# Private International Law and Migration Law

Some earlier publications of Veerle Van Den Eeckhout on Private International Law and Migration Law are currently being made publicly available on SSRN. One of the core publications is the article "De vermaatschappelijking van het internationaal privaatrecht. Ontwikkelingen aan het begin van de 21e eeuw" (written in Dutch. English title: "The Socialization of Private International Law. Developments at the beginning of the 21th Century"). This article provides an exploratory analysis of the interaction between Private International Law and Migration Law.

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# European Parliament's workshop on "Cross-border activities in the EU – Making life easier for citizens"

The papers presented at the European Parliament's workshop "Cross-border activities in the EU – Making life easier for citizens" (PE: 510.003) on 26 February 2015 in Brussels have been uploaded to the Parliament's homepage. The papers have been collected in a single compendium that is available (as a pdf file) here. The volume contains the following presentations (in the order of the workshop's programme):

SESSION I – LESS PAPER WORK FOR MOBILE CITIZENS

Towards a European Code on Private International Law? (*Jan von Hein* and *Giesela Rühl*)

Promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents within and outside the european union (proposal for a regulation, COM(2013) 208) (*Pierre Callé*)

Promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the EU and beyond (*Michael P. Clancy*)

Towards European Model Dispositions for Family and Succession Law? (*Christiane Wendehorst*)

EU Regulation 650/2012 on successions and the creation of a European Certificate of Succession (*Kurt Lechner*)

Regulation (EU) 650/2012/EU on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (*Eve Põtter*)

SESSION II – CROSS BORDER FAMILIES AND FAMILIES CROSSING BORDERS

The Brussels IIa Regulation: towards a review? (*Hans van Loon*)

Name Law –- Is there a need to legislate? (*Paul Lagarde*)

SESSION III – BUSINESS AND CONSUMER'S CONCERN

Private international law as a regulatory tool for global governance (*Harm Schepel*)

The European Small Claims Procedure and the new Commission proposal (*Pablo Cortés*)

Mediation as Alternative Dispute Resolution (the functioning of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters) (*Giuseppe De Palo*)

The 2005 Hague Convention on Choice of Court Agreements and the recast of the Brussels I Regulation (*Gottfried Musger*)

# Collection European Private International Law instruments

The second revised edition of European Private International Law, edited by Prof. dr. K.R.S.D. Boele- Woelki & R.J. ter Rele, has just been published.

This book collects international and European instruments which primarily contain Private International Law rules for jurisdiction, the applicable law and the recognition and enforcement of foreign decisions.

ISBN 9789069165998 | 452 Pages | Price € 34,50

More information, including the table of contents, is available here.

# Working Paper Series of the Centre for Private International Law, University of Aberdeen

The first paper in the Working Paper Series of the Centre for Private International Law is now available on the Centre's website (please see http://www.abdn.ac.uk/law/research/working-papers-455.php). Researchers are welcome to come to the Centre to pursue their research and to give a paper which could be submitted for the Working Paper Series. For further enquiries, please contact Jayne Holliday (Secretary), Dr Katarina Trimmings (Deputy Director) or Professor Paul Beaumont (Director).

# Vacancy at The Hague Conference on Private International Law

The Permanent Bureau of the Hague Conference on Private International Law (HCCH) is seeking a

**LEGAL OFFICER** (full-time)

to support ongoing work in relation to the **"Judgments Project".**

The ideal candidate will answer to the following description:

– Excellent law school education (Bachelor of Laws, Master of Laws, J.D., or equivalent), preferably in the common law tradition;

– Good knowledge of private international law (conflict of laws) in general, and in particular of international civil procedure;

– Familiarity with comparative law (substantive and procedural law) and public international law;

– A minimum of 3-5 years of experience in practice of law, academia, or an international organisation is desirable;

– Excellent command, preferably as native language and both spoken and written, of English; working knowledge of French and / or of other languages desirable;

– Very good drafting capabilities (*e.g.*, dissertation, law review or other publication experience will be taken into account);

– Personal qualities to work well in a small team and contribute to a good, pleasant and co-operative working atmosphere both within the Permanent Bureau and with outside experts.

The successful candidate will be working under the direction of the responsible First Secretary. Duties will mainly focus on the "Judgments Project", which

includes assistance with preparation of research papers and other documentation, organisation and preparation of presentations, attendance of relevant (experts) meetings, etc. Work may from time to time also relate to the follow-up and co-operation with States with regard to the implementation of the 2005 Hague Choice of Court Convention, assistance with promotional activities and training programmes, and other work as required by the Secretary General.

**Type of appointment and duration**: One-year contract as Legal Officer, funded by a special grant from the Attorney-General's Department of Australia; any extension of the contract is subject to additional funding.

**Preferable starting date**: as soon as possible, taking into account the availability of the successful candidate.

**Salary**: Relevant A-grade of the Co-ordinated Organisations scale for the Netherlands, depending on qualifications and experience (the grade corresponding to the envisaged profile would most likely be A/1 of the Hague Conference adaptation of the Co-ordinated Organisations scale).

**Place of work:** The Hague, the Netherlands

**Deadline for applications**: 22 May 2015

**Applications:** Written applications including a *curriculum vitae*, letter of motivation, academic transcripts, one sample of written work (preferably in an area of international civil procedure), and at least two references, should be addressed to the Secretary General of the Hague Conference on Private International Law, before **22 May 2015. Email address: applications@hcch.nl**

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# Issue 2015.1 Nederlands Internationaal Privaatrecht on

# Brussels IIbis revision

The first issue of 2015 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht*, is a special issue on the upcoming revision of the Brussels IIbis Regulation. Renowned scholars reflect on topical issues that need to be addressed in the revision. It includes the following contributions:

Ian Curry-Summer, 'The revision of Brussels IIbis' (Editiorial).

Alegría Borrás, 'Grounds of jurisdiction in matrimonial matters: recasting the Brussels IIa Regulation', p. 3-9.

***Abstract.*** *The recasting of the Brussels IIa Regulation implies different considerations. The first one is the review of the existing grounds of jurisdiction and how they can survive in the new text. The second is the possibility of the introduction of party autonomy and the hierarchization of the grounds of jurisdiction. These modifications imply the possibility of including changes in other rules related to jurisdiction. Although it would be a good result if all member states could accept the rules on matrimonial matters, as well as on jurisdiction and on the applicable law, this still seems to be difficult, taking into account the need for unanimity and the experience with the Rome III Regulation.*

Th.M. de Boer, 'What we should *not* expect from a recast of the Brussels IIbis Regulation', p. 10-19.(sample copy)

***Abstract.*** *If the European Commission decides to recast the Brussels IIbis Regulation, it is likely to submit a proposal in which the focus will be on practical matters, such as judicial cooperation, the return of abducted children, or the further abolition of exequatur. The questionnaire that was used for the public consultation on the 'functioning' of Brussels IIbis did not leave much room for criticism of the Regulation's points of departure with regard to jurisdiction in matters of parental responsibility. Yet, there are a few issues that may be more important than the prevention of parallel proceedings or the free circulation of judgments within the EU. One of them concerns the virtually unlimited scope of the regulation in cases in which jurisdiction is determined by prorogation (Article 12). Another problem results from the* perpetuatio fori *principle underlying Article 8. Both provisions confer jurisdiction even if the child is habitually resident*

*outside the EU, which casts considerable doubt on the effectiveness of the court's decision.*

Marco Mellone, 'Provisional measures and the Brussels IIbis Regulation: an assessment of the status quo in view of future legislative amendments', p. 20-26.

***Abstract.*** *The European Commission is assessing the need for legislative amendments to EC Regulation No. 2201/2003 on the recognition and enforcement of decisions in the field of matrimonial and parental responsibility matters (the so-called 'Brussels IIbis' Regulation). One of the key points of that Regulation is jurisdiction and the enforcement of provisional measures. This delicate issue has generated an intense debate among scholars and many decisions of the European Court of Justice have dealt with this subject. Therefore, the author returns to the outcomes of this debate and focuses on the parallel solutions adopted by the Brussels system of jurisdiction and the enforcement of decisions in civil and commercial matters. Following this path, the author tries to assess the right legislative approach for eventual future interventions by the European legislature.*

Janys M. Scott QC, 'A question of trust? Recognition and enforcement of judgments', p. 27-35.

***Abstract.*** *The European Commission and the European Council propose to revise Brussels IIa to abolish* exequatur *in all matters of parental responsibility. There are some good reasons for extending direct enforcement, but this should not be at the expense of abandoning safeguards including those relating to public policy, nor should it involve diluting protection for children. If the Regulation is to deliver enforcement measures that work, then consideration must be given to how enforcement is made effective. This is likely to involve a continued role for the courts of the member state where a judgment is to be enforced.*

Francisco Javier Forcada Miranda, 'Revision with respect to the cross-border placement of children', p. 36-42.

***Abstract.*** *Concerning the current Council Regulation (EC) 2201/2003, in application for almost 10 years, on 15 April 2014 the Commission adopted a report on its application in practice that was followed by an extensive public consultation. In 2015, the Commission has launched a call for expressions with a view to setting up a group of experts to assist the Commission in the preparation of a legislative proposal for a revision of the Regulation. Within this process, one*

*of the most important topics to be discussed is the proper functioning of the placement of a child in another member state in accordance with Article 56. In this field, this report helps to identify precedents, challenges and problematic points to be addressed and details and discusses the national procedures as well as topics of mutual trust, the case law of the Luxembourg Court of Justice and the best interests of the child in these situations, all of which aim to highlight the many prospective improvements to be achieved.*

This issue also includes a conference report authored by Jacqueline Gray 'Congress report: ERA Annual Conference on European Family Law 2014', p. 43-45.

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# 128th Conference of the Private International Law Association of Japan (2015)

The Private International Law Association of Japan will hold its 128th conference on **Saturday, June 6**, and **Sunday, June 7, 2015**, at the Campus of Waseda University, Tokyo. One of the sessions includes a symposium on "Regional Economic Integration and Private International Law". The conference programme and further information are available here.

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# Gremlins no more –

# conflictoflaws.net is back

Apologies for our recent outage, which many of you had noticed – thanks to those who emailed in and pointed out the problems with accessing posts, search, etc. We had gremlins of some variety in the database which powers conflictoflaws.net, and after much prodding and pushing they have cleared off. Everything should now be working normally again (if anyone does spot a fault, please do let me know.)

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# The Judgments Project Moves On

From 3 to 6 February 2015, the Working Group on the Judgments Project met in The Hague for its fourth meeting under the chairmanship of Mr David Goddard QC. The Working Group was composed of 28 participants from 15 Members. At its meeting, the Group further developed its proposed provisions for a future Convention on the recognition and enforcement of judgments. The Group prepared a common draft text, which sets out a possible architecture and draft provisions relating to the scope of the Convention, criteria for recognition and enforcement and procedure for recognition and enforcement.

The Working Group envisages that it will be able to bring the draft text to the point where it can recommend to Council, prior to its 2016 session, that the text be submitted to a Special Commission.

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# Conference Report: “International Civil Procedure and Brussels Ibis” – 50th Anniversary of the T.M.C. Asser Instituut, Den Haag

In 2015, the T.M.C. Asser Institute celebrates its 50th anniversary (http://www.asser.nl/asser-50-years/). On this occasion, its Private International Law Section organized on 19 March 2015 the Symposium “International Civil Procedure and Brussels I bis”.

The first panel discussed recent developments on the EU level in the context of the Brussels I bis Regulation. Ian Curry-Sumner, Voorts Juridische Diensten, presented thoughts on a possible future recast of Brussels II bis. The Commission conducted a consultation on the functioning of this Regulation from 15 April 2014 until 18 July 2014 (http://ec.europa.eu/justice/newsroom/civil/opinion/140415_en.htm) and published results (https://ec.europa.eu/eusurvey/publication/BXLIIA) but beyond these steps no further action has been taken so far. According to Article 65 of the Regulation the Commission should have presented no later than 1 January 2012 its first report on the application of the Regulation, based on information by the Member States, and should have accompanied this Report with proposals for adaption if necessary. Curry-Sumner submitted several of such proposals, e.g. in relation to making more precise the geographical scope of the Regulation or for making the Regulation more coherent with the Hague Convention on Protection of Children in order to reduce complexity in international cases.

Andrea Bonomi, Université de Lausanne, presented procedural issues of the Succession Regulation. He discussed the jurisdictional system of the Regulation as being one of comprehensive scope leaving no room for residual jurisdiction (except for Article 19). Bonomi drew attention to the risk of concurring proceedings under the subsidiary jurisdiction of Article 10, coupled with lis pendens rules in Article 17 that are limited to concurring proceedings before the courts of Member States. Given various „correction mechanisms“ for „reuniting“ *forum* and *ius* such as e.g. in Article 6 lit. a empowering the court seized to

exercise discretion to decline jurisdiction, the question was raised whether the dogma of legal certainty so far excluding *forum non conveniens doctrines* may become or even may have already become obsolete. The author of these lines asked whether the broad definition of „court“ in Article 3(2) may possibly include arbitral tribunals since the Succession Regulation does not exclude „arbitration“ as opposed to, for example, the Brussels I bis Regulation in its Article 1(2) lit. d. Even if arbitral tribunals are no „courts“ in the sense of the Succession Regulation the question of potential effects of the Succession Regulation on arbitration remains. One may hold that the Regulation implicitly establishes a fully mandatory system that excludes the derogation of the jurisdiction of the (Member) state courts, one may also hold that the Regulation leaves the decision about the arbitrability to the applicable national law but requires an arbitral tribunal with a seat in a Member State to apply the choice-of-law rules provided for by the Regulation, one may finally hold that arbitration is not affected in any way by the Regulation despite its silence on this issue.

Francisco Garcimartín Alférez, Universidad Autónoma de Madrid, reported that the Commission evaluated the Insolvency Regulation positively in principle but identified certain needs for reform (Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1346/2000 on insolvency proceedings, COM(2012) 744 final, p. 2 et seq.). These relate to (1) the inclusion of pre-insolvency proceedings, (2) the precision of the central connecting factor of the COMI, (3) the better coordination of main and secondary proceedings, (4) the publicity of insolvency proceedings and (5) insolvency of groups of companies. As regards the inclusion of pre-insolvency proceedings, Garcimartín pointed out that under the recast the English scheme of arrangement would still not be covered. He further explained the new system of rebuttable presumptions for establishing the COMI including „suspect periods“ of three and six months respectively in which the presumptions do not apply. Article 6 now allows consolidating insolvency and related non-insolvency proceedings. A large part of the new provisions concern duties of cooperation in case of insolvency of groups of companies (Chapter V). Garcimartín expressed scepticism as to the benefit and practical impact of these provisions. The recast of the Insolvency Regulation was adopted by the European Council last week, and the European Parliament will presumably adopt it in May. Most of the provisions will not take effect until 2017.

Finally, Jasnica Garasic, University of Zagreb, explained the system and details of the European Account Preservation Order. Garasic made clear that the EAPO allows creditors to preserve funds in bank accounts under the same conditions in all Member States of the EU (except the UK and Denmark) without changing the national legal systems. Rather, creditors are able to choose the interim protection procedure of the EAPO in cross-border cases.

The second panel focused on the Brussels I bis Regulation and forum selection clauses. Xandra Kramer, Erasmus University Rotterdam, provided for data material on the frequency of the use of forum selection clauses and the various interests and aims involved, e.g. choosing a forum because of an interest in the substantive *lex fori* or avoiding certain fora etc. Kramer also showed for the USA that forum shopping seems to pay off since the success rate of claims after referring the proceedings to another court on the grounds of *forum non conveniens* drops from 58% to 29%. As regards the Hague Forum Selection Convention, it was reported that the deposit of the ratification by the EU is expected for July which means that three months later the Convention will enter into force.

Christian Heinze, University of Hannover, explained the new lis pendens rules in Articles 29 et seq. of the Brussels I bis Regulation. He made clear to what extent the new rules rely on previous concepts or concepts from the Hague Convention and how far these rules introduce true novelties. In particular, Articles 33 et seq. were scrutinized and compared to traditional *forum non conveniens* notions. Heinze suggested that as opposed to *forum non conveniens* doctrines, Articles 33 et seq., in particular in light of Recital 23 and 24, do not allow to take account of choice of law or substantive law aspects but only of genuinely procedural aspects when it comes to the question whether the second seized Member State court should stay its own proceedings. Heinze also drew attention to the fact that taking account of the prospects of recognition of the future judgment from the earlier third state proceedings inevitably threatens uniformity since recognition of third state judgments is subject to non-unified national law of the Member States – as does the question whether a proceeding is "pending" in the sense of Articles 33 et seq.

Finally, Vesna Lazi?, T.M.C. Asser Instituut, Den Haag, presented on the protection of weaker parties in connection with forum selection and arbitration clauses. Lazi? particularly drew attention to the protection under the Unfair

Terms in Consumer Contracts Directive. Indeed, lit. q of Schedule 2 provides that clauses excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract, may be held unfair. Even if "arbitration" is excluded from the scope of the Brussels I bis Regulation this Regulation and its protective provisions for consumers may still serve as a measure for assessing whether the consumer's right to take legal action is unduly hindered.

In the discussion, the author of these lines asked the panel what standard should be applied for assessing whether there is an "agreement" in the sense of Article 31(2). If there is such an agreement in favour of a Member State court, a non-chosen Member State court must stay its own proceedings, as soon as the "chosen" court is seized as well. There were different views on this crucial issue for the functioning of the new *lis pendens* rule. For example, it was held that this was a non-issue since it was proof enough for a high likeliness of an agreement if the defendant in the first proceedings before the non-chosen court starts instituting further proceedings before the chosen court. However, if a party is determined to abuse as aggressively as possible the mechanisms of the *lis pendens* rule, things might well be different and another type of torpedo may emerge. The majority held that the non-chosen court should at least have the power to review the existence of an agreement to a certain extent. Indeed, Recital 22 Sentence 4, according to which the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute before it, should not be understood as excluding any review.

The third panel dealt with enforcement under the Brussels I bis Regulation. Ilaria Pretelli, Swiss Institute of Comparative Law, Lausanne, discussed the regime for provisional measures, Marta Requejo Isidro, Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg, reported on enforcement under Brussels I bis and under special European civil procedure Regulations and finally Paul Beaumont analysed the Brussels I bis Regulation in relation to other instruments of unification on the global level, in particular in relation to the Lugano Convention, the Hague Judgments Project and the 1958 New York Convention on the recognition and enforcement of arbitral awards in

light of Article 73(2) (Regulation “shall not affect” the 1958 Convention) and Recital 12 (Convention “takes precedence” over Regulation) of the Regulation. In essence, Beaumont suggested a general priority of arbitral awards over judgments about the same issue between the same parties rendered by Member State courts, even if the award comes years later than the judgment. In the discussion it was made the observation that this approach may conflict with *res iudicata* principles and thus may violate the public policy in the sense of Article V(2)(b) New York Convention which would of course be a matter of interpretation of the New York Convention as such.

It will be no surprise for those who know about the excellence of the Asser Instituut to be informed that the Symposium provided for first-class analysis and discussion of most central and current trends and developments in International Civil Procedure of European provenance. The large audience of the Symposium was perfectly right not only in congratulating the Institute to its 50th birthday but also the organisers of the birthday party.