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The Rome II Regulation and the Hague Conventions on Traffic Accidents and Product Liability – Interaction, conflicts and future perspectives

1. Introduction

In principle, the rules designating the applicable law set out in the Rome II Regulation also apply to road traffic accidents and product liability. However, in these areas of great practical importance, the unification of the conflict-of-law rules by the Rome II Regulation has remained, at most, partial. In fact, according to Article 28(1), the Rome II Regulation ‘shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations’. With a view to respecting the international commitments of Member States,¹ Article 28 thus leads to the co-existence of different sets of conflict-of-law rules within Europe.²

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See on the Rome II Regulation by the same author: ‘The Law Applicable to Cross-Border Damage to the Environment’, *Yearbook of Private International Law* 2008, pp. 71-86; ‘Freedom to choose the applicable law in tort – Articles 14 and 4(3) of the Rome II Regulation’, in: W. Binchy/J. Ahern (eds), *The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: A New Tort Litigation Regime*, Leiden: Brill (forthcoming); *The Law Applicable to Non-Contractual Obligations in Europe: A Guide to the Rome II Regulation* (in collaboration with Eleanor Grant), Oxford: Hart (forthcoming); ‘Le nouveau droit international privé communautaire en matière de responsabilité extracontractuelle’, *RCDIP* 2008, pp. 445-511; ‘Das Internationale Deliktsrecht der Europäischen Union ab Januar 2009 – Ein Vergleich mit dem schweizerischen Rechtszustand’, *Anwaltsrevue/Revue de l’avocat* 2008, pp. 151-157; ‘Das auf außervertragliche Schuldverhältnisse anwendbare Recht nach Inkrafttreten der Rom II-Verordnung’, *RabelsZ* vol. 1/2009 (forthcoming).

¹ Recital 36 of the Rome II Regulation.

² According to Art. 28(2), ‘[h]owever, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation’. Since both Hague Conventions on tort law count among their Member States non-EU States, Art. 28(2) does not apply and Rome II does not ‘take precedence over’ these Hague Conventions.

2. Relationship between the Rome II Regulation and the 1971 Hague Convention³

According to Article 28(1) of the Rome II Regulation, the twelve EU Member States that are also parties to the Hague Convention on the law applicable to traffic accidents concluded 4 May 1971 will continue to apply this Convention.⁴ The fourteen other EU Member States⁵ will designate the applicable law in accordance with Rome II. Consequently, the British, Irish, German, Swedish, Finnish, Estonian, Hungarian, Romanian, Bulgarian, Italian, Portuguese and Greek courts as well as the courts of Malta and Cyprus will, from 11 January 2009, determine the applicable law to road traffic accidents according to the Rome II Regulation. Conversely, the French, Spanish, Belgian, Luxembourg, Dutch, Austrian, Polish, Lithuanian, Latvian, Czech, Slovak, and Slovenian courts (as well as – outside of the European Union – the Swiss courts and the courts of the States succeeding the former Yugoslavia) will determine the law applicable to road accidents through the application of the 1971 Hague Convention.⁶

In the EU Member States that are parties to the Hague Conventions, the rules of the Rome II Regulation will only have to be taken into account in situations where the case is not (or not yet) before the courts, i.e. in out of court proceedings and settlements, if Member States that are parties to the Hague Convention as well as Member States that are not parties to the Hague Convention would have jurisdiction.⁷

³ See also A. Malatesta, 'The Law Applicable To Traffic Accidents', in: A. Malatesta (ed.), *The Unification of Choice of Law Rules on Torts and Other Non-Contractual Obligations in Europe*, Milano: CEDAM 2006, pp. 85-106; C. Brière, 'Réflexions sur les interactions entre la proposition de règlement "Rome II" et les conventions internationales', *Revue de droit international (Clunet)* 2005, pp. 677-694; T. Thiede/M. Kellner, "'Forum shopping" zwischen dem Haager Übereinkommen über das auf Verkehrsunfälle anzuwendende Recht und der Rom II-Verordnung', *Versicherungsrecht (VersR)* 2007, pp. 1624-1628; T. Kadner Graziano, 'La coordination des règlements européens et des conventions internationales en matière de droit international privé – L'exemple des futurs règlements Rome II et Rome I: appréciation des différentes options, critique et proposition', *RSDIE* 2006, pp. 279-293. For frictions between Hague Conventions on PIL and EU rules on PIL in other fields, see M. Jesús Elvira Benayas, 'La cooperación judicial internacional como observatorio de las fricciones entre la conferencia de La Haya de derecho internacional privado y la Comunidad Europea. ¿Posibles vías de coordinación?', *Anuario español de derecho internacional privado* 2000, pp. 261-274.

⁴ For details on the priority of the 1973 Hague Convention over the Rome II Regulation and its limits, see S. Corneloup, 'La responsabilité du fait des produits', in: S. Corneloup and N. Joubert (eds), *Le règlement communautaire 'Rome II' sur la loi applicable aux obligations extracontractuelles*, Paris: Litec, 2008, pp. 85-106.

⁵ The Rome II Regulation will not be applied in Denmark, see Recital 40 and Art. 1(4) of the Rome II Regulation.

⁶ Text of the Convention and list of Member States, available at: <www.hcch.net>.

⁷ See also N. Joubert, 'Les règles de conflit spéciales en matière de délits dans le Règlement du 11 juillet 2007 (Rome II)', in: Corneloup/Joubert (eds) 2008, pp. 55-84, at p. 65 (*supra* n. 4).

As the rules used in the Rome II Regulation and the 1971 Hague Convention differ, the result in an actual case might depend on the applicable regime. As a result, the possibility to *forum shop* in such cases will persist.

2.1 *Some differences between the Rome II Regulation and the Hague Convention*

a) A first major difference between the Rome II Regulation and the Hague Convention is the role of party autonomy. The Rome II Regulation allows the choice of the applicable law in Article 14, and rightly so⁸, whereas the 1971 Hague Convention does not mention such a possibility. The opinions expressed in the academic literature and case law from the States that are parties to the Hague Convention are very divided on the question of whether the application of the Convention can be excluded by agreement and a national law be chosen instead. Some believe that the Hague Conventions exclude agreements on the applicable law.⁹ However, others are of the opinion that such agreements are possible.¹⁰ Yet another group thinks that this question is to be examined according to the *lex fori*.¹¹

b) Rome II and the Hague Convention both provide for exceptions to the application of the law of the place in which the accident occurred. A second important difference between Rome II and the Hague Convention concerns the conditions in which a derogation from the *lex loci delicti commissi* rule is permitted. Whereas the rule in the Rome I Regulation is simple and straightforward, the rules in the Hague Convention providing for exceptions from the *lex-loci delicti* rule is rather complex.

Where the person claimed to be liable as well as the injured person have their *habitual residence* in the same country at the time the damage occurred, Article 4(2) of the Rome II Regulation provides for the application of the law of this country instead of the *lex loci delicti*. On the other hand, the Hague Convention, in specific cases set out in Article 4, provides for the application of the law of the State of registration of the vehicle(s). Where several vehicles

⁸ For a detailed analysis, see Kadner Graziano, in: Binchy/Ahern (eds), (supra n. *).

⁹ A. Rufener, in: H. Honsell et al. (eds), *Basler Kommentar, Internationales Privatrecht*, 2nd edn., Basel: Helbing & Lichtenhahn 2007, Art. 134, n. 29; A. Heini, in: D. Girsberger et al., *Zürcher Kommentar zum IPRG*, 2nd edn., Zurich: Schulthess 2004, Art. 132, n. 1-2.

¹⁰ Supreme Court of Austria (*Oberster Gerichtshof*, OGH), *Entscheidungen des österreichischen Obersten Gerichtshofes in Zivil- und Justizverwaltungssachen (SZ)* 68/17, with further references; see also the French Cour de cass. 19 April 1988 (*Roho v. Caron et autres*), *RCDIP* 1989, 68, case note H. Batiffol; M. Schwimann, *Internationales Privatrecht*, 3rd edn., Vienna: Manz 2001, p. 72.

¹¹ B. Dutoit, *Commentaire de la loi fédérale du 18 décembre 1987*, 4th edn., Basel: Helbing & Lichtenhahn 2005, Art. 134, n. 2^{bis}; Corneloup 2008, pp. 85 et seq., at pp. 99 et seq. (supra n. 4), for the 1973 Hague Convention on the Law Applicable to Product Liability.

are involved in the accident, the law of the State of registration is only applicable if all the vehicles are registered in the same State, other than the State in which the accident occurred.¹² Where persons who were not in a vehicle are involved in an accident, the exception to the *lex loci delicti* rule is only valid if all persons involved have their habitual residence in the State of registration.¹³ According to the Hague Convention, the exception to the application for the *lex loci delicti* rule therefore depends on the State of registration of the vehicles involved in the accident even if the person whose liability is invoked and the injured person (e.g. the driver and the passenger in the same vehicle) are habitually resident in the same country. Conversely, in such a case, the law of the country of the parties' common habitual residence would be applicable to their tort law obligations under the Rome II Regulation.

2.2 Case scenarios

Some case studies taken from the case law of the European courts illustrate the practical consequences of having different rules on the applicable law for traffic accidents:

a) In a first example, the facts of which gave rise to a famous French decision on PIL,¹⁴ the driver of a car who had his habitual residence in France attempted to overtake an articulated lorry on a German road. The manoeuvre, which was contrary to traffic rules, forced a car going in the other direction, carrying two brothers who also had their habitual residence in France, to do an emergency stop. The brothers' car skidded and crashed into the lorry causing the death of one of the brothers and the serious injury of the other. In this case, the two cars were registered in France whereas the lorry was registered in another State.

In such a case, the German courts (competent to judge the case according to Art. 3 of the Brussels I Regulation) would, from 11 January 2009, apply the Rome II Regulation. This would lead to the application of French law as the person claimed to be liable and the injured person both had their habitual residence in France, Article 4(2) of the Rome II Regulation.

The French courts (competent to judge the case according to Art. 2(1) of the Brussels I Regulation) would designate the law according to the 1971 Hague Convention and not according to the Rome II Regulation (see Art. 28 of the Rome II Regulation). The Hague Convention stipulates that if all vehicles involved in an accident are registered in the same State, the law applicable to the driver and passenger's claims is the law of the State of

¹² Art. 4(b) of the 1971 Hague Convention.

¹³ Art. 4(c).

¹⁴ *Kieger v. Amigues*, French Cour de cass. 30 Mai 1967, *RCDIP* 1967, 728, case note Bourel.

registration (Art. 4(b) read in accordance with Art. 4(a) of the Convention). However, in this case, only the two cars were registered in France, unlike the lorry which was registered in another State. Yet, in the case law of the States being parties to the Hague Convention, it is recognised that even vehicles that played a purely passive role are ‘implicated in the accident’ in the sense of Article 4 because the possibility that they played a causal role in the accident cannot be ruled out.¹⁵ In this instance, given that the lorry was not registered in France, not all the vehicles were registered in the same State so the requirements in Article 4 allowing an exception to be made from the *lex loci delicti* rule were not met. The French courts, applying the Hague Convention, would therefore designate German law (i.e. the *lex loci delicti*) as the applicable law in such a case.

Therefore, the German and French courts would not have designated the same applicable law. The German courts would have applied French law according to Rome II, whereas the French courts would have designated German law in accordance with the Hague Convention. Given that the compensation due in such a case and, in particular, the compensation of the victims’ families for non-pecuniary loss (*tort moral*), differs greatly between these two countries, it might be advisable for the victim of such an accident and his relatives to bring their claim before the German courts in order for French law (with its more favourable rules on compensation for non-pecuniary loss) to be applied to their claim.

b) In another case, which led to the French *Cour de cassation*’s first ruling on the 1971 Hague Convention,¹⁶ there was an accident in France involving a single hired car registered in Belgium. The car was carrying several people, all of whom were habitually resident in Spain. Given that only one vehicle was involved and that this vehicle was registered in a State other than the one in which the accident occurred, Belgian law, the law of the State in which the vehicle was registered, was applicable to the driver’s liability toward the passengers, pursuant to Article 4(a) of the 1971 Hague Convention.¹⁷

In such a situation, the Rome II Regulation would, on the contrary, lead to the application of the law of the country of the common habitual residence of the persons involved (Art. 4(2) of

¹⁵ See, e.g., the Austrian Supreme Court (OGH) 21 May 1985, *Österreichische Entscheidungen zum Internationalen Privatrecht (IPRE)* 2/90; P. Volken, in: Girsberger et al. 2004, Art. 134, n. 77-79 (*supra* n. 9); Dutoit 2005, Art. 134, n. 12 (*supra* n. 11); B. Audit, *Droit international privé*, 4th edn., Paris: Economica 2006, n. 807 *in fine*; Schwimann 2001, p. 73 (*supra* n. 10).

¹⁶ French Cour de cass. crim. 6 May 1981, *RCDIP* 1981, 679 case note Bourel.

¹⁷ For a critical view of this decision (in favour of the application of Spanish law in this scenario), see Pierre Bourel, case note: Cour de cass. 6 May 1981, *RCDIP* 1981, 681 (685); see also W. Lorenz, ‘Das außervertragliche Haftungsrecht der Haager Konventionen’, *RabelsZ* 1993, pp. 175 et seq., at pp. 180 et seq.

the Rome II Regulation). Had the passengers and the driver of the car had their habitual residence, e.g., in England, Germany, Sweden or Hungary, and had the case been brought before the courts of these countries, Article 4(2) of the Rome II Regulation would have led to the application of the law of the country of the common habitual residence of the people involved (instead of the law of the State of registration).

c) Accidents involving several vehicles and where a passenger brings an action against the driver or owner of the vehicle in which he was travelling are very common. This situation can be illustrated by a third case scenario: A car registered in Austria carrying passengers all of whom have their habitual residence in Austria, crashed into a stationary vehicle registered in the former Yugoslavia. The passengers claimed compensation for their injuries from the driver's insurance company.¹⁸ Given that not all the vehicles involved were registered in the same State, other than that where the accident occurred, the Hague Convention led to the application of the law of the place where the accident occurred (Art. 3, the requirements of Art. 4(a) not having been met).¹⁹

If the Rome II Regulation had been applicable in this case, the applicable law would, on the contrary, have been Austrian law, the law of the country of common habitual residence of the injured person and the person whose responsibility is invoked (Art. 4(2) of the Rome II Regulation).

These examples demonstrate that for traffic accidents, as numerous as they are in practice, the dual system of regimes compromises the objective of unifying the conflict-of-law rules as well as compromising the foreseeability of solutions on the European scale.²⁰ This is why the

¹⁸ OGH 21 May 1985, *IPRE* 2/90.

¹⁹ OGH 21 May 1985, *IPRE* 2/90; see also OGH 20 June 1989, *IPRE* 3/72: accident in Hungary between a car registered in Hungary and a car registered in Austria; claim brought by the passengers of the Austrian car against the driver of this car and his insurance company: *lex loci delicti* applied; see also the Belgian case *Hof van Cassatie* 15 March 1993, *Rechtskundig Weekblad* 1992/93, p. 1446; French Cour de cass. 4 April 1991, *Clunet* 1991, 981: collision in the former Yugoslavia involving a motorbike registered in France and a car registered in Germany; the passenger of the motorbike sues the biker and his insurance company; application of the law of the former Yugoslavia, i.e. of the *lex loci delicti*; French Cour de cass. 24 March 1987, *RCDIP* 1987, 577; Cour de cass. 6 December 1988, *RCDIP* 1990, 786; Cour de cass. 6 June 1990, *RCDIP* 1991, 354; see also Dutoit 2005, Art. 134, n. 13 (*supra* n. 11).

²⁰ For a critical perspective, see also Joubert 2008, p. 55, at pp. 62-64 (*supra* n. 7); P. Lagarde, 'Rapport de synthèse', in: Corneloup and Joubert (eds) 2008, p. 201, at pp. 203 et seq. (*supra* n. 4): '[i]l y a là une solution qui nuit gravement à l'effectivité de l'unification'; Thiede/Kellner 2007, pp. 1624 et seq. (*supra* n. 3); S. Leible/A. Engel, 'Der Vorschlag der EG-Kommission für eine Rom II-Verordnung', *EuZW* 2004, pp. 7-17, at p. 17; J. von Hein, 'Die Kodifikation des europäischen IPR der außervertraglichen Schuldverhältnisse vor dem Abschluss?', *VersR* 2007, pp. 440-452, at p. 451; G.

European Commission has announced, in Article 30(1)(ii) of the Rome II Regulation to present, by August 2011 at the latest, a report on Rome II. This report will, '[i]f necessary, ... be accompanied by proposals to adapt this Regulation' and 'a study on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents'. It thus appears that improvements in the coordination between the Rome II Regulation and the 1971 Hague Convention, which is currently less than satisfactory, might be made soon.

3. Relationship between the Rome II Regulation and the 1973 Hague Convention

Product liability is the subject-matter of a second Hague Convention, namely the 1973 Hague Convention on the Law Applicable to Products Liability.²¹ The Convention is in force in 11 countries, including 6 EU Member States.²² As with the 1971 Hague Convention, Rome II will not affect the application of the 1973 Hague Convention (Art. 28(1) of the Rome II Regulation). In the EU Member States in which the Convention is in force (i.e. France, Finland, Luxembourg, the Netherlands, Slovenia and Spain), the applicable law in product liability cases will continue to be determined by the 1973 Hague Convention and not by Article 5, the provision on the law applicable to product liability of the Rome II Regulation. Yet, like with traffic accidents, this is a less than satisfactory situation. Some case scenarios help to illustrate the interaction and conflicts between the Rome II Regulation and the 1973 Hague Convention:

1) In the first scenario which is probably the most frequent in transnational product liability cases, a consumer acquires a product made by a foreign manufacturer in the country of his habitual residence where the product causes damage. In this scenario, both the 1973 Hague Convention and the Rome II Regulation lead to the application of the law of the country of the consumer's habitual residence, even though the connecting factors under both regimes differ: According to Article 5(1)(a) of the Rome II Regulation 'the law applicable to a non-contractual obligation arising out of damage caused by a product shall be ... the law of the

Wagner, 'Die neue Rom II-Verordnung', *IPRax* 2008, pp. 1-17, at p. 3; A. Junker, 'Das Internationale Privatrecht der Straßenverkehrsunfälle nach der Rom II-Verordnung', *JZ* 2008, pp. 169-179, at p. 171.

²¹ Text and list of Member States available online at: <www.hcch.net>.

²² The Convention of 2 October 1973 on the Law Applicable to Products Liability is currently in force in France, Luxemburg, the Netherlands, Norway, Finland, Spain, Slovenia, Croatia, Macedonia, Serbia and Montenegro; <www.hcch.net>.

country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country'. Under Article 5(b) of the 1973 Hague Convention, 'the applicable law shall be the internal law of the State of the habitual residence of the person directly suffering damage, if that State is also ... the place where the product was acquired by the person directly suffering damage'. Since the product in this scenario was marketed in the country of the consumer's habitual residence (Rome II) and since the consumer acquired the product in this country (Hague Convention), both systems lead to the application of the law of the consumer's habitual residence.

2) However, as the rules used in the Rome II Regulation and the 1973 Hague Convention differ, the result in other cases will depend on the applicable regime:

- a) Let us imagine, for example, that a person habitually resident in Sweden acquires a product made by a Chinese producer while in England; no similar products made by the same producer are marketed in Sweden. The product causes the buyer to sustain damage in Sweden. In such a scenario, Rome II would lead to the application of the law of the country where the product was marketed and acquired, i.e. to English law (Art. 5(1)(b) of the Rome II Regulation). The Hague Convention, on the contrary, would lead to the application of Swedish law since Sweden was both the 'State of the place of injury' and 'the place of the habitual residence of the person directly suffering damage' (Art. 4(a) of the 1973 Hague Convention).
- b) In its 2003 proposal for a Rome II Regulation,²³ the European Commission uses yet another scenario. A German tourist buys French-made goods in Rome airport and takes them to an African country where they explode and cause him to sustain damage. In this scenario, the Rome II Regulation would lead to the application of German law (i.e. 'the country in which the person sustaining the damage had his or her habitual residence') provided that products of the same type and made by the same producer were marketed there (Art. 5(1)(a) of the Rome II Regulation). The 1973 Hague Convention, on the contrary, would lead to the application of the 'law of the State of the principal place of business of the person claimed to be liable', i.e. French law; the person having suffered the damage could opt for the application of the 'law of

²³ Proposal for a Regulation of the European Parliament and the Council on the Law Applicable to Non-Contractual Obligations ('ROME II'), Brussels, 22 July 2003, COM(2003) 427 final, p. 14, fn. 25, available online at: <ec.europa.eu/prelex/detail_dossier_real.cfm?CL=de&DosId=184392>.

the State of the place of injury', i.e. the law of the African State (Art. 6 of the 1973 Hague Convention).

As in the case of trans-border traffic accidents, in product liability cases the dual system of regimes compromises the objective of the foreseeability of solutions on the European scale and gives incentives for forum shopping.

Article 30 of the Rome II Regulation stipulates that the report on the application of the Regulation will examine the effects of the Regulation on the application of the 1971 Hague Convention on the law applicable to traffic accidents. Oddly enough, however, it does not mention the 1973 Hague Convention. We do not know whether this is an intentional gap or whether it results from the final text being drafted rather hurriedly. Be that as it may, it is desirable for the report planned by the Commission in Article 30(1)(ii) to lead not only to a better coordination between the Regulation and the 1971 Hague Convention, but also to a better coordination between the Regulation and the 1973 Hague Convention.

4. Perspectives (Article 30(1)(ii) of the Rome II Regulation)

The question of how the Rome II Regulation and the Hague Convention(s) could be coordinated in a better way will probably have to be tackled very shortly (see Art. 30(1)(ii) of the Rome Regulation). In order to achieve a better coordination, it is, for example, possible to imagine cases only involving people with their *habitual residence in the European Union* being governed by the Rome II Regulation. The 1971 Hague Convention, as well as the 1973 Hague Convention and future Hague Conventions in the area of tort, could, on the other hand, govern cases involving people resident in a third country. This could be achieved if Article 28 of the Rome II Regulation were, for example, to include the following rule:

- (1) This Regulation shall not affect the application of international multilateral conventions to which the Member States are or become party and which, in relation to specific matters, lay down conflict-of-law rules relating to non-contractual obligations.
- (2) However, when the person claimed to be liable and the person sustaining damage are habitually resident in a European Union Member State at the time the damage

occurred, this Regulation prevails over the conventions to which the Member States are or become party.²⁴

The suggested solution would guarantee that in *all* EU Member States the applicable law to disputes between persons habitually resident in a Member State of the European Union is set out in the Rome II Regulation. This solution is clear and simple and the results are predictable. If this rule were to apply to *future* Hague conventions, that is to say if the Rome II Regulation were not to affect the application of ‘international multilateral conventions to which the Member States are or *become* party’, then the Hague Conference need not be held back and EU Member States would still be able to play a role in the Hague Conferences in relation to tort law matters.

If this solution were to be adopted, the case of the accident in Germany involving people who were all habitually resident in France (see above),²⁵ would be resolved differently: The law applicable to the case between the surviving brother and his father on the one hand and the driver of the other car on the other, would, whether brought in France or Germany, be decided according to the Rome II Regulation given that the parties had their habitual residence in an EU Member State. Conversely, the applicable law in an action between parties with their habitual residence in, for example, France and Switzerland, would be determined by the 1971 Hague Convention before the courts in either country.²⁶

5. Conclusion

It is not at all desirable for European actors as well as for international business to be faced with legal uncertainty with regards to the fundamental issue of knowing whether the applicable law will be determined by a European Regulation or by the relevant Hague Convention. With the law as it stands at present, the regime designating the applicable law in traffic accidents and product liability cases will still depend on the place where the proceedings are brought.

²⁴ See the author’s proposal in *RSDIE* 2006, pp. 279 et seq. Using the criteria of habitual residence in a Member State has recently been done in the Hague Convention on Choice of Court Agreements concluded 30 June 2005. Art. 26(6) of the Convention stipulates that ‘[t]his Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention, whether adopted before or after this Convention – a) where none of the parties is resident in a Contracting State that is not a Member State of the Regional Economic Integration Organisation; b) ...’; see also Malatesta 2006, p. 85, at p. 105 (*supra* n. 3); Brière, *Clunet* 2008, p. 31, at p. 74, fn. 150.

²⁵ *Kieger v. Amigues* (*supra* n. 14).

²⁶ For details, see Kadner Graziano, *RSDIE* 2006, pp. 279 et seq.

The suggested solution would, on the contrary, guarantee that the applicable law to disputes between persons habitually resident in EU Member States would be determined in all EU Member States by the Rome II Regulation.

Currently, the States being parties of the Hague Conventions are obliged to apply the Hague Conventions *erga omnes*. In order to create the proposed solution, the EU Member States that are parties to the Hague Conventions in tort law would need to be *partially disconnected* from these Conventions. Both the Hague Conference and the European Commission should have an interest in such a partial disconnection: On the one hand, it would allow the Rome II Regulation to be applied to traffic accidents and product liability cases in all EU Member States; this should be in the interest of the European Union. On the other hand, in cases involving people having their residence in non-Member States of the European Union, present (*and future*) Hague Conventions in tort law could continue to be applied in EU Member States. The European Union would thus be able to continue to play its role in relation to tort law matters in the Hague Conference which should be in the interest of both the European Union and the Hague Conference.