

International private law aspects and dispute settlement related to transnational company agreements

Study on behalf of the European
Commission VC/2009/017

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Main topics

- Applicable law
- Jurisdiction of the courts
- *Ius standi* – standing in courts

PIL

Relevant instruments

- Rome I Regulation: applicable law with regard to contracts
- Rome II Regulation: applicable law with regard to non-contractual obligations
- Brussels I Regulation: international jurisdiction in civil and commercial matters

- Do they apply?

Characterisation issues

- Binding
- Civil and Commercial
- Contract

- NB limited relevance of national law – autonomous interpretation

Characterisation: conclusions

- Brussels I applies, as do Rome I and II
- Relationships between management and workers' representatives is (largely) 'contractual'
- Relationship with third parties (consumers, competitors) characterised independently, could be non-contractual

Applicable law: Rome I

Parties to the TCA

- Central (European) management
 - Local subsidiaries
 - International and/or European trade unions
 - National (federations of) trade unions
 - (E)WC's
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- Agency/mandate third party relations NOT covered by Rome I!

Applicable law: Rome I

- Article 3: party autonomy – choice of law by the parties
 - Non-national systems of law – CFR
 - Depeçage
- Article 4: applicable law in absence of a choice by the parties
 - Characteristic obligation (Article 4 sub 2)
 - Closest connection
 - As a default (Article 4 sub 4)
 - As an exception (Article 4 sub 3)

Conclusions

- Party autonomy as preferred solution
- Closest connection leads to uncertainty
- Depeçage: different law for different relationships within the TCA?

- NB Choice of law = **obligatory** aspect of the TCA

Normative effect - private international law aspects

- Effect of TCA on individual labour contracts
 - Statutory
 - Mandate/membership
 - Other
- Normative effects of collective agreements / works council agreements determined by national law: 'reception'
- Mandate national representatives determined by national law of country of origin

Normative effect - reception

- Can a TCA under law A have normative effect on labour relations governed by law B?
 - Restrictions under law A
 - Overriding mandatory provisions under Rome I
 - Public policy objections under law B
- Conclusion: to a limited extent only (favor) and subject to conditions.

Recommendations

- Express provision on binding character
- Express choice of law in TCA – with specifications
- Explicit mandate to negotiators at European level
- Implementation at national level according to national rules

Jurisdiction

- Non-EU employers v. EU employers
- Exclusive jurisdiction and jurisdiction over individual contracts of employment
- Other:
 - Forum rei
 - Special jurisdiction Article 5
 - Joinder of claims under Article 6
 - Interim and provisional measures Article 31

Recommendations

- Insert a place of performance for specific obligations in the TCA
- Insert a non-exclusive choice of forum in the TCA

Ius standi - problems

- Legal entity with full legal capacity? Special position of works councils and unions
- Large variety in national solutions
- No party autonomy

Ius standi - solutions

- European rule on ius standi (compare Article 10 recast directive)
- European system of mutual recognition
- Avoidance through jurisdiction rules
- Unilateral acceptance of ius standi by the MS