Rivista di diritto internazionale privato e processuale (RDIPP) No 2/2021: Abstracts

The second issue of 2021 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) has been released. It features:

Christian Kohler, Honorary Professor at the University of Saarland, **Limiting European Integration through Constitutional Law? Recent Decisions of the German Bundesverfassungsgericht and their Impact on Private International Law** (in English)

- On May 5, 2020 the Federal Constitutional Court (Bundesverfassungsgericht – BVerfG) in Germany ruled that the Public Sector Purchase Programme ("PSPP") of the European Central Bank (ECB) as well as the judgment of the Court of Justice of the European Union (CJEU) in case C-493/17 were "ultra vires" because they exceeded the competences conferred on these institutions. Both the PSPP and the CJEU's judgments were thus without effect in Germany. In order to assess the judgment of the BVerfG and to measure the ensuing conflict, a look at its case-law in matters of European integration is indispensable. In seminal judgments relating to the ratification of the Maastricht treaty (1993) and the treaty of Lisbon (2009), the Constitutional Court had previously explained its approach toward the European Union as being a confederation sui generis of sovereign states governed by the principle of

conferral, and that any action of the German institutions relating to the European integration has to respect a twofold limitation: it has to remain within the limits of the competences conferred by the treaties, and it has to safeguard Germany's "constitutional identity" as enshrined in the Basic Law. Any act taken in violation of these limits may be declared void by the Constitutional Court. The control exercised by the BVerfG has been further extended by a ruling of February 13, 2020: the Court held that the German law authorizing the ratification of the Agreement on a Unified Patent Court (UPC) was void as it had not been adopted by a majority of two thirds by the Bundestag and the Bundesrat as required by the Basic Law. This implies that from now on the Court will control not only the material but also the formal validity of an act relating to the European integration. Both the "Lisbon" judgment and the UPC ruling have implications for European private international law. Whereas these implications are well defined in the "Lisbon" judgment they are less visible but nevertheless present in the ruling of February 13, 2020.

Fabrizio Marongiu Buonaiuti, Professor at the University of Macerata, **Il rinvio della legge italiana di riforma del diritto internazionale privato alle convenzioni internazionali, tra adeguamento al mutato contesto normativo e strumentalita` alla tutela dei valori ispiratori** (The Reference to International Conventions Made in the Law Reforming the Italian System of Private International Law: Between Adaptation to the Changed Normative Context and Instrumentality to the Protection of the Underlying Principles)

- A salient feature of the law providing for the reform of the Italian system of private international law (Law No. 218 of 31 May 1995) consists of the references it embodies to some private international law conventions for the purposes of relying on their rules in order to regulate issues not falling within their scope of application, consistently with the regime contained in the relevant convention. This article discusses the fate of those references, as a consequence of the fact that most of the conventions referred to have in the meantime been replaced by EU regulations, when not by subsequent conventions. While just one of the said references, that embodied under Article 45 of the said law, concerning the law applicable to maintenance obligations, has been updated so far by the Italian legislature, the author proposes that, as a

matter of consistent interpretation, the other references made by the same law should be held as directed to the new instruments having replaced the conventions existing at the time the law was passed. As argued in the final part of the article, the proposed solution is also conducive to a more effective achievement of the objectives pursued already by the conventions initially referred to.

Zeno Crespi Reghizzi, Professor at the University of Milan, **La "presa in considerazione" di norme straniere di applicazione necessaria nel regolamento Roma I** ('Considering' Foreign Overriding Mandatory Provisions under the Rome I Regulation)

- In its *Nikiforidis* judgment of 2016, the Court of Justice of the European Union ruled that the limits set by Article 9(3) of the Rome I Regulation to the effects of foreign rules of mandatory application concern only their 'application' in the international private law sense, not also their 'taking into account' by substantive rules of the *lex contractus*. The present article discusses the reasons for this interpretative solution and highlights the need to specify its scope in order to preserve the Regulation's systemic coherence.

The following comment is also featured:

Rebekka Monico, Research fellow at the University of Insubria, **La disciplina europea sul Geo-blocking e il diritto internazionale privato e processuale** (The EU Geo-Blocking Regulation and Private International and Procedural Law)

- This article analyses the relationship between Regulation (EU) No 2018/302 on the prohibition of geo-blocking practices which are not justified on objective grounds and the rules of private international law contained in the Brussels I-bis, the Rome I and the Rome II Regulations. In this respect, Article 1(6) of Regulation (EU) 2018/302 contains, in addition to a safeguard clause of the Union law concerning judicial cooperation in civil matters, the clarification that the mere fact that the trader complies with the prohibitions imposed by the Geo-blocking Regulation does not imply that he intentionally directs his activity towards the Member State of the consumer pursuant to Articles 17(1)(c) and 6(1)(b) of the Brussels I-bis and the Rome I Regulations, respectively.

Although this clarification is consistent with the *Pammer*, *Mühlleitner*, *Emrek* and *Hobohm* judgments, the Author endorses a new interpretation of the directed-activity criterion by the Court of Justice of the European Union which would protect consumers and, at the same time, provide greater legal certainty for traders.

In addition to the foregoing, this issue features the following book review by *Cristina M. Mariottini*, Senior Research Fellow at the Max Planck Institute Luxembourg: Julia HÖRNLE, **Internet Jurisdiction: Law and Practice**, Oxford University Press, New York, 2021, pp. vii-485.