Mandatory Rules and Ordre Public (Public Policy)

Prof. Michael Hellner
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Two sides of a coin

**Ordre public (public policy)**
- Negative side
- Non-application of foreign law

**Mandatory rule:**
- Positive side
- Application of rule not from *lex causae*
Ordre public

Where?
- Rome I – Art. 21
- Rome II – Art. 26

When?
- Very restrictive application (manifestly incompatible)
- Limits set by CJUE

How?
- Lex fori?
- Adaptation of lex causae?
Ordre public: non-compensatory damages

Commission proposal

• Art. 24
• Non-compensatory damages *are* contrary to Community public policy.

Rome II Regulation

• Recital 32
• Non-compensatory or punitive damages *may* be contrary to public policy
Mandatory rules (lois de police)

Where?
- Rome I – Art. 9
- Rome II – Art. 16

When?
- If national law so requires
- Limits set by CJUE

How?
- PIL route
- Substantive law route
When is a rule (internationally) mandatory?

When they say so!

Examples:

• Rules protecting weaker parties
• Import and export bans (Covid-19!)

Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation, Art. 9(1) Rome I.
What mandatory rules?

Rules of the forum

Rules of other countries

• Laws of countries in which contract is performed
• Making the performance unlawful
• Also for Rome II?

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