for the tip-off)

"Oops, they did it again" –

Remarks on the intertemporal application of the recast Insolvency Regulation

Robert Freitag, Professor for private, European and international law at the University of Erlangen, Germany, has kindly provided us with his following thoughts on the recast Insolvency Regulation.

It is already some time since regulation Rome I on the law applicable to contractual obligations was published in the Official Journal. Some dinosaurs of private international law might still remember that pursuant to art. 29 (2) of regulation Rome I, the regulation was (as a general rule) supposed to be applied "from" December 17, 2009. Quite amazingly, art. 28 of the regulation stated that only contracts concluded "after" December 17, 2009, were to be governed by the new conflicts of law-regime. This lapse in the drafting of the regulation gave rise to a great amount of laughter as well as to some sincere discussions on the correct interpretation of the new law. The European legislator reacted in time by publishing a "Corrigendum" (OJ 2009 L 309, p. 87) clarifying that regulation Rome I is to be applied to all contracts concluded "as from" December 17, 2009.

Although one can thoroughly debate whether history generally repeats itself, it obviously does so on the European legislative level at least with regard to the intertemporal provisions of European private international law. The 2015 recast regulation on insolvency proceedings (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, p. 19) has, according to its art. 92 (1), entered into force already on June, 26, 2015. However, the European legislator has accorded a lengthy transitional period to practitioners and national authorities. The recast regulation therefore foresees in art. 92 (2) that it will only be applicable "from" June 26, 2017. This correlates well with art. 84 (2) of the recast regulation, according to which "Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened *before* 26 June 2017". Since the old regime will be applicable only before June 26, 2017, the uninitiated reader would expect the new regime to replace the current one for all insolvency proceedings to be opened "as of" or "from" June 26, 2017. This is,

hélas, not true under art. 84 (1) of the recast regulation which states that "[…] this Regulation shall apply only to insolvency proceedings opened *after* 26 June 2017." The discrepancy between the two paragraphs of art. 84 is unfortunately not limited to the English version of the recast regulation; they can be observed in the French and the German text as well. The renewed display of incompetence in the drafting of intertemporal provisions would be practically insignificant if on June 26, 2017, all insolvency courts will be closed within the territorial realm of the recast regulation. Unfortunately, June 26, 2017 will be a Monday and therefore (subject to national holidays) an ordinary working day even for insolvency courts. The assumption seems rather farfetched that on one single day next summer no European insolvency regime at all will be in place and that the courts shall – at least for one day – revert to their long forgotten national laws. Art. 84 (1) of the recast regulation is therefore to be interpreted against its wordings as if stating that the new regime will be applicable "as of" (or "from") June 26, 2017. This view is supported not only by art. 92 (2) and art. 84 (2), but also by art. 25 (2). The latter provision obliges the Commission to adopt certain implementation measures "by 26 June 2019".

It would be kind of the Commission if once again it would publish a corrigendum prior to the relevant date. And it would be even kinder if the members of the "European legislative triangle", i.e. the Commission, the European Parliament and the Counsel, would succeed in avoiding making the same mistake again in the future although there is the famous German saying "Aller guten Dinge sind drei" and it is time for an overhaul of regulation Rome II namely with respect to claims for damages for missing, wrong or misleading information given to investors on capital markets …

Out Now: Calliess (ed.), Rome Regulations, 2nd ed. 2015

The second edition of "Rome Regulations: Commentary on the European Rules of the Conflict of Laws", edited by *Gralf-Peter Calliess* (Chair for Private Law,

Private International Law, International Business Law and Legal Theory, University of Bremen), has just been published by Wolters Kluwer (1016 pp, 250 €). The second edition provides a systematic and profound article-by-article commentary on the Rome I, II and III Regulations. It has been extensively updated and rewritten to take account of recent legal developments and jurisprudence in the field of determining the law applicable to contractual (Rome I) and non-contractual (Rome II) obligations. It also contains a completely new commentary on the Rome III Regulation regarding the law applicable to divorce and separation. The aim of the book is to provide expert guidance from a team of leading German, Austrian and Swiss private international law scholars to judges, lawyers, and practitioners throughout Europe and beyond.

In her review of the first edition, my dear fellow conflictoflaws.net co-editor *Giesela Rühl* complained about a lack of diversity, pointing out that the circle of authors consisted exclusively of younger, male scholars (RabelsZ 77 [2013], p. 413, 415 in fn. 6). Well, not only have we male authors grown older since then; we now have quite a number of distinguished female colleagues on board, too: *Susanne Augenhofer*, *Katharina de la Durantaye*, *Kathrin Kroll-Ludwigs*, *Eva Lein* and *Marianne Roth*. For further details, see here.

"This book does what it promises, which is to provide judges and practitioners with easy access to the contents and interpretation of provisions of the Rome I and II Regulations. The thoroughness of the commentaries on most of the provisions also makes it a recommended read for scholars needing a quick orientation regarding several provisions, or wanting to make sure they have not missed out on important background information. A welcome addition to the various topic-based treatises regarding Rome I and II Regulations, the book has succeeded in its goal of furthering the valuable German tradition in terms of the European discourse." (*Xandra Kramer*, review of the first edition, Common Market L. Rev. 2014, p. 335, 337)

Issue 2015.1 Nederlands Internationaal Privaatrecht on Brussels IIbis revision

The first issue of 2015 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht*, is a special issue on the upcoming revision of the Brussels IIbis Regulation. Renowned scholars reflect on topical issues that need to be addressed in the revision. It includes the following contributions:

Ian Curry-Summer, 'The revision of Brussels IIbis' (Editiorial).

Alegría Borrás, 'Grounds of jurisdiction in matrimonial matters: recasting the Brussels IIa Regulation', p. 3-9.

Abstract. *The recasting of the Brussels IIa Regulation implies different considerations. The first one is the review of the existing grounds of jurisdiction and how they can survive in the new text. The second is the possibility of the introduction of party autonomy and the hierarchization of the grounds of jurisdiction. These modifications imply the possibility of including changes in other rules related to jurisdiction. Although it would be a good result if all member states could accept the rules on matrimonial matters, as well as on jurisdiction and on the applicable law, this still seems to be difficult, taking into account the need for unanimity and the experience with the Rome III Regulation.*

Th.M. de Boer, 'What we should *not* expect from a recast of the Brussels IIbis Regulation', p. 10-19.(sample copy)

Abstract. *If the European Commission decides to recast the Brussels IIbis Regulation, it is likely to submit a proposal in which the focus will be on practical matters, such as judicial cooperation, the return of abducted children, or the further abolition of exequatur. The questionnaire that was used for the public consultation on the 'functioning' of Brussels IIbis did not leave much room for criticism of the Regulation's points of departure with regard to jurisdiction in matters of parental responsibility. Yet, there are a few issues that may be more important than the prevention of parallel proceedings or the free circulation of*

judgments within the EU. One of them concerns the virtually unlimited scope of the regulation in cases in which jurisdiction is determined by prorogation (Article 12). Another problem results from the perpetuatio fori *principle underlying Article 8. Both provisions confer jurisdiction even if the child is habitually resident outside the EU, which casts considerable doubt on the effectiveness of the court's decision.*

Marco Mellone, 'Provisional measures and the Brussels IIbis Regulation: an assessment of the status quo in view of future legislative amendments', p. 20-26.

Abstract. *The European Commission is assessing the need for legislative amendments to EC Regulation No. 2201/2003 on the recognition and enforcement of decisions in the field of matrimonial and parental responsibility matters (the so-called 'Brussels IIbis' Regulation). One of the key points of that Regulation is jurisdiction and the enforcement of provisional measures. This delicate issue has generated an intense debate among scholars and many decisions of the European Court of Justice have dealt with this subject. Therefore, the author returns to the outcomes of this debate and focuses on the parallel solutions adopted by the Brussels system of jurisdiction and the enforcement of decisions in civil and commercial matters. Following this path, the author tries to assess the right legislative approach for eventual future interventions by the European legislature.*

Janys M. Scott QC, 'A question of trust? Recognition and enforcement of judgments', p. 27-35.

Abstract. *The European Commission and the European Council propose to revise Brussels IIa to abolish* exequatur *in all matters of parental responsibility. There are some good reasons for extending direct enforcement, but this should not be at the expense of abandoning safeguards including those relating to public policy, nor should it involve diluting protection for children. If the Regulation is to deliver enforcement measures that work, then consideration must be given to how enforcement is made effective. This is likely to involve a continued role for the courts of the member state where a judgment is to be enforced.*

Francisco Javier Forcada Miranda, 'Revision with respect to the cross-border placement of children', p. 36-42.

Abstract. *Concerning the current Council Regulation (EC) 2201/2003, in application for almost 10 years, on 15 April 2014 the Commission adopted a*

report on its application in practice that was followed by an extensive public consultation. In 2015, the Commission has launched a call for expressions with a view to setting up a group of experts to assist the Commission in the preparation of a legislative proposal for a revision of the Regulation. Within this process, one of the most important topics to be discussed is the proper functioning of the placement of a child in another member state in accordance with Article 56. In this field, this report helps to identify precedents, challenges and problematic points to be addressed and details and discusses the national procedures as well as topics of mutual trust, the case law of the Luxembourg Court of Justice and the best interests of the child in these situations, all of which aim to highlight the many prospective improvements to be achieved.

This issue also includes a conference report authored by Jacqueline Gray 'Congress report: ERA Annual Conference on European Family Law 2014', p. 43-45.

Opinion of Advocate General Jääskinen in Case C-352/13 (CDC) on jurisdiction in cartel damage claims under the Brussels I Regulation

by Jonas Steinle

Jonas Steinle, LL.M., is fellow at the Research Center for Transnational Commercial Dispute Resolution (www.ebs.edu/tcdr) at EBS Law School in Wiesbaden.

On 11 December 2014, Advocate General Jääskinen delivered its Opinion in Case C-352/13 (*CDC*). The case deals with the application of different heads of

jurisdiction of the Brussels I Regulation to cartel damage claims.

The facts

The claim arises out of a complex cartel in the sector of the sale of hydrogen peroxide that covered the entire European Economic Area and had been going on for years before it was disclosed and fined by the European Commission. The Commission established that there was a single and continuous infringement of Art. 101 TFEU. The claimant, a Belgian company that is the buyer and assignee of potential damage claims resulting from this cartel, brought proceedings against the members of the cartel at the regional court (*Landgericht*) in Dortmund. The defendants in the case have their seats in different Member States including one defendant who has its seat in Germany.

Being seized in this complex case, the *Landgericht Dortmund* struggles with the application of several heads of jurisdiction under the Brussels I Regulation in order to establish its own jurisdiction. Therefore, the *Landgericht Dortmund* referred to following three questions to the CJEU as an order for reference:

1. Must Art. 6 No. 1 of the Brussels I Regulation be interpreted in a way that under circumstances like in the case at hand the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments from separate proceedings? Is it relevant that the claim against the defendant who is domiciled in the Member State of the seized court was withdrawn after service of process to the defendants?

2. Must Art. 5 No. 3 of the Brussels I Regulation be interpreted in a way that under circumstances like in the case at hand the place where the harmful event occurred or may occur may be located with respect to every defendant in any Member State where the cartel agreement had been concluded or implemented?

3. Does the well-established principle of effectiveness with respect to the enforcement of the prohibition of restrictive agreements allow to take into account a jurisdiction or arbitration agreement, even if that would lead to the non-application of jurisdiction grounds such as Art. 5 No. 3 or Art. 6 No. 1 Brussels I Regulation?

The Opinion

As for the application of Art. 6 No. 1 of the Brussels I Regulation, the Advocate General referred first to the well-established principle of the CJEU that a risk of irreconcilable judgments must arise in the context of the same situation of fact and law. For the same situation of fact, the Advocate General simply referred to the binding decision of the European Commission that had established a single and continuous infringement of Art. 1010 TFEU. For the same situation of law the Advocate General pointed out that the members of a cartel are severally and jointly liable and that there was the risk that different Member State courts would interpret the joint and several debt differently which could lead to conflicting decisions in different Member States courts. Furthermore, the Advocate General pointed out that Art. 6 para. 3 Rome II Regulation implicitly refers to Art. 6 No. 1 Brussels I Regulation so that in sum the Advocate General held that Art. 6 No. 1 Brussels I Regulation might be applied to a case like the one at hand. As for the withdrawal of the claim against the German anchor-defendant, the Advocate General did not consider this to be relevant for the jurisdiction of the referring court since he considered the service of process to be the relevant point in time to fulfil the criteria of Art. 6 No. 1 Brussels I Regulation.

With respect to Art. 5 No. 3 Brussels I Regulation, the Advocate General differentiated, again according to well-established case law of the CJEU, between the place giving rise to the damage and the place where the damage occurred. However, the Advocate General considered both alternatives of Art. 5 No 3 Brussels I Regulation to be inapplicable to the case at hand. The Advocate General observed that in a case of a long-standing and wide-spread cartel like the one at hand, it is essentially impossible to identify one single place where the event giving rise to the damage took place. Similarly, the place where the damage occurred would lead to the place of the claimant’s seat as the relevant place of jurisdiction which is contrary to the purpose of the Brussels I Regulation. Hence, the Advocate General held that Art. 5 No. 3 Brussels I Regulation is in applicable in a case like to one at hand.

Finally, Advocate General Jääskinen considered the third question with respect to jurisdiction and arbitration agreements. He therefore drew the line between jurisdiction agreements under Art. 23 Brussels I Regulation on the one hand and jurisdiction agreements that designate Non-Member States courts or arbitration agreements on the other hand. As for agreements under Art. 23 Brussel I Regulation, the Advocate General referred to the principle of mutual trust and

held that the principle of effectiveness could not hinder the application of Art. 23 Brussels and thereby the derogation of other grounds of jurisdiction in cartel damage claims. Contrarily, the Advocate General held that the principle of effectiveness with respect to the enforcement of the prohibition of restrictive agreements might render agreements of the second type inapplicable if an effective enforcement of EU competition law would not be assured.

Evaluation

The Opinion of the Advocate General is grist to the mill of the ongoing enhancement of private enforcement of competition law in the European Judicial Area. After the Directive on antitrust damage actions has been signed into law on 26 November 2014, jurisdiction in cartel damage claims is the last resort that has been left untouched so far. Jurisdiction is the first hurdle that potential claimants have to overcome in these types of cases. As one can see from the proceedings pending before the *Landgericht Dortmund,* these proceedings can be extremely complex and time-consuming. Guidance on these issues by the CJEU is therefore much awaited.

As the Advocate General points out in his Opinion (para. 7), it is the first time that the CJEU will have to decide whether and to what extent the substantive EU law (e.g. Art. 101 TFEU) influences the jurisdictional rules of the Brussels I Regulation in their application. According to the Advocate General, the Brussels I Regulation is not very well suited to enhance private enforcement of competition law (para. 8). The consequences that the Advocate General draws from this finding are noteworthy: As considers Art. 5 No. 3 Brussels I Regulation, being the core jurisdictional rule for cartel damages claims, the Advocate General simply promotes to not apply this rule in complex cases such as the one at hand (para. 47). He even goes further and calls for the European legislator to introduce delict-specific jurisdictional rules into the Brussels I Regulation (para. 10).

This line of argumentation is a striking move. The non-application of a head of jurisdiction in a complex case is somewhat surprising. However, this would not solve the existing problems since it remains unclear in which cases Art. 5 No. 3 Brussels might be still applied then. The call for the introduction of delict-specific rules into the Brussels I Regulation is even more problematic since it breaks with the general scheme of the Brussels I Regulation as a general and cross-cutting legal instrument that might uniformly be applied to any case that is not excluded

from its scope. Instead of creating more exceptions in this complex area of law, the CJEU should build on the existing system of the Brussels I Regulation and come forward with some guiding principles for the referring court which are drawn from the idea of procedural justice and not so much from substantive law influences from the specific area of law.

Reviewing a Review, or: What is the meaning of Article 4(1) Rome II?

The 80's British pop band *Prefab Sprout* once recorded a song called „Electric Guitars", dealing with the career of the Beatles, which contained the line: „We were quoted out of context – it was great!" Being quoted out of context in a review, however, is an entirely different and less pleasant matter. In a recent issue of Lloyd's Maritime and Commercial Law Quarterly (2013, pp. 272–274), *Adrian Briggs* from Oxford University criticizes my commentary on Article 4 of the Rome II Regulation (in: *Calliess* (ed.), Rome Regulations, Alphen aan den Rijn, 2011) as follows (p. 273):

„The book is at its best when the reader is looking for an answer to a precise question, such as whether the particular contract with which he is dealing, and which does not contain an express choice of law, falls within any the specific contracts listed in Art. 4(2) of the Rome I Regulation, or whether the particular kind of assignment, or particular right to be assigned, falls within the choice of law rule in Art. 14 of the same Regulation, and so on. There are, of course, odd points with which one is simply bound to disagree. One such is the assertion, in relation to the Rome II Regulation, that the said instrument "is rather conservative, in giving the *lex loci delicti* pride of place as the general rule for torts" (p. 404). It is not the first time this kind of sentiment has been heard, but it is simply not true, and credibility is neither gained nor given by advancing it. The most striking thing about Art. 4, as it was about earlier English legislation, is that

it saves one from the gymnastic pain of having to decide where a cross-border tort was committed: to look for the place of the tort is, in a significant number of cases, to look for something which is not there. Article 4 accordingly places its emphasis on the place where the damage occurs. It is not helpful to pretend that this is a rule which it manifestly is not. Indeed, the commentary makes no more of the assertion set out above; it is still a pity that it was there at all.
It might be said that the presentation of arguments is still more German than it is delocalised. For example, the elucidation of the country in which the damage occurs (which is the proper reading of Art.4(1)) states, at p. 406, that the legislation reflects something which is rendered in German as *Erfolgsort*. No doubt it does. But for the non-German reader, the more helpful starting point would surely be to go to the substantial jurisprudence of the European Court in relation to Art. 5(3) of the Brussels I Regulation. This is soon done, but putting it after the German law point seems wrong. Certainly, when one gets there the analysis of the European material is good and clear, but one might still have thought that this, rather than German understanding of damage and its location, should have been presented as the primary source material. It must be said, however, that the citation of material from sources outside Germany is extraordinarily impressive; and it is, of course, hard not to offer lessons from one's own law where these appear to be instructive. But there are still advantages in trying, in this context, to treat the European law source material as the first resource, and anything generated by national law as ancillary only."

Briggs' first point seems to be that my commentary erroneously tries to assert that the Rome II Regulation clings to the primacy of the place where the tortfeasor acted (place of conduct). Of course, such a statement would be utterly nonsensical. Read in context, however, the incriminated section merely points out that the systematic position of Art. 4(1) Rome II as a general rule must be put into perspective when viewing the more complex structure of the Regulation. The whole section reads as follows:

„Contrary to earlier drafts (*see* mn. 12), the final Rome II Regulation is rather conservative in giving *lex loci delicti* pride of place as the 'general rule' for torts. In fact, *lex loci delicti* is, for logical and systematic reasons, rather a **subsidiary rule**: It applies only if the parties have not chosen the applicable law (Article 14), if there is no manifestly closer connection, for example, because of a contract between the parties (Article 4(3)) and if there is no common habitual residence of

the parties (Article 4(2)) [footnotes omitted]".

I have difficulty in understanding what should be wrong about this analysis concerning the obvious, not to say trivial, discrepancy between the numerical position of Art. 4(1) in the Regulation and its real importance for the choice-of-law process. *Briggs*, however, seems to be more infuriated by what he perceives as my incorrect use of "lex loci *delicti*" as encompassing the lex loci *damni* (and not only the law in force at the place of conduct). In this regard, however, the text merely follows the understanding of the term as it was used by the European Commission when it drafted the Rome II Regulation. In its Explanatory Memorandum on the 2003 draft, which already opted for the place of damage as the basic connecting factor, the Commission points out explicitly: "The Commission's objectives in confirming [!] the *lex loci delicti commissi* rule [!] are to guarantee certainty in the law and to seek to strike a reasonable balance between the person claimed to be liable and the person sustaining the damage. The solutions adopted here also reflect recent developments in the Member States' conflict rules" (COM [2003]427 final, p. 11). The fact that the European legislature saw lex loci damni merely as a more precise, uniform definition of the place where a harmful event occurred rather than an antithetical novelty is also supported by Recitals 15 and 16 of the final Regulation. Being a non-native speaker, I concede that I would accept any criticism referring to an idiosyncratic use of established English (or, in this case, Latin) legal terms. In their treatise „The Private International Law of Obligations", 3rd ed. 2009, para. 18–007, however, *Richard Plender & Michael Wilderspin* state as well: „Article 4(1) [Rome II] thus represents a refined version of the classic *lex loci delicti commissi* rule [!] which has always been applied in one way or another in all Member States." Thus, with due respect for my learned colleague *Adrian Briggs*, I still think that the section he strongly criticizes as pitiful is correct both in its wording and its substance.

Briggs' second point of concern refers to my seemingly parochial preference for quoting German sources rather than genuine European material. Again, the section that he criticizes is far more nuanced when it is read in context:

„Although the language of Article 4(1) Rome II is rather complex, defining the place of injury as 'the country in which the damage occurs … irrespective of the country or the countries in which the indirect consequences of that event occur', the explicit exclusion of 'indirect consequences' makes clear that the real

connecting factor is not the place where mere pecuniary damage was suffered ('I suffered the damage in my pocket'),[35] but the place of injury, the *Erfolgsort* in the traditional German terminology.[36]"

The footnote 35 explicitly refers to the rejection of a so-called money pocket rule under Art. 5(3) of the Brussels I Regulation. Moreover, the section *Briggs* criticizes is actually preceded [!] by a paragraph (marginal number 13) which draws the reader's attention to the "settled case law of the ECJ" on Art. 5(3) Brussels I. Apart from that, even the Commission, when drafting Rome II, occasionally referred to established German legal terms, for instance in COM [2003]427 final, p. 11: "The rule entails, where damage is sustained in several countries, that the laws of all the countries concerned will have to be applied on a distributive basis, applying what is known as *‚Mosaikbetrachtung'* in German law." This explanation shows that the Commission did not legislate on a clean slate, but was very aware of the experience gained under former domestic approaches to choice of law in torts. Thus, making the reader familiar with some established German legal terms and their background might actually be helpful in understanding some ideas underlying the Rome II Regulation.

For other, more balanced reviews of the Commentary, see, for example, *Matteo Fornasier*, Zeitschrift für Europäisches Privatrecht (ZEuP) 20 (2012), p. 676 et seq. and *Xandra Kramer*, Common Market Law Review 51 (2014), pp. 335-337. By the way: A new edition of the Commentary is forthcoming in 2015. In addition to the Rome I and II Regulations, Rome III will be covered as well. Stay tuned!

Book on Rome Regulations and Maritime Law

For all interested in the maritime conflict of laws there is a book titled **Regulations Rome I and Rome II and Maritime Law** available here. This book is published by Giappichelli Editore and comes as a result of an EU funded project. Editors are Evangelos Vassilakakis, Nikolay Natov and Reuben Balzan

and the contents include:

Introduction.
I. Regulations (EC) n. 593/2008 on the law applicable to contractual obligations ("Rome I") and (EC) n. 864/2007 on the law applicable to non-contractual obligations ("Rome II") (C. Esplugues Mota, G. Palao Moreno, C. Azcárraga Monzonís – Spain).
II. Marine insurance contracts under the Rome I and Brussels I Regulations: c?nflict of laws and jurisdiction issues (E. Vassilakakis, V. Kourtis – Greece).
III. The discipline of maritime transport contracts under the Rome I and Brussels I Regulations: conflict of laws and jurisdictional issues (I. Queirolo, C. Cellerino – Italy).
IV. Collisions and maritime salvage (Reuben Balzan, Keith A. Borg, Carlos Bugeja – Malta).
V. Maritime environmental delict/tort (N. Natov, B.a Musseva, V. Pandov, D. Sarbinova, Z.i Ianakiev, I. Kirchev, M. Stankov – Bulgaria).

Comparing Rome II

The Rome II Regulation returns to the spotlight in a seminar to be held at the British Institute of International and Comparative Law's London fortress on Thursday 31 January 2012 (5:30-7:30pm).

The seminar, entitled "Comparative Torts before the Courts: The Impact of Rome II", is part of the Herbert Smith Freehils Private International Law Seminar Series and comes at a time when the Regulation is under review by the European Commission. It will focus, in particular, on aspects relating to the application of foreign law rules under the Regulation.

The panel, chaired by Lady Justice Arden, will include Avvocato Marco Bona (Turin), Marie Louise Kinsler and Robert Weir QC (London) and Maître Carole Sportes (Paris) (as well as the author of this post).

Further details and online registration are available here.