

ABSTRACT

'Ordre public interne in European Private International Law'

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Any system of private international law which recognises party autonomy in determining the applicable law must deal with the question of whether and how such autonomy is restricted in legal relationships that are purely internal in character. In those relationships, the choice by the parties of a foreign law typically cannot exclude the application of local legal norms which the parties cannot derogate from by agreement. Used in this context, the totality of internally applicable mandatory rules is known in private international law as *ordre public interne*. The concept is much wider in reach than the public policy exception proper (*ordre public international*), which limits the application of foreign law in legal relationships involving an international element.

In EU private international law, the notion of *ordre public interne* is dealt with in the EU regulations on the law applicable to contractual and non-contractual obligations (Rome I Regulation, Articles 3(3) and 3(4) and Rome II Regulation, Articles 14(2) and 14(3)). The manifestation of the concept in those instruments is twofold. First, in relationships connected with only one country, the choice of a foreign law cannot exclude the mandatory rules of that country (*local ordre public interne*). Second, in legal relationships associated only with EU member states, the choice of the law of a third country cannot exclude the mandatory rules of EU law. This latter concept, which is endemic for EU, treats supranational European private law as the law of a single state thereby confirming the coherence of EU private law as a single legal system.

The paper will analyse the theoretical underpinnings of the rules on *ordre public interne* in EU private international law. In particular, it will focus on the doctrinal explanations for the application of external law in internal legal relationships and explore whether under the EU rules on *ordre public interne* the chosen external law should apply as the applicable law proper or as a contract between the parties.