Short Studies in Private International Law

Short Studies in Private International Law are short-book publications devoted to topics in private international law, in particular international and European civil procedure. The volumes can be a result of papers presented at conferences but can also consist of short monographs or edited volumes on private international law, aimed to inform academics and practitioners timely of recent developments. The hardcover books are compact volumes of 100–150 pages and are characterized by fast, global electronic dissemination, standard publishing contracts, standardized manuscript preparation and formatting guidelines, and expedited production schedules.

More information about this series at http://www.springer.com/series/15450

Christoph Schmon

The Interconnection of the EU Regulations Brussels I Recast and Rome I

Jurisdiction and Law

ASSER PRESS

Springer

Christoph Schmon
Nottingham, UK

ISSN 2522-8145 ISSN 2522-8153 (electronic)
Short Studies in Private International Law
ISBN 978-94-6265-366-5 ISBN 978-94-6265-367-2 (eBook)
https://doi.org/10.1007/978-94-6265-367-2

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

Preface

> *The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)*—Recital 7 of the Rome I Regulation.

When interpreting EU private international law rules, the task of duly assigning the proper meaning to non-defined legal terms has proved tricky because the European Union may only legislate in specific areas and the set of European substantive law rules cannot yet provide for unified contract law concepts as a reference. Neither can the much-vaunted postulation of an 'autonomous' interpretation, an interpretation detached from meanings of a specific domestic law, be easily realised by a comparative approach. In many cases, there will be no *tertitum comparationis* that could serve as a comparative function. This suggests a systematic approach of interpretation to derive benefits from the reference points under the Treaties and to interpret the provisions of a legal act in due consideration of others. After all, every Union law provision must be seen in its context and interpreted in the light of the provisions of EU law and its principles.

A systematic approach would be particularly rewarding with respect to the key instruments of EU international contract law—the Regulations Brussels I Recast and Rome I. Whilst, due to various preliminary references since 1976, an abundance of case law exists with respect to the former and its predecessors, the contrary may be said for conflict of laws. Since it lacked jurisdiction for interpretation until 2004, the Court of Justice could not substantiate the terms of the Rome Convention and, consequently, the Rome I Regulation could not rely on rich case law or defined concepts. Both Regulations are historically and dogmatically connected and are embedded within the matrix of a judicial net of legislative acts of supranational character which pursue specific Union targets and serve as potential reference points for interpretation.

However, we have learned from comparative law that when words cross boundaries a morality is thereby attached to those words. Synergized legal terms require the conveyance of language and the legal culture those terms are stemming from. Something similar may be said when comparing these Regulations. Both legal acts have their specific DNA, system and underlying idea: Brussels I Recast has a procedural focus when it governs the allocation of jurisdiction and the free circulation of judgments. Rome I follows a conflict of laws rationale when it designates the law applicable to the contract. If one wishes to exploit synergy effects and to establish whether there can be a horizontal terminology across legal boundaries, it is necessary to delimit the scope and analyse the Regulations' systems, their individual justice models, internal and external target objectives, and their balance of flexibility and legal certainty. Such analysis is even more necessary as their legal DNA is encrypted by the value-laden authority of a *preludium*, the preamble of the legal text with its citations and recitals. Recitals intend to explain the text and to give the reasons on which the legal act is based. Sometimes though, they are programmatic or may even obscure the spiritual essence of the law. Recital 7 of the Rome I Regulation explains that its provisions should be consistent with those of the Brussels I and Rome II Regulations. Without doubt, it would be comforting if the same terms were presumed to bear the same meaning across the Regulations.

The mission of this book is thus to analyse the interconnection between the Brussels I Recast and Rome I Regulations and to address the questions of uniform interpretation and whether fragmentation may be avoided by way of systematic-teleological interpretation. Attention will be paid to the amalgamation of private international law on contractual obligations and Union law, taking into account the creation of an EU area of justice. Existing parallels and differences will be investigated, and the findings employed in the example of consumer contracts.[1]

Nottingham, UK Christoph Schmon

[1]Parts of this book build on the author's Ph.D.-thesis, submitted for approval in 2016 and successfully defended at the University of Vienna the following year. The author is grateful to the members of the doctoral committee and particularly wishes to thank those who encouraged him not to stop there but to go the extra mile.

Contents