# RabelsZ: New issue alert

Issue 3 of RabelsZ 2024 has just been released. It contains the following articles:


*Chris Thomale and Stephan Schmid*, Das *Private Enforcement* der EU-Lieferkettenrichtlinie – Eine rechtsvergleichende und rechtsökonomische Beurteilung der finalen Fassung mit Anregungen für die mitgliedstaatlichen Umsetzungsgesetze (Private Enforcement in the EU Supply Chain Directive: A Critical Comparative Law and Economics Analysis of the Final Compromise with Suggestions for its Implementation by the Member States), pp. 425–493, https://doi.org/10.1628/rabelsz-2024-0046

> *One component of the European Green Deal is the implementation of a harmonized supply chain law in the form of the Corporate Sustainability Due Diligence Directive (CS3D). The final compromise imposes a new type of due diligence obligation on companies to protect the climate, human rights and the environment in the supply chain. Its enforcement will rely inter alia on private law mechanisms. This article describes how private-law enforcement mechanisms so far have fallen short in ongoing human rights, environmental and climate litigation. It then assesses the new supply chain regulation's effectiveness and efficiency, especially in comparison to alternative regulatory instruments. It also contains recommendations for the upcoming implementation process by the EU member states.*

*Jochen Hoffmann and Lisa-Marie Pischel*, Die Kollision von CISG und nationalem Verbraucherschutzrecht (Conflicts Between the CISG and National Consumer Law), pp. 494–526, https://doi.org/10.1628/rabelsz-2024-0043

*Despite the exclusion which Art. 2 lit. a CISG sets out for a sale of goods for personal use, the UN Sales Law may in individual cases be applicable to cross-border sales contracts that are also subject to national consumer protection law. This is due to the fact that the wording of the exclusion may not align with the legal conception of a consumer in the national laws of the Contracting States, in particular the European concept of a consumer. The involved provisions are generally not compatible with each other, with the result that they cannot be applied to the same contract. In resolving such a conflict, it is therefore necessary to interpret Art. 2 lit. a CISG through the lens of the national conception of a consumer. For any remaining conflicts, it falls upon national law to decide which provisions prevail.*

*Knut Benjamin Pißler*, Die Immunität ausländischer Staaten im Recht der Volksrepublik China – Das Gesetz vom 1. September 2023 als Instrument zur Gestaltung des Völkergewohnheitsrechts (Immunity of Foreign States Under the Law of the People's Republic of China. The Law of 1 September 2023 as an Instrument for the Shaping of Customary International Law), pp. 527–555, https://doi.org/10.1628/rabelsz-2024-0045

*The Law of the PR of China on the Immunity of Foreign States (Immunity Law) has been adopted by the Standing Committee of the National People's Congress and entered into force on 1 January 2024. The law is a legislative measure to establish a "foreign-related rule of law" that is directed both inwards and outwards. Inwardly, it means that the courts of the People's Republic of China are now entitled to hear lawsuits brought against foreign states. Outwardly, the Immunity Law enables China to actively participate in the development of customary international law, as many rules regarding restrictive immunity have still not been conclusively clarified. Active participation of this nature is a declared goal of foreign-related rule of law as proclaimed under Xi Jinping, seeking namely to give Chinese law a higher status at the international level and to allow the Chinese government and Chinese courts to influence the*

*shaping of international legal norms.*

*Leon Theimer*, Die unionsrechtliche Zukunft des Schadensersatzes wegen Verletzung einer ausschließlichen Gerichtsstandsvereinbarung (The Future of Damages for Breach of an Exclusive Choice of Court Agreement in EU Law), pp. 556–585, https://doi.org/10.1628/rabelsz-2024-0038

*Damages for breach of an exclusive choice-of-court agreement have fascinated legal scholars for quite some time. Once a peculiarity of the common law, the remedy is now also recognised in the legal systems of Spain and Germany. Recently, the EU-law dimension of the topic has come to the fore. However, despite a recent decision by the CJEU, the issue of whether damages for breach of an exclusive choice of court agreement are compatible with the Recast Brussels I Regulation has not yet been conclusively resolved. The article examines this question with regard to hurdles arising from the CJEU's case law on (quasi) anti-suit injunctions, hurdles arising from the law on recognition of a foreign judgment, and doctrinal hurdles. In carrying out this analysis, the principle of mutual trust serves as a key standard of assessment. Moreover, the fundamental rights dimension of the topic is examined for the first time. The article concludes that damages for breach of an exclusive choice of court agreement indeed have a future in the EU, but only where the derogated court has not already rendered a decision or declined its jurisdiction.*

*Jürgen Samtleben*, Das Internationale Privatrecht im neuen Zivilgesetzbuch Puerto Ricos – Abkehr vom *common law* (Private International Law in Puerto Rico's New Civil Code – Farewell to Common Law), pp. 586–609, https://doi.org/10.1628/rabelsz-2024-0037

*Puerto Rico enacted a new civil code in 2020 the introductory title to which regulates private international law. The code, which supersedes the earlier Civil Code of 1902/1930, was over twenty years in the making. The code it replaced was rooted in the country's Spanish heritage but overlain by common law principles, as the island of Puerto Rico has been a territory of the United States*

*since 1898. It was against this common law influence that the reform movement arose that led to the creation of the new Civil Code. Article 1 of the Code postulates Puerto Rico's membership in the civil law family of nations, declaring civilian methods of finding and interpreting the law to be the exclusively binding approach. The same approach is taken to private international law, which was the subject of great controversy during the consultations in advance of the new code. Late in the consultations, a new chapter on „Conflicto de Leyes" was drafted that takes up elements from various sources but never arrives at a unified synthesis and shows signs of lingering editorial uncertainty. It is a heterogenous body of rules that calls for jurisprudence to build a logically consistent system out of, even as Article 1 of the Civil Code forbids any resort to common law principles.*