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A new volume of the *Anuario Español de Derecho Internacional Privado* has just been released. It includes a number of unique studies, most of which are in-depth developments of the ideas briefly presented both by Spanish and foreign scholars at the International Seminar on Private International Law, held last March at the Universidad Complutense de Madrid; that is why the volume is as rich as the seminar was. Patricia Orejudo, secretary of the magazine since 2010, has kindly provided the abstract of each single publication:

JACQUET, J.M.: “La aplicación de las leyes de policía en materia de contratos internacionales”, pp. 35-48.

This article analyses from a current perspective some of the issues raised by the application of overriding mandatory provisions, with a special emphasis on questions of EU Law. On the one hand, the author identifies the practical obstacles which hinder the effective application of overriding mandatory provisions, either by means of a control to be carried out prior to their application, or by means of jurisdictional mechanisms intended to obstruct such application, as for example choice of court agreements and arbitration agreements. On the other hand, the author points out possible solutions –both material and procedural– that can be used to overcome the obstacles previously detected, in order to guarantee that the imperative character of overriding mandatory provisions is respected and, consequently, that such provisions are effectively applied to all the cases falling within their scope of application.

BERGÉ, J-S.: “El Derecho europeo ante la fragmentación del Derecho aplicable a las relaciones internacionales: la mirada del internacional-privatista”, pp. 49-68.

When we evoke the question of the European law (European Union) confronted with the fragmentation of the choice of law to the international relations, by what law do we speak? For the private lawyer, two answers are

outlined. The fragmentation of the choice of law can result, at the first level, from a confrontation of the solutions and the methods of the private international law and from the European law. But it can also find accommodation, at the second level, in the appropriate constructions of the European private international law.

MEDINA ORTEGA, M.: “El Derecho patrimonial europeo en la perspectiva del programa de Estocolmo”, pp. 69-90.

The principle of mutual recognition and its extension to the rules of jurisdiction, recognition and enforcement of decisions and Law applicable is not enough satisfactory for a European Union which aims at creating an internal market where persons, goods, capitals and services are not subject to the arbitrary application of a given legal order, on grounds of legal technique. No matter the reasons that could be bestowed to uphold the “living” nature of Law and its connexion to the national culture and traditions, the European Union, as a great area of supranational peace, is developing its own society and its own social and legal culture. Such culture may not be split on basis of whimsy sociological and legal theories that are nostalgic of the culture of the “peoples of Europe”, for these “peoples” are nowadays melting in a unified political community, right before our eyes. The European “acquis” in contractual matters is already important; though still spread in a set of instruments whose purpose is the harmonization of certain fields: mainly the field of consumer protection. In this context, the CFR is an ambitious project. It still has an uncertain future, but both the Commission and the European Parliament are doing their best to take it forward, in its most cautious character, i.e., that of an optional instrument to which parties could resort in order to avoid a particular state Law. The task is not easy, but the multiplication of efforts over the past decade by the common institutions to achieve a harmonization of European property law shows that it is a necessary and urgent task that the European citizens demand today as an essential part of the Area of Freedom and Justice established by the Treaties of the European Union.

RÜHL, G.: “La protección de los consumidores en el Derecho internacional privado”, pp. 91-120.

The majority of cross-border consumer contracts are governed by general

contract terms provided by the professional. In most cases these terms provide for a choice of law clause. From an economic perspective these clauses pose serious problems. However, this is not because consumers are “weaker” than professionals, but rather because they know less about the applicable law and have no incentive to invest into the gathering of the relevant information. Professionals, in contrast, enter into a large number of similar contracts on the same market. As a result, they have an incentive to gather information about the applicable law in order to choose the law that provides the most benefits for them and the least benefits for consumers. Since consumers are not able to distinguish between professionals who choose consumer-friendly laws and those who don’t, this may lead to a race to the bottom and a market for lemons. The self-healing powers of markets are unlikely to avoid these problems. Therefore, it is necessary to directly regulate consumer transactions by modifying the general provisions determining the applicable law. An analysis of the various models that are applied around the world lead us to conclude that the general European model, which is also to be found, albeit with differences in detail, in Japan, Korea, Russia, Turkey and the United States, promises the greatest benefits in terms of efficiency.

MIQUEL SALA, R.: “El fracaso de la elección del Derecho a la luz del Reglamento Roma I y de las libertades fundamentales”, pp. 121-154.

According to an obiter dictum in the decision Alsthom Atlantique, it seems that party autonomy excludes the control by the ECJ of a possible limitation of the fundamental freedoms by the chosen law. This paper analyses the implications and the convenience of this rule, not considering the cases in which despite freedom of choice of law the parties have not been able to avoid the application of the given legal system. In order to find out to what extent the parties should carry the risk of the application of rules which are contrary to community law, it focuses on the issues of the admissibility and the validity of the choice-of-law agreement under the Rome I Regulation and the Spanish civil law.

Later on, the paper discusses the practical problems of the application of this doctrine and the arguments in favour and against of the control of dispositive law by the ECJ.

OREJUDO PRIETO DE LOS MOZOS, P.: “El idioma del contrato en el

Derecho internacional privado”, pp. 155-182.

Where the parties to a contract do not share the same mother tongue, an additional question arises. It happens to be necessary to choose the language to be employed within their relationship and to conclude the contract. Each party will try to impose its own language, so as to avoid linguistic risks, and the election will become a matter of negotiation. The parties may agree to use a third neutral language (habitually, English), the language of one of them or both. In any case, specific language clauses will be needed in order to solve or prevent conflicts. The language finally chosen will be paramount to manifest the concepts, and it will impinge on the interpretation of the contract. But it might also have some effect on international jurisdiction, the law applicable to the contract and the service of documents and acts.

UBERTAZZI, B.: “Derechos de propiedad intelectual y competencia exclusiva (por razón de la materia): entre el Derecho internacional privado y público”, pp. 183-257.

In the last years, prestigious courts of different countries around the world have declined jurisdiction in matters related to foreign -registered or not- intellectual property rights: in particular, when an incidental question concerning the validity of the right arise. This incidental question comes up both when the proceedings concern the violation of intellectual property rights and the defendant argues that the right is void or null, so there is no violation at all; and when the claimant aims at a declaration of no-violation of the right, on grounds of its nullity. The present paper takes up and develops a thesis that is being held by the majority of scholars and has been brought to the most recent academic works, such as the Principles of the American Law Institute and the Draft CLIP Principles. According to this thesis, the rules on exclusive jurisdiction in matters of intellectual property are not suggested by Public International Law, and are illicit according with the general principles of denial of justice and the fundamental human right of access to jurisdiction. Therefore, the said rules must be abandoned not only in the matters related to the violation of the right, but also when a question concerning the validity of the right arises.

REQUEJO ISIDRO, M.: “Litigación civil internacional por abusos contra derechos humanos. El problema de la competencia judicial

internacional”, pp. 259-300.

In 2008, the Committee on Civil Litigation and the Interests of the Public of the International Law Association launched a research into the area called “private litigation for violations of human rights”, with particular focus on the private international law aspects of civil actions against multinational corporations. In its 2010 report, the Committee presented the issue of international jurisdiction as one of the most serious obstacles to such actions. Our study examines personal jurisdiction criteria in the U.S. (so far the prime forum for this kind of litigation), and Europe (as potential forum, likely to become a real one to counterbalance the increasingly serious restrictions to access to American jurisdiction). Not surprisingly, we conclude that the situation is unsatisfactory, and that as far as Europe is concerned, the proposal for amending EC Regulation No. 44/01 does not alter such result. Changes in PIL will not be enough for private litigation to become a useful regulatory mechanism of corporations in relation to human rights; a much more comprehensive action is needed, supported by international consensus. In other words: still a long way to run.

ESPINIELLA MENÉNDEZ, A.: “Incidencia de la nacionalidad de las sociedades de capital en su residencia fiscal”, pp. 301-317.

Rules on tax residence in Spain and rules on Spanish Nationality in respect of corporate enterprises are consistent because they are both based on the incorporation under the Spanish Law and the placement of the registered office in Spain. Nevertheless, tax rules are silent on certain issues of dual nationality and change of nationality.

MICHINEL ÁLVAREZ, M.A.: “Inversiones extranjeras y sostenibilidad”, pp. 319-338.

International investment Law has been generally drawn upon a model which largely assumes first the need to solve the problem about protection of investors, in despite of the interests of the host States, in particular the developing countries, whose needs for foreign investments are much more intense. That situation is shown not just by the text of the agreements itself, but also when they are applied in the arbitration proceedings. However, a number of significant problems have emerged, considering the tension

between the policies oriented towards the sustainable development of host States – regarding basically environmental protection and social welfare– and the protection of foreign investments. This kind of problems must be solved through a new International Investment Law. This paper highlights those tensions and focuses on the ways to find the proper balance.

ÁLVAREZ GONZÁLEZ, S.: “Efectos en España de la gestación por sustitución llevada a cabo en el extranjero”, pp. 339-377.

*This paper points out the current situation that arises in Spain after some recent events related to surrogacy. Two contradictory statements triggered new rules to be enacted at a civil registry level. The first one, delivered by the DGRN (administrative body depending on the Ministry of Justice), recognizes Californian surrogacy in order to register it on the Spanish civil register. This statement (resolución) was revoked by a Court of Justice, that ruled the statement of the DGRN was unlawful. The author deals with the new situation and points out that these new rules are clearly unsatisfactory to offer an adequate and proper answer to the wide constellation of problems arising from surrogacy. According to him, the fact that surrogacy is banned by the Spanish civil law is not enough reason to consider surrogacy as opposite to Spanish international public policy. So it would be possible nowadays to recognise some situations of foreign surrogacy. The main question is to determine the precise conditions to admit foreign surrogacy and to act in order to provide an adequate degree of stability for the recognized cases. In this context, the author also proposes a change at civil level: the admission of surrogacy in Spanish civil law. The admission under certain conditions of foreign surrogacy jointly with the maintenance of its ban in Spanish law brings as unsatisfactory outcome the promotion of a undesirable discrimination between people that can afford a foreign surrogacy and those who can not. From a methodological perspective, the author deals with the delimitation between conflict of laws and recognition method and, related to this second issue, with the scope of public policy and the question of *fraus legis*.*

HELLNER, M.: “El futuro Reglamento de la UE sobre sucesiones. la relación con terceros Estados”, pp. 379-395.

The proposal for a Regulation on jurisdiction, applicable law, recognition and

enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession follows a recent trend in EU private international law regulations in that its rules on jurisdiction are intended to apply universally. In order to compensate for the non-referral to national rules of jurisdiction, the proposed Regulation itself contains rules on subsidiary jurisdiction in Article 6 which foresees a kind of jurisdiction based on the location of property. And an Article 6a on forum necessitatis has also been added in the latest text discussed in the Council. But the proposal has some lacunae, that must be remedied before the final adoption or there is great risk that a situation of unnecessary 'limping' devolutions of estates will occur. The paper proposes three different ways to avoid such 'limping' devolutions: renvoi, deference to the foreign devolution and limiting the devolution to assets located in the EU and the inclusion of mechanisms for taking a foreign distribution into account.

GONZÁLEZ BEILFUSS, C.: “El Acuerdo franco-alemán instituyendo un régimen económico matrimonial común”, pp. 397-416.

In February 2010 France and Germany signed a bilateral Uniform law Convention on the property relations between spouses. This paper analyzes this agreement, which introduces a common matrimonial property regime of Participation in acquisitions into the respective substantive law, from the perspective of its eventual interest for Catalan law and as a possible model for European private law.

CARO GÁNDARA, R.: “(Des)confianza comunitaria a la luz de la jurisprudencia del Tribunal de Justicia sobre el Reglamento Bruselas II bis: algunas claves para el debate”, pp. 417-439.

The judgments handed down by the Court of Justice in 2010 relating to the interpretation to be given to the rules of the Brussels Regulation II bis concerning the custody of minors, have reinforced the principle of mutual trust as between the courts of the Member States exercising jurisdiction on the merits. The Court has indicated that no limits or exceptions are to apply to the mutual recognition of decisions, not even when this might result in a possible violation of a minor's rights under the Charter of Human Rights of the European Union. But the Court has also set down a premise: the principle of mutual trust presupposes the high degree of responsibility of the courts

that hear the cases. If that condition is not satisfied, the judiciaries will not be trusted and their provisional measures will not produce their intended effect. Countenancing training for the personnel assigned to the administration of Justice in the different Member States, along with the harmonization of rules of Civil Procedure, will help foster that level of trust required for the consolidation of a genuine common European space for Justice.

AÑOVEROS TERRADAS, B.: “Los pactos prematrimoniales en previsión de ruptura en el Derecho internacional privado”, pp. 441-469.

The significant social developments occurred in Family Law, and especially the increase of the so called mobile marriages, have rise the use of the so called pre-nuptial agreements, even before marriage, in order to establish in advance the economic consequences of divorce. The laws of the different jurisdictions with regard to such agreements vary considerably from one state to the other. Such legal disparities (both substantive and conflicts) may jeopardise the preventive character of the prenuptial agreement and create legal uncertainty. For this reason, a suitable Community private international law legislation is needed (both in the field of jurisdiction and with regard to the applicable law to the agreement) in order for the spouses to have guaranteed the enforceability and validity of the prenuptial agreement.

PAREDES PÉREZ, J.I.: “La incidencia de los derechos fundamentales en la ley aplicable al estatuto familiar”, pp. 471-490.

The universalist scope of human rights, instead of tempering the particularities among different legal systems, has widened the conflict among civilizations, and thus, the alteration of the role of international private law. Apart from the coordination role among legal systems, current international private law (IPL) has become an IPL of intercultural cooperation, more concerned with avoiding limping legal situations than with the classical goal of solution’s international harmony. IPL in family matters becomes, in this sense, a real testing ground of the impact that fundamental rights have had, and still have, not only regarding goals of the IPL but also in the construction of the legal system and the functioning of the regulation techniques themselves.

GUZMÁN PECES, M.: “¿Hacia un Derecho dispositivo en materia de estatuto personal y familiar?. Reflexiones a la luz del Derecho internacional privado español”, pp. 491-510.

This paper analyzes the recent legal reforms in matters of personal and family status to be induced if there is a trend to a law device in the current private international law both in the field of international jurisdiction and in the sector of applicable law. To this end, we analyze various legal institutions such as parenthood, marriage and marital crisis and maintenance obligations.

NAGY, C.I.: “El Derecho aplicable a los aspectos patrimoniales del matrimonio: la ley rectora del matrimonio empieza donde el amor acaba”, pp. 511-529.

The matrimonial property regimes and maintenance are questions which have a great practical importance in the international litigations derived from the dissolution of the marriage. These questions carry problems of characterization and problems of context, because they change according to the system to which there belongs the jurisdiction that knows about the case (common Law or civil law). After analyzing some conceptual aspects of the Draft Regulation on Matrimonial Property, one can conclude that it, though with some exceptions, introduces uniform rules of conflict of law throughout the European Union in this matter. Nevertheless, this instrument does not serve to break with the national diversity that in this field exists in Europe – from a theoretical point of view–, since it does not address the issue of characterization and inter-relation. In order to achieve the wished result it might be tried by two ways: through of party autonomy, or with the insertion of escape clauses (option not foreseen in the Draft Regulation on Matrimonial Property).

BOUTIN I., G.: “El fideicomiso-testamentario en el Derecho internacional privado panameño y comparado”, pp. 531-546.

The testamentary trust in the Panamanian private international and comparative law summarizes the development of this evolution from the common law and how it will be assimilated by the Spanish-American coded systems, thanks to the conceptualization from Alfaro and Garay, who introduce the notion of trust in the Region. Similarly, the applicable law is

interpreted and the recognition of the trust will, based on the rule of conflict of the self-registration autonomy and the subsidiary rule of the law of administration of trust, without neglecting the issue of jurisdiction or conflict of jurisdiction based on two potential options at the arbitral forum and the attributive clause forum of the jurisdiction; both figures regulated by the autonomy of the settlor.

ARENAS GARCÍA, R.: “Condicionantes y principios del Derecho interterritorial español actual: desarrollo normativo, fraccionamiento de la jurisdicción y perspectiva europea”, pp. 547-593.

Spanish Civil Law is a complex system. Not only Central State, but also some Autonomous Communities have legislative competence in the field of Civil Law. During the past thirty years, Spanish Autonomic Communities have developed their own civil laws. This development has exceeded the lines drawn by the Spanish Constitution of 1978 and caused some tension. This tension affects the articulation of the different Spanish Civil Laws and the unity of jurisdiction. The increasing relevance of the UE in PIL is another factor to take into consideration, thus the personal and territorial scope of the Spanish civil laws is affected by the UE Regulations.

ÁLVAREZ RUBIO, J.J.: “Hacia una vecindad vasca: la futura ley de Derecho civil vasco”, pp. 595-614.

Given the diversity that characterizes the internal regulations Basque Civil Law, the purpose of these reflections is directed from a historical angle to an appreciation of the Basque regional legislature’s intention of trying to adapt to their particular circumstances, which require specific policy responses. These are articulated through rules that have a special role within the inter-law, framed in a subcategory that might be described as interlocal law in a spring ad intra of the system, with the aim of responding to the specific features of the fragmentation of Legislative jurisdiction and diversity that characterizes the Basque regional civil law.

PÉREZ MILLA, J.: “Una perspectiva de renovación y dos parámetros de solución en los actuales conflictos internos de leyes españolas”, pp. 615-637.

Spain is a plural Legal system that is organized territorially. However, the

territoriality has created inefficiencies that are compounded both by the expansion of Regional Law as well as the economic crisis. This study analyzes how to overcome the distortions of territoriality with two parameters. First, from a constitutional point of view, strengthening the balance of the multi Legal organization; second, implementing a new principle of action that comes from the Services Directive. The stated purpose of the study is to facilitate the communication between the different Spanish territories and develop sufficiently the internal Spanish Conflicts of Law system.

RODRÍGUEZ-URÍA SUÁREZ, I.: “La propuesta de reglamento sobre sucesiones y testamentos y su posible aplicación al Derecho interregional: especial consideración de los pactos sucesorios”, pp. 639-665.

This contribution analyzes the possibility of resolving Spanish interregional conflicts related to agreements as to succession through an European rule of law. At a first stage, we apply both the Proposal for a Regulation of successions and wills and also art. 9.8º of the Spanish Civil Code (hereinafter, Cc) to three different cases with an interregional factor involving agreements as to succession. Secondly, we deal with the feasible solutions under the point of view of the interests of agreements as to succession and the requirements of the interregional law system. We conclude reaching our own decision and suggesting new ways of possible interpretations of art. 9.8º Cc.

HSU, Yao-Ming: “Los nuevos códigos de Derecho internacional privado de China y Taiwán de 2010-especial referencia a la materia de familia”, pp. 669-689.

We briefly summarize the respective amendment or new codification of private international law in Taiwan and in China. These new regulations both ambitiously show the intention to cope with the newest international regulatory trends but also carefully keep their own specificities. Especially in the domain of lex personalis, Taiwan keeps the choice of lex patriae, but China chooses the path of habitual residence as connecting factor. This difference in legislative principle result in the diverse applicable law in family matters on both sides of the strait. After their promulgation of the new laws, from the 26 May 2011 on in Taiwan and from the first April 2011 on in China, these differences will probably create other divergences for resolving the

cross-strait family matters, even though on both sides there exists other specific regulation for the interregional conflict of laws. Besides, there exist some ambiguities in some provisions both in Taiwanese and Chinese new codes. More jurisprudences and doctrinal explanations would be needed for the future application.

ASAMI, E.: “La ley japonesa sobre las normas generales de aplicación de las leyes (Ley 78/2006 de 21 de junio)”, pp. 691-705.

The beginning of the Japanese private international law dates back to the late 19th century when the Japanese jurists, under the guidance of European experts, prepared the “Act on the Application of Laws” known as Horei. After more than 100 years of existence, Horei has been entirely reformed and in 2006 culminated in the enactment of the “Act on General Rules for Application of Laws”. This is a special code which contains only the choice-of-law rules, whereas the rules regarding the international jurisdiction as well as the recognition and enforcement of foreign judgements are found in the Code of Civil Procedure. The most notable change is the modernization of Japanese language which is considered to be a big progress. It will contribute to raise awareness of Japanese law internationally, thanks to the more comprehensive writing of the Japanese language. This article explores the background of the reform and highlights features of the new law.

ELVIRA BENAYAS, M.J.: “Matrimonios forzados”, pp. 707-715.

Multicultural societies are faced with situations that are alien, but that affect its members. This is the case of forced marriages involving significant numbers of women and girls in the world and demand of these societies, sometimes an overwhelming response to a practice that involves the violation of Fundamental Rights and Freedoms. Response must be multidisciplinary, with a required preventive function, but also care and legal assistance to victims, where there are several trends that include both the intervention of criminal law, civil law and private international law.

STAATH, C.: “La excepción de orden público internacional como fundamento de denegación del reconocimiento del repudio islámico”, pp. 717-729.

When it comes to the recognition of foreign judgments or legal situations, the public policy exception constitutes the last legal tool to ensure the protection of the fundamental values of the forum's legal order, which include Human Rights. This has been perfectly illustrated by the case law on recognition of Islamic talaq divorces in occidental countries. The talaq is a unilateral act that consists of the dissolution of the bond of matrimony under the exclusive and discretionary initiative of the husband. In Europe, various courts have denied recognition of the talaq for its incompatibility with the principle of equality between spouses as embodied in article 5 of the 7th additional Protocol to the European Convention on Human Rights, on the grounds of the public policy exception. Although a talaq could not normally be pronounced in Europe, some courts, such as the French ones, have sometimes accepted to recognize a foreign talaq depending on the degree of connection between the legal situation and the forum. However, such a difference of treatment based on the residence and/or nationality of the parties is not legitimate when it comes to the protection of Human Rights, especially when they are of universal reach, as in the case of the principle of equality between spouses.

GUZMÁN ZAPATER, M.: “Gestación por sustitución y nacimiento en el extranjero: hacia un modelo de regulación (sobre la Instrucción DGRN de 5 de octubre de 2010)”, pp. 731-743.

The Instrucción (resolution) of the Dirección General de los Registros y del Notariado of October 5th 2010 is meant to reduce the difficulty to access to Spanish (consular) registries to those born from surrogate mothers in a foreign country. Said Instrucción introduces changes from the previous case law in order to provide a greater protection in these cases in the interest of the child and of the mother through the judicial control of the surrogation contract. Access to the Spanish registry is hereinafter possible only when judicial control has taken place. The Instrucción also creates the legal regime for recognition of the foreign judicial decision. Yet several difficulties remain in place which would make a review of the system advisable.

SÁNCHEZ-CALERO, J. y FUENTES, M.: “La armonización del Derecho europeo de sociedades y los trabajos preparatorios de la European Model Company Act (EMCA)”, pp. 745-758.

This paper aims to expose the initiative for a few years developed with regard

to the elaboration of a European Model Company Act (EMCA), intended to be inserted in the construction of European company law. This is a project led by renowned academics from across Europe, which aims to develop a kind of law-model (following the paradigm of the U.S. Model Business Corporation Act) on corporations. For now, the several draft chapters already made, show the approach to be made: dispositive rules, information, and a wide range of self-regulation. The working method followed is that of comparative law, so that the EMCA keep in mind the differences and similarities of the European legal systems.

IRURETAGOIENA AGIRREZABALAGA, I.: “Los APPRI en la Unión Europea post-Lisboa”, pp. 759-791.

In the European Union, the debate on the future of Bilateral Investment Treaties (intra-EU and extra-EU BITs) is more alive than ever. The Lisbon Treaty has included the subject of foreign direct investment within the Common Commercial Policy, stating the exclusive competence of the Union to conclude treaties in this field with third countries. In this new scenario, the EU is taking the first steps to design a common investment policy, which will gradually replace the network of extra-EU BIT still in force. On the other hand, intra-EU BITs require differentiated analysis. The coexistence of these BIT and EU law raises questions difficult to answer, both from the perspective of international law and from the perspective of EU law. In short, the following question is made: Will the EU be an area without BITs in the near future?

BORRÁS, A.: “La aplicación del Reglamento Bruselas I a domiciliados en terceros Estados: los trabajos del Grupo Europeo de Derecho Internacional Privado”, pp. 795-814.

The European Group for Private International Law / Group Européen de Droit international privé (GEDIP) is working on the revision of the Brussels I Regulation: a revision that will also lead to the modification of the Lugano Convention in its amended version of 2007. A paramount element in this revision is the extension of the scope of application of the Regulation, so that it could be applied also when the defendant is domiciled in a third country. This modification is a step forward in the communitarization or -in more accurate terms nowadays- the europeization of the rules on jurisdiction and

recognition and enforcement of decisions in civil and commercial matters. It is the time now to assess whether member States are willing to take the step or, on the contrary, this part of the revision must be postponed, as it will probably happen with other elements. Some clear examples might be seen in the GEDIP proposal: in particular, concerning the introduction of “mirror rules” in matters of exclusive grounds of jurisdiction and prorogation clauses, and the settlement of rules on recognition and enforcement of the decisions of third countries.

SALVADORI, M.: “El Convenio sobre acuerdos de elección de foro y el Reglamento Bruselas I: autonomía de la voluntad y procedimientos paralelos”, pp. 829-844.

The Hague Convention of 30 June 2005 on Choice of Court Agreements, not yet entered into force, offers a new international instrument to enhance legal certainty and predictability with respect to choice of court agreements in international commercial transactions. The Convention is limited to “exclusive choice of court agreements concluded in civil or commercial matters” and excludes consumer and employment contracts and other specific subject matters. The Convention contains three main rules addressed to different courts: the chosen court must hear the case if the choice of court agreement is valid according to the standards established by the Convention (in particular there is no possible forum non conveniens in favour of courts of another State); any court seized but not chosen must dismiss the case unless one of the exceptions established by the Convention applies; any judgment rendered by the court of a Contracting State which was designated in an exclusive choice of court agreement that is valid according to the standards established by the Convention must be recognised and enforced in other Contracting States unless one of the exceptions established by the Convention applies. Between the Choice of Court Agreements Convention and the Brussels I Regulation important differences rise when the operational systems of the two instruments are compared. In this context the Recast of Brussels I Regulation (December 2010) enhance of the effectiveness of choice of court agreements: giving priority to the chosen court to decide on its jurisdiction, regardless of whether it is first or second seized, and introducing a harmonised conflict of law rule on the substantive validity of choice of court agreements. Thereby it will be easy the conclusion of this Convention by the

European Union.