

Out Now: Zeitschrift für Vergleichende Rechtswissenschaft (ZVglRWiss) 119 (2020) No. 2 containing the Contributions to the German IC2BE Conference in Freiburg

On 10-11 October 2019, the Albert-Ludwig-University of Freiburg (Germany) hosted the final conference of the German branch in the framework of the research project “Informed Choices in Cross-Border Enforcement” (IC²BE). Funded by the Justice Program (2014-2020) of the European Commission, the project aimed to assess the working in practice of the “second generation” of EU Regulations on procedural law for cross-border cases, *i.e.* the European Enforcement Order, Order for Payment, Small Claims and the Account Preservation Order Regulations (see our earlier post here). As a result, an open-access database of CJEU and national case law has been created which is available here. The presentations given at this conference have now been published in the second issue of the 2020 volume of the Zeitschrift für Vergleichende Rechtswissenschaft (German Journal of Comparative Law), Germany’s oldest continuously published review of comparative and PIL legal issues. The abstracts of the articles read as follows:

Informierte Entscheidungen in der grenzüberschreitenden Forderungsdurchsetzung - Vorstellung und Ergebnisse eines internationalen Forschungsprojekts [Informed Choices in Cross-Border Enforcement - Presentation and Results of an International Research Project]

Jan von Hein, University of Freiburg (Germany) - ZVglRWiss 119 (2020) 123-142

An efficient cross-border enforcement is more important than ever in light of the increasing economic integration of the EU. In order to achieve this aim, creditors may freely choose between enforcing a claim under Brussels Ibis or by means of

the 2nd generation Regulations. Thus, weighing the pros and cons of choosing between one of the various options has become more difficult. This article presents the main findings of the EU-funded study „Informed Choices in Cross-Border Enforcement - IC²BE“, which is based on an extensive evaluation of case law and interviews with practitioners from eight Member States.

Der Anwendungsbereich der EU-Verordnungen zur grenzüberschreitenden Forderungsdurchsetzung [The scope of the EU Regulations on Cross-Border Enforcement of Claims]

Michael Stürner, University of Konstanz (Germany) - ZVglRWiss 119 (2020)
143-166

As part of the judicial cooperation in civil matters, the EU has issued a number of regulations on cross-border enforcement of debts. So far, this harmonization brings about piecemeal solutions with a certain lack of coherence. While those Regulations all apply in civil and commercial matters, they differ in their scope of application depending on the individual goal pursued by the act. The paper analyses those differences with a view to the material and geographical scope of application and discusses possible steps towards a reform, such as the abolition of the Enforcement Order Regulation or the consolidation of the various legal acts in a horizontal instrument (“Regulation Brussels 0”).

Die Sicherung von Forderungen im europäischen Zivilprozessrecht
[Interim measures to secure monetary claims in European Civil Procedure]

Christian Heinze, University of Hanover (Germany) - ZVglRWiss 119 (2020)
167-196

Interim measures to secure monetary claims are addressed in several instruments of European civil procedure law, ranging from jurisdiction and recognition of foreign judgments, over special rules for cross-border proceedings and into sectoral procedural law for intellectual property disputes. The following article provides an overview of the relevant provisions and develops proposals on how a more coherent regulation at European level could be achieved.

Der Beitrag der Gerichtsorganisation zur Effizienz der grenzüberschreitenden Forderungsdurchsetzung [The Contribution of National Judicial Organization to the Efficiency of the International Recovery of Money Claims]

Christoph Althammer, University of Regensburg (Germany) - ZVglRWiss 119 (2020) 197-219

Measures taken by the national judicial organization have so far played only a minor role in improving cross-border enforcement of claims and diverge considerably in the European Member States. This is where the competence of the European legislature conferred by Art. 81 TFEU ends, so that harmonization efforts that are autonomous for the Union are difficult to implement. So far, the topic has been of practical importance in connection with the concentration of jurisdiction in central courts and the transfer of judicial matters to other judicial officers. However, the ECJ has recently made it clear in a different technical context that it wants to shape the national judicial organization more “European” in the future.

Der Beitrag der modernen Informationstechnologie zur Effizienz der grenzüberschreitenden Forderungsdurchsetzung [The Contribution of Information Technology to the Efficiency of the International Recovery of Money Claims]

Florian Eichel, University of Berne (Switzerland) - ZVglRWiss 119 (2020) 220-236

The article outlines how digitization and digitalization may contribute to make cross-border judicial recovery of money claims more efficient. It also considers the proposals for reform of the European Service and the European Evidence Regulations.

Anerkennungs- und Vollstreckungsversagungsgründe im Europäischen Zivilprozessrecht [Grounds for Refusing Recognition and Enforcement of Foreign Judgments in European Civil Procedural Law]

Haimo Schack, University of Kiel (Germany) - ZVglRWiss 119 (2020) 237-253

Even after the abolition of exequatur proceedings in art. 39 Brussels Ibis Regulation the grounds for non-recognition in art. 45 have been kept intact, albeit only after a separate motion by the debtor. Many other EU regulations, however, have significantly restrained the control by the enforcement State. The concurring and different provisions ask too much of the practitioners and invite abuse. The constitutionally mandated protection of the debtor in the enforcement State must not be sacrificed on the altar of an absolutely free movement of judicial decisions. The Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims is outdated and should be scrapped.

**Schnittstellen und Wechselwirkungen zwischen dem europäischen
Zivilprozessrecht und dem nationalen Vollstreckungsrecht** [Interfaces and
Interactions between European and National Enforcement Law]

Caroline Meller-Hannich, University of Halle (Germany) - ZVglRWiss 119 (2020)
254-275

There are various ways of transferring a title into the enforcement system of foreign European Union member states, depending on the applicable EU-Regulation. This leads to an unclear legal situation that is to be solved by either the consolidation of the regulations of the second generation or by drafting one unitary system allowing for the freedom of enforcement title movement within the scope of all regulations. The German national executive and implementing law also needs to be revisited. The abolition of the exequatur in the Brussels Ia Regulation has resulted in unanswered questions concerning the enforcement procedure that must be clarified by jurisdiction. This applies in particular to the interpretation and adaptation of the title, the possible enforcement measures and the differentiation between the requirements of enforceability and the conditions for the enforcement procedure. This article will highlight these unanswered questions and suggest potential solutions.