Towards a Norwegian codification of choice of law rules
An assessment of Rome I and Rome II

Oslo, 3 and 4 May 2018

The Norwegian Ministry of Justice has requested Professor Giuditta Cordero-Moss, University of Oslo, to submit a proposal for a statute on choice of law rules for contractual and non-contractual obligations. This conference is organized to ensure that the proposal reflects state-of-the-art knowledge on the field at the international level.

While the EU-Regulations on choice of law for contractual- and for non contractual obligations (respectively, Rome I and Rome II) do not fall within the scope of the EEA Agreement and therefore are not binding in Norway, Norway has implemented various provisions on choice of law contained in the EU-instruments that are relevant to the internal market. Also, through the Lugano Convention Norway has implemented a system of choice of forum and recognition and enforcement of civil judgements that is parallel to part of the EU-system. Therefore, it is natural that the work on a proposal for a Norwegian statute on choice of law starts from Rome I and Rome II.

However, the proposal should not be simply based on a translation of Rome I and Rome II, for several reasons. First of all, these instruments are not exhaustive, and on certain areas they open for the prospect of being revised. Such revision is ongoing in some areas, such as assignment of claims. Secondly, certain provisions of these instruments may contradict existing rules in Norwegian law, be it codified (for example, in the Code of Maritime Law) or based on case law. Thirdly, experience with these instruments may have shown potential for improvement. Fourthly, developments in systems that do not have Rome I and Rome II can show alternative approaches to some matters. Of particular interest is the ongoing work in the US on a Third Restatement on Conflict of Laws.

Therefore, it is important to discuss those aspects of Rome I and Rome II where there is potential for a more complete or better regulation, as well as those aspects that are not compatible with Norwegian law.

Participants to the conference represent the highest level of expertise in important European countries that have implemented Rome I and Rome II and thus can testify about the application of these instruments, as well as in countries that have not implemented Rome I and Rome II and thus can contribute with the experience of not having a EU-regulation. Participants from Nordic countries will be able to give contributions particularly relevant to the compatibility of these instruments with the Nordic tradition. Participants from the US will give important insight as to possible different approaches.
Each panel will discuss a given topic from various points of view. Prepared presentations by each panelist should not exceed 10 minutes each, so as to ensure sufficient time for discussion. Discussion will be held both within the panel and in plenum.

PROGRAMME

Thursday, 3 May 2018

8.30-8.45 Welcome and introduction
Giuditta Cordero-Moss, University of Oslo

8.45-10.00 Privacy and personality rights
Chair: Caroline Kleiner, University of Strasbourg

History and rationale of the exclusion of privacy and personality rights in article 1(2)(g), also in light of the Commission Statement on the Review Clause (art 30) and subsequent documents such as the 2009 Commission’s Comparative Study on the Situation in the 27 Member States as regards the Law Applicable to Non-Contractual Obligations Arising out of Violations of Privacy and Rights Relating to Personality and the Committee on Legal Affairs of the European Parliament Working Paper of 23 June 2010 and the European Parliament Resolution of 2 May 2012 (Peter Arnt Nielsen, Copenhagen Business School) (Presentation)

Possible regulations of the issue, also considering the ongoing discussions on including it into the Hague Judgments Project (Symeon Symeonides, Willamette University) (Presentation)

Relationship of the exclusion with other provisions of Rome II, such as disclosure of confidential information and unfair competition (article 6), disclosure of confidential information and intellectual property (article 8) (Francesca Ragno, University of Verona) (Presentation)

Is the exclusion applicable to legal persons? Also in view of the regulation in article 8 ECHR and articles 7 and 8 of the Charter of Fundamental Rights of the European Union (Michael Bogdan, University of Lund)

Discussion

10.00-10.15 Coffee break
10.15-11.30 Product liability and the Hague convention

Chair: Paul Beaumont, University of Aberdeen

History and rationale of the provision in article 5, also in light of Recital 20 (Andrea Bonomi, University of Lausanne)

Relationship with the 1973 Hague Convention on the Law Applicable to Product Liability; does article 28(1) require that the Hague Convention takes precedence only on articles 5 and 14 of Rome II, or also on general rules, such as articles 18, 19 and 20 of Rome II? (Michael Hellner, University of Stockholm) (Presentation)

Comparison of article 5 Rome II and the Hague Convention (Caroline Kleiner, University of Strasbourg)

Pros and cons of maintaining the regime of the Hague Convention as opposed to denouncing the Hague Convention and adopting the regime of article 5 (Gustaf Möller, Supreme Court of Finland)

Discussion

11.30-11.45 Coffee break

11.45-13.00 Intellectual property

Chair: Franco Ferrari, New York University

History and rationale of the provision in article 8, also in light of Recital 26 (Annette Kur, Max Planck Institute for Innovation and Competition) (Presentation)

Relationship with Community Instruments and Conventions relating to intellectual property (Ulf Maunsbach, University of Lund)

Applicability of the mosaic principle to injunctive reliefs (for example, in case of infringements via internet) (Erich Schwarzenbacher, Supreme Court of Austria) (Presentation)

Multi-state infringements of Community rights caused by several different acts (article 8(2)): is the mosaic principle to be preferred, also in light of CJEU case law? Would it be preferable to provide for a single law approach inspired by article 6(3) Rome II? Would the connecting factor be the defendant’s domicile or other connecting factors? (Marie Nesvik, University of Oslo)

Discussion
13.00-14.00  Lunch

14.00-15.15  Environmental liability

  Chair: Pascal de Varreilles-Sommieres, University of Paris 1- Panthéon-Sorbonne

  History and rationale of the provision in article 7, also in light of Recital 25, and relationship with the 1974 Nordic Environmental Protection Convention; Relationship with article 17 Roma II on Rules of Safety and Conduct (Michael Bogdan, University of Lund)
  Exclusion of nuclear damage under article 1(2)(f) and relationship with other conventions (Paul Beaumont, University of Aberdeen)

  Autonomous interpretation of “civil and commercial matters”. Do public authorities’ claims for clean up costs for pure environmental harm qualify? (Henrik Bull, Supreme Court of Norway)

  Discussion

15.15-15.30  Coffee break

15.30-16.45  Choice of law by the parties in Rome II

  Chair: Herbert Kronke, University of Heidelberg

  Rationale of the exclusion of choice of law in articles 6(4) and 8(3) (Pascal de Varreilles-Sommieres, University of Paris 1- Panthéon-Sorbonne)

  Rationale of the differentiation between consumer and commercial contracts (Michael Hellner, University of Stockholm) (Presentation)

  Some cautionary notes (Symeon Symeonides, Wilamette University); (Presentation)

  Formation and validity of choice of law agreement (Andrea Bonomi, University of Lausanne)

  Discussion

16.45-17.00  Coffee break
17.00-18.15  Insurance

Chair: Andrea Bonomi, University of Lausanne

History of the provision, particularly regarding the relationship with Directives 88/357 and 90/618 in light of Directive 2009/138 (Henrik Bull, Supreme Court of Norway)

Advisability of defining risks by reference to directives (Pascal de Varreilles-Sommieres, University of Paris 1- Panthéon-Sorbonne)

Advisability of applying articles 3, 4 and 6 to reinsurance contracts and contracts covering mass-risk outside the EEA (Erik Røsæg, University of Oslo) (Presentation)

Revision under article 27(1)(a) (Kristina Siig, Syddanske Univerisity)

Discussion

1900  Dinner at Festningen Restaurant

Friday, 4 May 2018

8.45-11.30  Financial Services, Securities and Company Law Contractual Instruments

Chair: Peter Arnt Nielsen, Copenhagen Business School

Rationale and application of the provision of article 4(1)(h) on contracts on financial instruments concluded within a multilateral system (Caroline Kleiner, University of Strasbourg) (Presentation)

Rationale and application of the exclusion by article 6(4)(d) of rights and obligations constituting financial instruments, and of the effects of issuance or subscription of securities (Kåre Lilleholt, University of Oslo) (Presentation) (Full article)

Investor protection through contractual and non-contractual remedies (Herbert Kronke, University of Heidelberg) (Presentation)

Borderline between market protection and party autonomy (Massimo Benedettelli, University of Bari) (Presentation)

Discussion

10.00-10.15  Coffee break
10.15-11.30  Contracts of carriage and international conventions

Chair: Kristina Siig, Syddanske University

History and rationale of article 5 (Amund Tørum, Lawfirm Schjødt) (Presentation)

Sea carriage and the relationship between choice of law and scope of application of the Maritime Code (Trond Solvang, University of Oslo)

Hierarchy between conflict rules and uniform law (Franco Ferrari, New York University)

Article 5 and the Intranordic protocol (Gustaf Möller, Supreme Court of Finland)

Discussion

11.30-11.45  Coffee break

11.45-13.00  Country of origin and choice of law in Rome I and Rome II

Chair: Michael Hellner, University of Stockholm

The principle of country of origin and its role in Rome I and Rome II (Diego Fernández Arroyo, SciencesPo) (Presentation)

The principle of country of origin and choice of law rules (Amund Tørum, Lawfirm Schjødt)

The principle of country of origin and internet torts (Berte-Elen Konow, University of Bergen) (Presentation)

The principle of country of origin and overriding mandatory rules of the forum (article 9 Rome I) (Ulf Maunsbach, University of Lund)

Discussion

13.00-14.00  Lunch

14.00-15.15  Assignment of claims and proprietary effects

Chair: Amund Tørum, Lawfirm Schjødt

History of the rule and developments under the review provision of article 27(2) (Sabine Corneloup, University of Paris 2- Panthéon-Assas) (Presentation)

Overview of doctrinal debate (Herbert Kronke, University of Heidelberg) (Presentation)
Possible conflict rules for third party effects (Kåre Lilleholt, University of Oslo)  
(Presentation)  (Full article) 

Recent case law (Kristina Siig, Syddanske University) (Presentation) 

Discussion 

15.15-15.30  Coffee break 

15.30-16.45  Habitual residence and domicile in Rome I and Rome II 

  Chair: Sabine Corneloup, University of Paris 2- Panthéon-Assas 

  Relationship between domicile in Brussels I and habitual residence in Rome I and Rome II (Paul Beaumont, University of Aberdeen) 

  Place of central administration and the need for predictability (Diego Fernández Arroyo, Sciences Po) (Presentation) 

  Branch, agency and the nexus with the contract or the tort (Erich Schwarzenbacher, Supreme Court of Vienna) 

  Criteria for natural persons (Maria Beatrice Deli, University of Molise) 

  Discussion 

16.45-17.15  A look from the US 

  Symeon Symeonides, Willamette University 

  Discussion 

17.15-17.30  Conclusion 

  Giuditta Cordero-Moss, University of Oslo 

19.30  Dinner at Sanguine Brasserie