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The latest issue of "Praxis des Internationalen Privat- und Verfahrensrecht (IPRax)" has just been released. The table of contents is available on the IPRax-Homepage and reads as follows:

***Articles**:*

H.-P. Mansel/K. Thorn/R. Wagner, **Europäisches Kollisionsrecht 2011: - Gegenläufige Entwicklungen,** p. 1:

> *The article gives an overview on the developments in Brussels in the judicial cooperation in civil and commercial matters from November 2010 until October 2011. It summarizes current projects and new instruments that are prevently making their way through the EU legislative process. It also refers to the laws enacted on a national level in Germany which are a consequence of the new European instruments. Furthermore, the article shows areas of law where the EU has made use of its external competence. The article discusses both important decisions and pending cases before the ECJ as well as important decisions from German courts touching the subject matter of the article. In addition, the present article turns to the current projects of the Hague Conference as well.*

C. F. Nordmeier, **Stand, Perspektiven und Grenzen der Rechtslagenanerkennung im europäischen Rechtsraum anhand Entscheidungen mitgliedstaatlicher Gerichte,** p. 31:

> *Current judgments of the ECJ – most recently in Runevi?-Vardyn – have given rise to the question if and under which circumstances a legal situation may be recognised, based on the rights of EU citizenship, in the European judicial area. The present article analyses the reception of the ECJ cases by courts of the member states. Based hereon, it is possible to demonstrate that the recognition of legal situations is not a new phenomenon. Some national courts resort to Art. 8 ECHR in order to generalize the ECJ decisions which does not convince without further differentiation. Regarding the conditions of application of rights derived from citizenship of the Union, the necessity of a cross-border element and the development of a substantial effect criteria are discussed. The analysed*

cases lead to the conclusion that it does not seem recommendable to replace classic private international law by a principle of recognition.

T. Rauscher, **Von prosaischen Synonymen und anderen Schäden – Zum Umgang mit der Rechtssprache im EuZPR/EuIPR**, p. 40:

EC/EU-Regulations on Conflict Law (Brussel I Regulation, Rome Regulations etc.) are suffering from significant linguistic problems. This article analyses different types of such defects including imprecisely used legal terms (like "damage" when used in the context of the concept of unjust enrichment), meaningless tautologies (like the use of "Schriftstück" and "Dokument" for what the English version consistently calls a "document"), redundancies in different Regulations featuring unclear variations of the respective wording or merely improper translations into other official languages of the EU of what originally had been developed in one of the EU's working languages.
The author does not suggest at all to replace the system of multiple official languages with a system of only one legal lingua franca. However, the quality of the rule making and translation process should be given greater attention including the co-operation of lawyers and interpreters in this process and a mechanism of control in comparative networks. Last but not least, in order to improve the consistency of the entire system of Regulations, a systematic codification of European Conflict Law should be taken into consideration.

M. Günes/K. Freidinger, **Gerichtsstand und anwendbares Recht bei - Konsignationslagern,** p. 48:

Consignment stocks are one of several techniques to ensure that goods reach the intended market. In particular consignment agreements are used as a method of commercial transactions for oversea markets. Despite the fact that such agreements are regularly bedded in an international context the applicable law and the place of jurisdiction for any disputes have not been discussed scientifically in German law yet. After assessing the possible legal nature(s) of contracts in the context of a consignment stock, the paper establishes that in most cases – if contractual provisions do not stipulate otherwise –, German law would declare the Law of the storage location applicable and the Court of the storage location competent if it had to assess a legal question concerning the storage contract (the master agreement) itself. In

a case concerning an individual sale agreement to this master agreement, a German court should – in most cases – hold the law of the place of residence of the seller applicable and determine the place of jurisdiction in the exact same manner as it does in case of an ordinary sale agreement. Nevertheless, these findings are not the only possible ones. Therefore, it is recommendable to conclude consignment agreements with paying special attention to the questions of the applicable law and the place of jurisdiction. The parties and in particular the seller must hereby consider that any agreed legal system may not be applied to the questions of title and the retention of the title in the goods.

C. Luttermann/S. Geißler, **Haftungsfragen transnationaler Konzern-finanzierung (cash pooling) und das Bilanzstatut der Gesellschaft,** p. 55:

We will enter a core domain of international legal practice and jurisprudence: Companies are globally organised as groups, consisting of numerous corporations (legal entities); as a rule, these are financed within the framework of common cash management in the affiliate relations (cash pooling). Under the dominion of the separate legal entity doctrine, this is problematic, for the individual corporation has only limited "assets". These have to be determined on the basis of accounting law. This means that transnationally, it is a matter of central questions of liability and in general, for an adequate asset order, a change of perspective regarding conflict of law rules, as will be shown: Instead of dealing with the classic company statute regarding organisational law (lex societatis), the material issue is rather which accounting law is valid for the individual company and its valuation (accounting statute of the company). This is the necessary basis on which a sustainable legal order can be developed. The fact that this is still lacking is illustrated by the ongoing worldwide "financial crisis" with largely ailing balance sheets (financial reporting).

Case Notes

D.-C. Bittmann, **Ordnungsgeldbeschlüsse nach § 890 ZPO als Europäische Vollstreckungstitel? (BGH, S. 72),** p. 62:

In the decision reviewed in this article the German Federal Supreme Court held that penalty payments according to § 890 ZPO cannot be issued as European Enforcement Orders. The Court is reasoning that a decision imposing a penalty

payment does not comply with the procedural minimum standards set in force by Regulation (EU) 805/2004. Decisions according to § 890 ZPO especially do not inform the debtor about how to contest the claim and what the consequences of not contesting are (art. 17).
The following article agrees with this result. It looks, however, critically at the way of reasoning of the Federal Supreme Court. The central point of the decision is the question, who is entitled to enforce a penalty payment. Different from the French system, according to which a penalty payment (astreinte) goes to the claimant of the injunctive relief, which shall be enforced, penalty payments according to § 890 ZPO flow into the treasury. As a consequence, in Germany the claimant of an injunctive relief cannot apply for a penalty payment issued as European Enforcement Order.

D. Schefold, **Anerkennung von Banksanierungsmaßnahmen im EWR-Bereich (LG Frankfurt a.M., S. 75)**, p. 66:

On appeal against a preliminary seizure order, the district court in Frankfurt on Main held that such an order by a German court against a German branch of an Icelandic credit institution violates the European directive 2001/24/EC, adopted for the entire European Economic Area (EEA), on the reorganisation and winding up of credit institutions when the credit institution undergoes reorganisation in its home state and the reorganization procedure entails a suspension of enforcement. In line with art. 3 of directive 2001/24/EC, the district court held that the administrative or judicial authorities of the home member state of a credit institution are alone competent to decide on implementation measures for a credit institution, including branches established in other member states. Such measures are fully effective according to the law of the home member state, including against third parties in other member states, and subject to mutual recognition throughout the EEA without any further formalities.

Overview over Recent Case Law

OLG München 19.10.2010 31 Wx 51/10, **Noterbrecht nach griechischem Recht des einzigen Sohnes eines in Deutschland?1. ansässigen und verstorbenen Auslandsgriechen. Die Rückkehr nach Griechenland zur Ableistung des Wehrdienstes?2. stellt jedenfalls dann eine Aufgabe des**

Wohnsitzes in Deutschland dar, wenn der Wehrpflichtige seinen Hausstand auflöst und die gesamte Familie nach Griechenland umzieht. [E. J.], p. 76

no abstract

View abroad

M. Pazdan, **Das neue polnische Gesetz über das internationale Privatrecht**, p. 77:

On 16th of May, 2011, the new act on private international that was enacted on the 4th February, came into force. The new law replaces the old act from 1965. It is harmonized with European private international law. The act governs matters excluded from the scope of regulations Rome I and Rome II and supplements the Hague Convention of 19th October, 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children with respect to issues not regulated therein.
The act of 2011 fills out many of the gaps that existed previously. For example, it determines the law applicable to power of attorney, personal rights, name and surname of a person, as well as to arbitration agreement and intellectual property. It also alters some of the rules adopted under the law of 1965. It permits, inter alia, a choice of law for matrimonial property regimes, marriage contract and succession. Moreover, the obligations arising out of unilateral legal acts have been treated differently than in the law of 1965. As with respect to the formal validity of legal acts related to the dispositions of immovable property or corporate matters (such as creation, transformation or liquidation of a legal entity), the new law gives up the rule according to which it was sufficient to satisfy the requirements of the form of lex loci actus.

Finally, the act establishes a general rule in article 67, which applies in the circumstances where the act itself or other provisions of Polish law fail to indicate governing law. The provision is based on the concept of the closest connection.

M. Melcher, **Das neue österreichische Partnerschaftskollisionsrecht**, p. 82:

Due to the introduction of the registered partnership ("eingetragene Partnerschaft") as a legal institution for same-sex couples in Austria in January 2010, several provisions were added to the Austrian Private International Law Act (IPRG), which determine the law applicable to the establishment (§ 27a IPRG), the personal effects (§ 27b IPRG), the property regime (§ 27c IPRG) and the dissolution (§ 27d IPRG) of registered partnerships. The article analyzes the personal and temporal scope of application and describes the new conflict rules. Besides, a thorough assessment of the applied connecting system and its impact on registered partnerships is included, which identifies the inconsistency of connecting factors regarding the establishment and the dissolution of registered partnerships and the non-adaptation of conflict rules on inheritance, surnames and adoption to the particularities of registered partnerships as main areas of concern.

P. F. Schlosser, **Aus Frankreich Neues zum transnationalen einstweiligen - Rechtsschutz in der EU (Cour de cassation, 8.3.2011 – 09-13830 und Cour de cassation, 4.5.2011 – 10-13712)**, p. 88:

The author informs the readers of two decision of the French Cour de cassation (8 March 2011 09-13830 and 4 May 2011 10-13712) which according to him should be supported.
In the later decision the Cour de cassation is confirming its prior ruling that the rules of the Brussels I Regulation on provisional, including protective, measures cover measures for obtaining evidence. The German doctrine is spit on that issue. The Cour de cassation should, however, be encouraged to continue emphasizing that the Brussels I Regulation covers only evidentiary measures to be granted in a case of urgency.
In the first decision the issue was the binding character of a Greek court decision refusing, after opposition of the debtor, to order the arrest of a seagoing vessel anchoring in a Greek port. When subsequently the vessel was anchoring in the port of Rouen the creditor tried again to obtain an arrest invoking the more creditor-friendly rules of French law. But he was again unsuccessful The Cour de cassation decided that pursuant to Art 32 Brussels I Regulation foreign decisions refusing to grant provisional measures must be recognized. The innovative nature of the decision is due to the fact that for the first time the issue of the binding force of a decision refusing to grant provisional protection was discussed. There is no trace of such a discussion in

previous case law or legal doctrine.

H. Wais, **Zwischenstaatliche Zuständigkeitsverweisung im Anwendungsbereich der EuGVVO sowie Zuständigkeit nach Art. 24 S. 1 EuGVVO bei rechtsmissbräuchlicher Rüge der Unzuständigkeit (Hoge Raad, 7.5.2010 – 09/01115),** p. 91:

In this decision of the Dutch Hoge Raad, which deals with an alimony dispute between Dutch citizens domiciled in Belgium, three main issues arise: first, the applicability of the Brussels I-Regulation in cases where both parties are domiciled in the same member state; second, the observation of a cross-border transfer of a case on the grounds of a bilateral treaty when the Brussels I-Regulation is applicable; and third, the possibility of taking into account in its scope the abuse of process of one party. This article examines these questions, before presenting some thoughts on a possible alternative approach.

C. Aulepp, **Ein Ende der extraterritorialen Anwendung US-amerikanischen - Kapitalmarkthaftungsrechts auf Auslandstransaktionen? (US Supreme Court, 24.6.2010 – No. 08-1191 – Morrison v. National Australia Bank Ltd.),** p.95:

U.S. law provides for a broad issuer liability for securities fraud, especially under § 10(b) Securities Exchange Act of 1933 in connection with SEC Rule 10b-5. Together with the availability of opt-out class actions, this sets the United States apart from most other jurisdictions. In the past, the U.S. Federal Courts of Appeal have held that § 10(b) applies extraterritorially if there are significant effects on American investors or the American market; or if significant conduct in the US contributed to the fraud scheme. In a landmark decision, the U.S. Supreme Court held in Morrison v. National Australia Bank, Ltd., 130 S. Ct. 2869 (U.S. 2010) that § 10(b) of the Exchange Act and Rule 10b-5 possess no extraterritorial reach. It adopted a bright-line rule that these provisions only apply to transactions in securities listed on domestic exchanges, and domestic transactions in other securities. The author argues that the Morrison decision constitutes a step in the right direction, as it provides a certain degree of legal certainty for transnational issuers in a previously convoluted area of international securities law. It is submitted that Morrison might provide valuable impulses for resolving conflicts of law in securities

disputes within the European Union as well, as a transaction-base rule like the one articulated in Morrison can well be integrated within the framework of the Rome I and Rome II Regulations.

Announcements

H.-P. Mansel, **Werner Lorenz zum 90. Geburtstag,** p. 102

no abstract

E. Jayme, **Zur Kodifikation des Allgemeines Teils des Europäischen - Internationalen Privatrechts – 20 Jahre GEDIP (Europäische Gruppe für Internationales Privatrecht) – Tagung in Brüssel,** p. 103

no abstract