Dutch Journal of PIL (NIPR) – issue 2024/2

The latest issue of the Dutch Journal on Private International Law (NIPR) has been published.

NIPR 2024 issue 2

EDITORIAL

M.H. ten Wolde / p. 239

Article

C.G. van der Plas, A.F. Veldhuis, B.H.B. Verheul, Automatische erkenning en tenuitvoerlegging van vonnissen in het Europa van nu: de noodzaak

van een nieuwe blik op wederzijds vertrouwen na *J/H Limited* / p. 241-267

Abstract

This article explores the concept of mutual trust in the context of the recognition and enforcement of judgments under Brussel Ibis. Backslidings in the rule of law in Member States such as Hungary and Poland have cast doubts on the reliability of mutual trust in judicial cooperation. The Court of Justice of the European Union (CJEU) has further complicated the issue of mutual trust in its ruling in J/H Limited. The CJEU held that judgments from third countries, that have been or could have been capable of being subject to an inquiry in adversarial proceedings in a Member State, result in a 'judgment' within the meaning of Article 2a Brussels Ibis.

This article critically assesses whether the concept of mutual trust justifies the (indirect) automatic recognition and enforcement of third-country judgments under Brussels Ibis. It examines the content of the principle of mutual trust and argues that – although mutual trust is of fundamental importance for European integration – mutual trust must be balanced with adequate safeguards to protect fundamental rights in accordance with the jurisprudence of the European Court of Human Rights. While the public policy exception of Article 45 of Brussels Ibis is generally scrutinized for its effectiveness in addressing human rights violations, the analysis reveals that the current safeguards might not always be efficient in the context of third-country judgments under Brussels Ibis. By re-evaluating the principle of mutual trust in the context of third-country judgments, the article underscores the necessity of a more nuanced approach to mutual trust.

Case law

M.H. ten Wolde, Het forum delicti en de aankoop van een van sjoemelsoftware voorzien voertuig. Nadere uitleg van het Hof van Justitie EU. HvJ EU 22 februari 2024, C-81/23, ECLI:EU:C:2024:165, *NIPR* 2024-515 (*MA tegen FCA Italy Spa, FPT Industrial SpA*) / p. 269-274

Abstract

In this judgment on Article 7(2) Brussels Ia Regulation (No. 1215/2012), the ECJ

clarifies its previous judgment of 9 July 2020, C-343/19 (VKI/Volkswagen). In that judgment, the Court had ruled that where a manufacturer in a Member State has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State, the place where the damage occurs (the) is in that latter Member State. Whereas in the VKI/Volkswagen case, purchase and delivery took place in the same Member State (Austria), in the present case, the purchase took place in Germany but the vehicle was actually delivered in Austria where the purchaser had made normal use thereof. This prompted the Oberster Gerichtshof in Austria to refer a preliminary question to the ECJ as to what should count as the place of purchase in these particular circumstances: the place where the contract of sale for the vehicle was concluded, the place where the vehicle was handed over to the final purchaser or the place where it was used in accordance with its destination? According to the ECJ, the place where the manipulated vehicle was actually handed over to the final purchaser is the only usable criterion and that place should therefore be regarded as the place of purchase (and the Erfolgsort).