Article 4 and Traffic Accidents

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A. Introduction

The general methodological approach of the Rome II Regulation is characterised by a combination of general rules (Articles 4 and 14 Rome II) and specific rules governing certain types of torts (Articles 5–9 Rome II). Unlike for example,
product liability, environmental damage or unfair competition claims, however, the final Rome II Regulation does not contain any particular rule on traffic accidents. This omission could perhaps be attributed to the notion that traffic accidents are precisely the kind of everyday, garden-variety torts which are sufficiently dealt with by the general rules and which therefore do not merit the creation of particular, tailor-made conflicts rules. Yet this assumption raises doubts for various reasons. Traffic accidents were at the centre of the U.S. conflicts revolution in the 1960’s – just think of Babcock v. Jackson –, and they played an important role in the European discussion about developing more flexible approaches to tort conflicts in Europe as well, e.g. with regard to the “Auflockerung” pursued by the German Federal Court of Justice in the 1980s and 1990s. As long ago as 1971, several states, among them many member states of what is today the European Union, concluded the Hague Convention on the law applicable to traffic accidents (hereinafter: Hague Convention). This convention is a rather complex and detailed legal instrument that employs the method of a kaleidoscopic “grouping of contacts”, which was inspired by the achievements of the U.S. conflicts revolution at that time. Evidently, at least the states parties to the Hague Convention were of the opinion that good old lex loci delicti was no longer adequate for the complexity of legal questions raised by traffic accidents in modern times.


5 See e.g. Bundesgerichtshof [Federal Court of Justice] 7 July 1992, BGHZ 119, 137.


7 On the American influence on the methodology employed by the Hague Conventions on Traffic Accidents (n. 6) and on Product Liability (available at http://www.hcch.net/index_en.php?act=conventions.text&cid=84, with information about the status of ratifications; also published in (1973) 37 RabelsZ 594), see von Hein op. cit., fn. 2, supra 1679–1681.