

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 2/2026: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts“ (IPRax) features the following articles:

*C. Budzikiewicz/H.-P. Mansel/K. Thorn/R. Wagner: **Europäisches Kollisionsrecht 2025: Im Windschatten der Weltpolitik** [German]*

This article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from January 2025 until December 2025. It presents newly adopted legal instruments and summarizes current projects that are making their way through the EU legislative process. It also refers to the laws enacted at the national level in Germany as a result of new European instruments. The authors discuss both important decisions and pending cases before the CJEU as well as important decisions from German courts pertaining to the subject matter of the article. In addition, the article also looks at current projects and the latest developments at the Hague Conference of Private International Law.

*P. Stenko: **Employer’s Liability Towards Subcontractors in International Construction Disputes: Direct Claims of the Subcontractor Against the Employer in European Civil Procedure Law and the New Interpretation of the Term “Matters Relating To a Contract”** [German]*

This paper examines international jurisdiction for direct claims of subcontractors against employers (clients) in international construction disputes under the Brussels I Recast Regulation. In several European legal systems, subcontractors are granted a statutory direct claim for payment of remuneration against the employer, in addition to their claim against the general contractor. Central to the analysis is whether such direct claims may be qualified as “matters relating to a

contract” within the meaning of Article 7(1) of the Brussels I Recast Regulation, even though there is no direct contractual relationship between the subcontractor and the employer. Traditionally, the CJEU required an “obligation freely assumed” for the application of the contractual jurisdiction under Article 7(1) Brussels I Recast Regulation. However, recent CJEU case law has relaxed this requirement: statutory claims arising in the context of a contractual relationship may also be treated as “matters relating to a contract” even if there is no direct contractual relationship between the parties. As a result of this change, the subcontractor’s claims against the employers may be qualified as “relating to a contract” and the subcontractor may sue at the contractual place of performance (Article 7(1) Brussels I Recast Regulation).

C. Wendland: The Jurisdiction of Member State Courts under the EU Maintenance Regulation in Cases Involving Third Countries [German]

While there have been repeated calls to extend the scope of the EuGVVO to third countries, the universal application of jurisdiction rules has been a reality in international maintenance law since the adoption of the EU Maintenance Regulation. The exhaustive nature of the jurisdiction rules in the Regulation was the focus of the ECJ’s ruling in the case *Amozov*, which is discussed here. While the court’s decision is hardly surprising, it nevertheless provides an opportunity to consider the challenges and opportunities of a conclusive jurisdiction system at the EU level.

S. Mock: Eligibility of US funds to apply for special court ordered audits under German corporate law [German]

The so-called *Diesel*-scandal has sparked interest, particularly among *Volkswagen AG* shareholders, in a comprehensive investigation into the responsibility for this scandal. Since the resolution of the annual meeting failed to achieve the required majority, several US shareholders applied for a court order for a special audit. Following several court decisions, including two successful constitutional complaints, the Court of Appeal Celle, in its decision of 27 November 2024, denied the US shareholders the capacity to participate in the proceedings, arguing that they were funds whose legal capacity was unclear. This article

critically examines this decision and demonstrates that US funds are also eligible to participate proceedings in German courts.

J. Adolphsen: ECJ answers questions of jurisdiction of courts of the member states in patent infringement cases when patent infringers defend themselves with the argument the patent is not valid [German]

The judgment is the subsequent decision following a ruling from 2006. At that time, the European Court of Justice (ECJ) first addressed the question of the jurisdiction of courts of the member states in patent infringement cases when defending with the argument that the patent is not valid. It was established that any assessment of the validity of the patent is exclusively reserved for the courts of the granting state. Other questions remained unanswered. These are now answered by the present judgment. The infringement court may, but is not required to, stay its proceedings. It can also assume the validity of the patent and decide the infringement dispute accordingly. At the same time, the ECJ rejects the question of whether Article 24 Nr. 4 of the Brussels Ia Regulation also applies when a third country has granted the patent. In this case, the ECJ denies a reflexive effect of Article 24 Nr. 4 Brussels Ia Regulation and allows the infringement court to also examine the validity of the patent for the purpose of deciding the infringement dispute with *inter partes* effect. As a result, the judgment strengthens the possibilities for patent holders to take action against infringers at the defendant's court, especially when multiple national patents are involved across different member states.

H. Roth: Possible Legal Remedies for Debtors in the Enforcement of Provisionally Enforceable EU Titles in Germany (Art. 39 Brussels I Regulation (recast)) [German]

In principle, the debtor is required to utilize the legal remedies against the provisional enforcement of a judgment that are available in the member state of origin, in this case before the Italian appellate court (Art. 283 of the Italian *Codice di procedura civile* [CPC]). Applications for enforcement protection by the debtor may only be submitted to German courts or enforcement authorities insofar as European law permits. This is the case, for example, under Article 44

(1) of the Brussels I Regulation (recast) in conjunction with Section 1115 (6) of the German Code of Civil Procedure (ZPO) and Article 44 (2) of the Brussels Regulation (recast) in conjunction with Section 1116 ZPO. If the conditions outlined in these provisions are not met, European law prohibits the debtor from seeking a suspension of enforcement based solely on German procedural law (e.g., by analogy to Sections 719 or 707 ZPO). The exhaustive regulation in Article 44 (1) and (2) of the Brussels I Regulation (recast) excludes additional legal protection under national law.

J. F. Hoffmann: Cross-border payment to the debtor after the opening of insolvency proceedings - continuation of the ECJ's restrictive rulings on Art. 31 EIR [German]

In its unambiguous scope of application, Art. 31 (1) of the European Insolvency Regulation protects a third-party debtor who has honoured his obligation to the benefit of the debtor in good faith after insolvency proceedings have been opened. The third-party debtor is protected from having to perform to the insolvency administrator for a second time. The ECJ had to decide whether the third-party debtor should also be protected if not only he had made his payment to the debtor after the opening of the proceedings, but also if the debtor had provided counter-performance belonging to the estate after the opening of the proceedings. A need for protection may also be apparent in this case, as the third-party debtor faces comparable economic losses. To achieve this, Art. 31 (1) EIR would need to recognise also the debtor's counter-performance as being effective vis-à-vis the insolvency estate. However, national legal systems often do not grant any legal protection concerning asset dispositions made by the debtor after the opening of insolvency proceedings. The ECJ now continues its restrictive interpretation of Art. 31 (1) EIR, likely because the provision's underlying regulatory purpose remains highly controversial.

K. Duden: From the principle of recognition in EU primary law to the replication of status: a doctrine decades in the making [German]

Since *Grunkin-Paul*, the principle of recognition based on primary EU law has - through the jurisprudence of the ECJ - gained increasing importance in

international family law. The *Cupriak-Trojan* decision marks a milestone in this respect: the Court demands the comprehensive recognition of marriages concluded between Union citizens abroad. Not only characteristics of one's individual status but also status relationships - at least between Union citizens - must be recognized as effective across borders. This makes the free movement of status the law in force for Union citizens. Although some open questions remain, *Cupriak-Trojan*, coupled with the previous *Mirin* decision, expands the jurisprudence on the recognition principle in a way that allows it to be consolidated into an independent doctrine of private international law. To describe this doctrine, I suggest the term "replication of status" (*Statusnachvollzug*), which distinguishes the replication of status from the recognition of judgments and from the referral method. Another differentiation is also necessary: between the replication of status as a doctrinal approach in conflict of laws and international civil procedural law on the one hand and the principle of recognition and the free movement of status as mandates of EU primary law on the other. While the latter currently provide their normative framework and basis, the replication of status could, in future legislation, be detached from this origin.

A. Schulz: Name and Gender: German Federal Court of Justice Ruling on a Name Change via UK Deed Poll [German]

A recent decision by the German Federal Court of Justice (BGH) addresses two key issues in Private International Law. First, the Court held that a name change effected through a British "deed poll" can be recognised as a change of birth name under German civil status law. In this respect, the Court clarified that it is irrelevant whether the change concerns a person's "legal name" or their "conventional name". However, the Court ultimately rejected the requested amendments in their entirety, as the requirements for recognizing the applicant's new legal gender had not been fulfilled. In particular, the applicant had not completed the formal procedure as required by the applicable Gender Recognition Act 2004.