Job Opening: Research Fellow (Wissenschaftliche/r Mitarbeiter/in) in Private International Law / Transnational Commercial Law at the EBS Law School, Wiesbaden (Germany)

The EBS Law School in Wiesbaden, Germany, is looking for a highly skilled and motivated research fellow on a part-time basis (50%).

The position will entail research within the team of the Chair for Civil Law, Civil Procedure and Private International Law (Prof. Dr. Matthias Weller, Mag.rer.publ.) and within the EBS Research Center for Transnational Commercial Dispute Resolution (TCDR) on a number of new and ongoing projects focusing on Private International Law, Transnational Commercial Law and International Civil Litigation.

The position includes teaching and programme management for the "EBS Law Term" on Transnational Commercial Law, an intense academic programme in English from September to December each year for incoming international students from all over the world, mainly from the partner law faculties of the EBS Law School. For further information on this programme: http://www.ebs.edu/lawterm.

Requirements:

- a university law degree (e.g. JD, preferably the German "Erste Juristische Prüfung")
- qualifications or at least substantial interest in Private International Law and Transnational Commercial Law
- excellent English language skills

The position is limited to two years but can be prolonged. The work location is Wiesbaden, a city close to Frankfurt, Germany. The work involves 19,75 hours per week (50%). The payment is subject to negotiations with the University, depending on the level of qualifications, but will not be lower than the average payment for research fellows (*Wissenschaftliche Mitarbeiter*) there. The faculty offers to obtain a doctoral degree on the basis of a thesis (*Dissertation*) if the faculty's requirements for admission are met.

How to Apply:

Please send your application with reference to **"ZRV_WiMi_Law Term"** via email to antonella.nolten@ebs.edu. The application should include a cover letter, a CV containing, if applicable, list of publications and/or teaching evaluations and electronic copies of all relevant certificates. Please do not hesitate to contact Antonella Nolten in case of further questions.

We are looking forward to hearing from you!

German Federal Court of Justice (Bundesgerichtshof) rules on the validity of arbitration agreements (Claudia Pechstein)

by Lukas Schmidt, Research Fellow at the Center for Transnational Commercial Dispute Resolution (TCDR) of the EBS Law School, Wiesbaden, Germany.

Claudia Pechstein, an internationally successful ice speed skater, claims damages against the International Skating Union (ISU) because of a two-year-suspension for doping. The essential question was whether an arbitration agreement signed by *Pechstein* is effective. This agreement includes amongst other things the

exclusive jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne. Pechstein claimed that the arbitration agreement was invalid under § 19 GWB (German Antitrust Legislation) because the ISU (nationally and internationally only the ISU organizes competitions in ice speed skating) has abused its dominant position. *Pechstein* had to sign the arbitration agreement to be admitted to the competition. She claimed that the list of arbitrators of the CAS, from which the parties must each select an arbitrator, has not been prepared impartially because the sports federations and Olympic committees have a clear predominance in creating the list.

However, the German Federal Court of Justice (Bundesgerichtshof) does not agree with these propositions. The Court, by its decision of 7 June 2016, docket no. KZR 6/15, ruled that the action is inadmissible because of the arbitration agreement. The Court held that the ISU is indeed dominant in the organization of international speed skating competitions, but has shown no abusive conduct because the associations and the athletes do not confront each other as guided by fundamentally conflicting interests. There was no structural imbalance in the composition of the tribunal ruling on *Pechstein's* suspension. Furthermore, in the Court's view, *Pechstein* has signed the agreement voluntarily, even if she otherwise could not have participated in the contest. A consideration of the mutual interests in the light of § 19 GWB justifies the application of the arbitration clause. However *Pechstein* is entitled to invoke the internationally competent Swiss courts following the arbitral procedure.

2nd Liechtenstein Conference on Private International Law on 30 June 2016

Despite the fact that thousands of legal persons and personal relations are subject

to Liechtenstein Private International Law, Liechtenstein law has retained some unique features. Whether the unique features should be maintained, or provide the reasoning for a reform agenda, will be discussed at the 2nd Liechtenstein Conference on 30 June 2016 organised by the Propter Homines Chair for Banking and Securities Law at the University of Liechtenstein.

The presentations will deal with Liechtenstein international company, foundation and trust law, conflicts of law relating to banks, prospectus liability and collectus investment schemes, as well as matters of succession and the potential of Liechtenstein as an arbitration venue. All presentations will be held in German.

Please find further information here.

In case of interests please contact: nadja.dobler@uni.li

Out now: Furrer/Markus/Pretelli (eds.), The Challenges of European Civil Procedural Law for Lugano and Third States (2016)

 The new 2007 Lugano Convention, establishing parallelism with the Brussels I Regulation (Reg. 44/2001), had just entered into force in Switzerland in 2010 when it faced a new challenge in the form of the Recast Regulation (Reg. 1215/2012). Therefore, in 2014, CIVPRO (University of Bern), CCR (University of Luzern) and the Swiss Institute for Comparative Law (Lausanne) invited professors, researchers, civil officers and practitioners from all over Europe to discuss the future of European civil procedure with a special focus on Lugano and third states. Alexander Markus (Bern), Andreas Furrer (Luzern) and Ilaria Pretelli (Lausanne) have now published the (English/German) volume containing the keynote speeches and the subsequent contributions to this conference as well as the reports on the discussion in the various panels. This book presents and

analyzes the past, the present and the alternative conceivable futures of the Lugano model of a “parallel” convention. For further information, click here.

Reminder – Call for Papers – Young PIL Scholars’ Conference

This post has kindly been provided by Dr. Susanne Gössl, LL.M.

“This post is meant to remind that the deadline for applications for the Young PIL Scholars’ Conference in Bonn, Germany, in April 2017 is approaching.

We accept applications of junior researchers to present a paper until 30 June 2016. The topic is “Politics and Private International Law (?)”. We envisage presentations of half an hour each in German language with subsequent discussion on the respective subject. The presented papers will be published in a conference transcript by Mohr Siebeck.

Please send an exposé of maximum 1,000 words to nachwuchs-ipr(at)institut-familienrecht.de. The exposé shall be in German language and composed anonymously that is without any reference to the authorship. The author including his/her position or other affiliation shall be identifiable from a separate file.

Additional information can be found at https://www.jura.uni-bonn.de/en/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/pil-conference/call-for-papers/

If you have any further questions, please contact Dr. Susanne Gössl, LL.M. (sgoessl(at)uni-bonn.de).”

Geo-blocking and the conflict of laws: ships that pass in the night?

On 25 May 2016, the European Commission presented its long-awaited proposal for a regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market (COM[2016] 289 final).

In the Commission's words, "[t]he general objective of this proposal is to give customers better access to goods and services in the Single Market by preventing direct and indirect discrimination by traders artificially segmenting the market based on customers' residence. Customers experience such differences in treatment when purchasing online, but also when travelling to other Member States to buy goods or services. Despite the implementation of the non-discrimination principle in Article 20(2) of Directive 2006/123/EC 3 ("Services Directive"), customers still face refusals to sell and different conditions, when buying goods or services across borders. This is mainly due to uncertainty over what constitutes objective criteria that justify differences in the way traders treat customers. In order to remedy this problem, traders and customers should have more clarity about the situations in which differences in treatment based on residence are not justifiable. This proposal prohibits the blocking of access to websites and other online interfaces and the rerouting of customers from one country version to another. It furthermore prohibits discrimination against customers in four specific cases of the sale of goods and services and does not allow the circumventing of such a ban on discrimination in passive sales agreements. Both consumers and businesses as end users of goods or services are affected by such practices and should therefore benefit from the rules set out in this proposal. Transactions where goods or services are purchased by a business for resale should, however, be excluded in order to allow traders to set up their distribution systems in compliance with European competition law."

From a conflicts perspective, the question that is most interesting is how the prevention of geo-blocking and similar techniques will relate to the "directed-activity"-criterion that the European legislature has used both in the Rome I Regulation (Article 6(1)(b)) and in the Brussels I (recast) Regulation (Article 17(1)(c)). In a series of cases starting with the *Alpenhof* decision of 2011

(ECLI:EU:C:2010:740) the CJEU has developed a formula for determining the direction of a trader's activity by focusing on its subjective intention to deliver goods or services to consumers in a certain country, i.e. that it "should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them." If standard techniques of geo-blocking or the use of different sets of general conditions of access to their goods or services are now banned as discriminatory, how will this affect the test developed by the CJEU; in other word, is it reasonable to infer that a trader has actually been "minded to conclude a contract" and consented to being sued in the state of the consumer's domicile if the trader has no legal option *not* to offer goods or services to the customer? The drafters have noticed this obvious problem and inserted a pertinent clause into Article 1 no. 5 of the proposal, which reads:

"This Regulation shall not affect acts of Union law concerning judicial cooperation in civil matters. Compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the habitual residence or domicile within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008 and point (c) of Article 17(1) of Regulation (EU) 1215/2012."

In light of the highly controversial experience with similar reservations – it suffices to think of Article 1(4) of the E-Commerce Directive (2000/31/EC) or Recital 10 of the recently withdrawn CESL proposal (COM[2011]635 final) –, I have doubts whether the separation between the two areas of law will work as smoothly as the Commission seems to imagine: if a trader is legally *coerced* to serve consumers in a certain state, any test aimed at determining his or her "state of mind" to do so necessarily becomes moot – which, on the other hand, may be a good opportunity for the CJEU to rethink its frequently criticized approach. Considering the (non-)treatment of Recitals 24 and 25 of the Rome I Regulation in *Emrek* (ECLI:EU:C:2013:666), however, I am inclined not too expect much deference from the Court to interpretative guidance provided by the European legislators…

General Principles of European Private International Law (book)

Many thanks to Dr Eva Lein, Herbert Smith Freehills Senior Research Fellow in Private International Law, British Institute of International and Comparative Law, who has shared this information and provided the link below.

Are there general principles of European conflict of laws? Looking at the myriad of EU regulations in the area, one may well doubt it. And this explains why a new book edited by Stefan Leible is so topical. It addresses themes and concepts that reoccur across different conflicts regulations, but so far have not yet come under detailed scrutiny as to whether they follow a coherent approach. Among them are the usual suspects such as preliminary questions, characterisation, *renvoi*, party autonomy, the determination of habitual residence and the application of overriding mandatory rules, to name but a few. They are complemented by broader topics such as the role of recognition as a substitute for conflict of laws and economic efficiency in European private international law. The idea of treating those themes in one volume chimes with Leible's idea of a ‚Rome 0' Regulation, which he has expounded earlier together with Michael Müller (14 (2012/13) Yearbook of Private International Law 137). The book is a logical follow-up on this proposal. It analyses issue by issue whether there is indeed enough material that deserves to be treated in a 'General Part' of European private international law. The authors of the book are well-known experts in the field, such as Peter Mankowski, Heinz-Peter Mansel and Jan von Hein. The only criticism one may level is that they are almost exclusively from Germany. It would be interesting to see how lawyers from other countries react to the – quite Germanic – idea of an '*Allgemeiner Teil*' for the European conflict of laws.

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The Proposed Revision of the Posting Directive (paper)

Veerle Van Den Eeckhout has written a working paper version of an article on the Proposed Revision of the Posting Directive. The working paper, in Dutch, is entitled "Toepasselijk arbeidsrecht bij langdurige detachering volgens het voorstel tot wijziging van de Detacheringsrichtlijn. Enkele beschouwingen vanuit Ipr-perspectief bij het voorstel tot wijziging van de Detacheringsrichtlijn" (in English: "The Law Applicable to Long-Term Postings According to the Proposal for a Directive Amending the Posting Directive. Some Reflections from a Private International Law Perspective on the Proposal for a Directive Amending the Posting Directive").

In this contribution, the author formulates some reflections from the perspective of Private International Law on the proposal for a revision of the Posting Directive, focusing on the issue of the law applicable to long-term postings.

You can download Prof. Van Den Eeckhout's paper here.

Out now: Matthias Weller (ed.), Europäisches Kollisionsrecht (2016)

Professor Dr. Matthias Weller, European Business Law School-University of Wiesbaden (Germany), has edited and co-authored a new volume on European Conflict of Laws (in German): Europäisches Kollisionsrecht (Nomos; Baden-Baden, 2016). The volume contains contributions by Weller himself (on the general principles of European private international law), by Dr. Carl Friedrich Nordmeier (on Rome I, marital property and succession) and by Dr. David Bittmann (on Rome II and III as well as on the Maintenance Regulation and the

Hague Protocol). The Book provides the reader with a survey on the current state of the art in European choice of law that is both up-to-date and analytical. Weller's introduction in particular offers a fascinating treatment of the emerging general part of European PIL. Highly recommended!

For further information, click here.

Thöne on the abolition of Exequatur in the European Union

Meik Thöne has authored a book on the abolition of exequatur proceedings under the new Brussels I-Regulation ("Die Abschaffung des Exequaturverfahrens und die EuGVVO", Mohr Siebeck, 2016, IX + 289 pages). The volume is forthcoming in German. A German abstract is available on the publisher's website.