Working Paper on Business and Human Rights

The Working Paper *The Private International Law Dimension of the Principles. An Introduction*, written by Veerle Van Den Eeckhout is now available on ssrn.

The abstract reads as follows: “In the reports on Business and Human Rights by John Ruggie, “access to remedies” cq “access to justice” appears to be a key element. Rules of Private International Law can be seen as key factors in achieving access to remedies cq access to justice: PIL rules act like hinges that allow doors – granting access to a specific court and to a specific legal norm – to be opened or to be kept closed; thus, as PIL deals with issues of international jurisdiction and applicable law, PIL rules are of paramount importance in determining access to a specific court and access to a specific legal norm. In his Guiding Principles, Ruggie addresses the responsibility of States for issuing suitable legislation and ‘access to remedies’; it may be well argued that PIL legislation (rules on jurisdiction and applicable law) and the interpretation of this legislation should also be examined in this context. In this article the focus is on the hypothesis that plaintiffs want to bring an action before a EU Member State court. When focusing on this hypothesis, one can observe that at least some PIL-aspects are covered by rules of PIL of European origin – the regulation of some other aspects is still left to the EU- Member States themselves. To what extent do these rules allow or deny access to remedies cq access to justice? In this article, some rules and issues of (mainly) European PIL – both jurisdiction and applicable law – that deserve attention from this perspective will be highlighted in an introductory way.”

The corresponding Power Point Presentation, presented during the Conference “The Implementation of the UN Principles on Business and uman Rigths in Private International Law” at Lausanne (October 2014) is available here.

ECtHR on SAS v. France. A Comment.

Multiculturalism is one of the greatest challenges of our time. Minority but deeply rooted practices with a potential to bring social unrest to host countries – as may be, in our Western societies, the use of the full Islamic veil- raise questions to which law may answer with tolerance or reject with incomprehension and hostility. It is with the first intention in mind that Prof. Zamora and Prof. Camarero, both from the University Jaume I (Castellón) have addressed the ECtHR decision *SAS v. France*, application number 43835/2011, in a paper written in Spanish, with an English abstract that reads as follows:

"The decision of the European Court of Human Rights related to the case S.A.S. is a historic milestone as far as the treatment of the religious freedom all along its jurisprudence is concerned. Throughout a critical analysis their foundations are submitted to review. Among them we underline the requirements of the so called *vivre ensemble* and the wide way it is granted to the State a 'margin of appreciation'. Both aspects are subject to scrutiny to reach the conclusion that there exists little ultimate basis to support the severe restriction imposed upon freedom of religion and the protection of minorities under the French law of 2010. Upon those basis, the study agrees upon that the above mentioned decision really masks the purpose of an institutional political balance looked for by the High Court in its ruling. A balance that in the present case turns out to be highly burdensome concerning the protection of Human Rights".

The full text is to be found in the *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 37 (2015).

Praxis des Internationalen Privat-

und Verfahrensrechts (IPRax) 1/2015: Abstracts

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

Heinz-Peter Mansel/Karsten Thorn/Rolf Wagner, ***European conflict of laws 2014: The year of upheaval***
The article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from December 2013 until November 2014. It summarizes current projects and new instruments that are presently 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. Furthermore, the authors look at areas of law where the EU has made use of its external competence. They discuss both important decisions and pending cases before the ECJ 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.

Anatol Dutta, ***The European Succession Regulation: Ten issues in miniature***
Since its adoption in July 2012, the European Succession Regulation has generated a great volume of scholarly writing, although being applicable only from summer 2015 onwards. The following paper shall retrace ten selected issues which have been subject to debate during those first three years, namely (1) the delimitation between the applicable succession law and matrimonial property law, in particular regarding the German lump sum approach as to the participation of the surviving spouse in the gain obtained during marriage, (2) the role of legacies or other attributions which directly transfer ownership in certain objects of the estate from the testator to the legatee or other beneficiaries, in particular in case of a so-called legatum per vindicationem, (3) the localization of joint wills of spouses or registered partners, (4) the scope of the special jurisdictional rules in case of a choice of law, (5) the admissibility of certain types of testamentary dispositions, (6) the problem of incidental questions in the applicable succession law, (7) the binding effects of a choice of law, (8) the role of national certificates of inheritance under the Regulation, (9) the scope of the duty to accept foreign

authentic instruments, and (10) the impact of previous overriding succession-related conventions of the Member States on the European Certificate of Succession.

Peter Mankowski, ***The Deceased's Habitual Residence in Art. 21 (1) Successions Regulation***

Art. 21 (1) Successions Regulation hails the deceased's habitual residence as the dominant connecting factor for objectively determining the applicable law. The European legislator intends to nurture integration and personal mobility within the Internal Market. Habitual residence as connecting factor raises quite some questions, though. Recitals (23) and (24) are only helpful up to a certain extent in this regard. To place particular reliance on the deceased's intentions would be misconceived. To rely on such intentions would generate a bevy of consequential issues, for instance concerning the deceased's mental sanity or other persons' influence. Moving cross-border ordinarily is a deep cut in everybody's personal life and should be a clear warning of possibly ensuing consequences. To assume an alternating habitual residence provides a solution for the tricky cases that someone is living in different places consecutively each year. With regard to cross-border commuters the place where they habitually carry out their work is only relevant for employment purposes but does not determine their habitual residence.

Burkhard Hess/Katharina Raffelsieper, ***The European Account Preservation Order: A long-overdue reform to carry out cross-border enforcement in the European Area of Justice***

This article describes the key elements of Regulation (EC) 655/2014 establishing a European Account Preservation Order adopted in May 2014 and explains its practical implications. This new instrument will facilitate direct cross-border enforcement of monetary claims by allowing creditors to block bank accounts in other EU Member States (with the exception of the UK and Denmark). The Regulation shall be available as an additional alternative to existing national provisional relief. However, it implements the so-called surprise effect in cross-border cases: the blocking effect takes place without any prior notification to the debtor.

At the same time, appropriate safeguards to protect the debtor's rights are in place, such as the obligation of the creditor to compensate the damage caused to the debtor by the seizure if the order is subsequently set aside. The debtor's right

to be heard will be safeguarded by a hearing in the Member State of enforcement taking place after the blocking of the account. Finally the livelihood of the debtor is assured by the application of the respective national laws of the Member State of enforcement governing non-attachable amounts. All in all, the European Account Preservation Order can be qualified a major achievement which will considerably improve cross-border enforcement in the EU. It fills the gap in creditor protection left open by the Brussels I Recast which has unnecessarily abolished the surprise effect of provisional measures in the cross-border context.

Christian Kohler, ***A Farewell to the Autonomous Interpretation of the Concept of 'Civil and Commercial Matters' in Article 1 of Regulation Brussels I?***

In Case C-49/12, Sunico, the ECJ held that the concept of "civil and commercial matters" within the meaning of Article 1 of Regulation Brussels I covers an action whereby a public authority of one Member State claims, as against persons resident in another Member State, damages for loss caused by a tortious conspiracy to commit value added tax fraud in the first Member State. The author argues that the judgment is not in line with the ECJ's earlier caselaw on the autonomous interpretation of that concept. As the defendants in Sunico were the real beneficiaries of the sums obtained by means of tax evasion and the damages claimed corresponded to the amount of the VAT not paid, the action was brought in the exercise of the authority's powers and concerned a "revenue matter" within the meaning of Article 1(1) of the Regulation. The author observes a tendency in the ECJ's recent case-law to give too much weight to the law of the Member State of the proceedings when interpreting the concept of "civil and commercial matters". However, a shift towards a "national" rather than an autonomous interpretation of that concept would be detrimental to the uniform application of the Regulation. Although a wide interpretation of the concept is to be approved, the rationale behind the exclusion of matters of public law from the scope of the Regulation remains valid.

Michael Grünberger, ***The Place of an Alleged Infringement of Copyright under the Brussels I-Regulation***

The CJEU held in Pinckney v KDG Mediatech AG that a court has international jurisdiction for a copyright infringement claim according to Art. 5 No. 3 Brussels I regulation, if the member state in which that court is situated protects the copyrights relied on by the plaintiff and the harmful event alleged may occur

within the jurisdiction of the court seised. First, the court reaffirmed that jurisdiction in intellectual property rights claims can be allotted based on both, the place where the damage occurred and the place of the event giving rise to it. Second, the CJEU developed a specific approach for non-registered IP rights, merging the classical Shevill doctrine with its solution to IP rights in Wintersteiger. Third, the CJEU rebuffed any attempt to apply any further localization criteria to limit a national court's international jurisdiction in multistate infringements. Fourth, the approach enables the plaintiff to sue one of several supposed perpetrators of the damage in the place where the final damage has occurred even though he or she did not act within the jurisdiction of the court seised.

Christoph Thole, ***Jurisdiction for injuncture relief and contractual penalties***
The judgment in question was linked to two significant problems within the law of international jurisdiction. It concerned a legal action taken by an association and the question of jurisdiction for injuncture relief in cases without adherence to a specific locality. Although the court reaches – in spite of overlooking several aspects – the correct result, the judgment still reveals yet unresolved questions of how to treat agreements on contractual penalties and negative covenants with respect to the place of performance under art. 5 no. 1 Brussels I-Reg. (= art. 7 no. 1 Reg. 1215/2012).

Marta Requejo Isidro, ***On Exequatur and the ECHR: Brussels I Regulation before the ECtHR***
Concerns about the relationship between Article 6 ECHR and the international procedural law instruments of European (Community) source has long been a recurring topic in the legal literature. The issue has been reviewed recently by the ECtHR: concrete aspects of the European system of recognition and exequatur of judgments among EU Member States have been assessed by the Court in light of the so called Bosphorus test and the presumption of equivalence in Povse v. Austria, of 18.6.2013, in the domain of family law; and in the decision we comment on here, Avoti?š v. Latvia, rendered on 25.2.2014, where Regulation Brussels I was applied. Avoti?š v. Latvia is remarkable and must be approved for the tolerance shown by the ECtHR towards existing EU law and its application by the Member States at a very sensitive stage of the relations EU/Strasbourg. However, disappointment cannot be hidden as regards its grounds used by the ECtHR: technically the decision is based on unclear, disputable reasoning, as well

as on a rather superficial assessment of the Bosphorus test. It is therefore not surprising that the judgment was adopted by a narrow majority of just four votes against three.

Friedrich Niggemann, ***Foreign precautionary measures to take evidence under the Brussels I-Regulation: New attempts, but still no convincing solution***

The decision of the OLG München of 14.2.2014 is part of the quite heterogeneous case law of the German courts under Art. 31 Regulation 44/2001. Following an expert procedure in France the German party to this procedure started a second procedure with the same object in Munich, which was the agreed place of jurisdiction. The German court refused jurisdiction on the basis of Art. 27 par. 2 Regulation 44/2001. Whereas the result is in line with the decisions of the ECJ, the decision remains nevertheless unconvincing. It considers that the French procedure is not a provisional one under Art. 31, but an ordinary one, which in the court's opinion is apparently necessary to justify the refusal of jurisdiction. However this is contrary to the ECJ's definition of a provisional decision. Moreover the ECJ attributes the consequence of Art. 27 para. 2 Regulation 44/2001 not only to ordinary but as well to provisional decisions.

Sarah Nietner, ***Fragmentation of the law applicable to succession by way of party autonomy: What will be the impact of the Succession Regulation?***

The present case deals with a succession having cross-border implications. The deceased was a Swedish citizen who had her habitual residence in Germany at the time of her death. In her disposition of property upon death, the deceased had chosen German law to govern her succession with regards to her immovable property located in Germany. The deceased had disinherited her niece, who contests the validity of the will due to lack of testamentary capacity. The Higher Regional Court of Hamm found that the question, whether the deceased had been capable of drawing up her will, is governed by German law with respect to the immovable property located in Germany, whereas Swedish law decides on the question of capacity regarding the other assets. The fragmentation of succession results from the possibility to choose the law governing the succession, which is granted by Art. 25 (2) of the Introductory Act to the German Civil Code. This contribution outlines the decision of the court and examines how the situation will change under the European Regulation on Succession and Wills, which aims to avoid contradictory results due to a fragmentation of succession.

Rolf A. Schütze, ***On providing security for costs of proceedings under Austrian law***

Under Austrian Law a foreign plaintiff in civil litigation is obliged to provide security for costs. The foreign plaintiff is released from such obligation if – inter alia – there is a provision in an international treaty on security for cost or if an Austrian decision on costs can be recognized and enforced in the country of the habitual residence of the plaintiff. According to the ruling of the Austrian Supreme Court, however, the release from the cautio iudicatum solvi on the ground of the possibility to execute cost decisions under national law does not apply if there is an international treaty, even if such treaty – as in the instant case – does not release the plaintiff from the obligation to provide security for costs. Therefore the Court did not examine the issue of enforceability of an Austrian cost decision under the laws of the British Virgin Islands.

Claudia Pechstein and SV Wilhelmshaven: Two German Higher Regional Courts Challenge the Court of Arbitration for Sport

By Professor *Burkhard Hess* (Director) and *Franz Kaps* (Research Fellow), *Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law*

In a decision of January 15, 2015, the Munich Court of Appeal (OLG) addressed dispute resolution practices common to sports law. The case concerns the well-known German speed skater Claudia Pechstein. In February 2009, Ms. Pechstein was imposed a two year ban by the International Skating Union (ISU) for blood doping. As she had signed an arbitration clause, she challenged the ban before the Court of Arbitration for Sport (CAS). However, an arbitral tribunal of the CAS confirmed the ISU suspension in November 2009. Ms Pechstein challenged the

award before the Swiss Federal Tribunal (case no. 4A 612/2009 and 4A 144/2010), but without success. On December 31, 2012, Ms. Pechstein started litigation before the German courts contesting the lawfulness of the ban. She has always asserted that the doping results are due to an illness she has inherited from her father. According to recent (innovative) expert testimonies her allegation is correct.

In its judgment of 15 January, the OLG Munich addressed the validity of the CAS arbitration agreement and the recognition of the arbitral award. Relying on German cartel law the Court concluded that the arbitration agreement was void (a) and the arbitral award could not be recognized (b).

(a) First, the Court held that no valid arbitration agreement had been concluded between Ms. Pechstein and the ISU, as Ms. Pechstein had no choice but to agree to the arbitration clause in favor of the CAS in order to participate to the "World Speed Skating Championship" organized by the ISU. According to the Munich court, the organization of professional sports by international sports federations like the ISU corresponds to a dominant position in the (sports) market, and the ISU had abused this dominant position by imposing the arbitration clause on the athlete. In addition, the Court held that the CAS appeal dispute resolution procedures do not correspond to the required minimum standards of a fair trial as the parties are not treated equally. In this respect the court relies on two arguments: First, parties to the CAS arbitration proceedings must select the arbitrators from a closed list; but only the sports federations (i.e., not the athletes) participate in its drawing up. Furthermore, the Court criticizes the nomination of the president of the arbitration tribunal, made by the CAS and not by the party-appointed arbitrators. Again, the Court denounces the influence of the sports' federation on the process, which entails an unequal treatment of the parties. In light of these arguments it is clear that the judgment is much more about the independence of sports arbitration than about German cartel law. Hence it may prove to be much further-reaching than appears at first sight.

(b) With regard to the recognition of the CAS arbitral award confirming the validity of the ban for doping, the Munich Court applied Art. V (2) (b) NY Convention to hold that the CAS award violated German cartel law pertaining to the German "public policy", and refused to grant recognition. In this respect, the court referred again to the lacking independence of the CAS from the international sports federations.

It must be noted that the "Pechstein-story" has not yet come to an end. A second appeal was filed with the German Federal Supreme Civil Court; a decision is expected in the next months. Moreover, this spring the European Court of Human Rights (pending case 67474/10, *Claudia Pechstein ./. la Suisse*) will decided on a complaint brought by Ms. Pechstein against Switzerland for an allegedly unsufficient review of the CAS by the Federal Tribunal.

In addition, a recent decision of the Court of Appeal Bremen of 30 December 2014 is also worth mentioning here. In the case under consideration a local football club, SV Wilhelmshaven, challenged a ban of the Regional Football Association, imposed on the local football club for the non-payment of a so-called "training compensation". This compensation corresponds to a payment due to a football club by another upon the transfer of an athlete; in the case at hand SV Wilhelmshaven had recruited an Italian football player from Argentina. The FIFA ordered the German club to pay to the Argentinian club the amount of 157.000 € "training compensation". The order was contested by the addressee but confirmed by an arbitral tribunal of the CAS. When the German club failed to pay the sum, the FIFA decreed the German club's relegation to a lower league. Once again, the club challenged this decision before the CAS, once again to no avail. Finally, the German Regional Football Association, being under the statutory obligation to enforce the FIFA decision, implemented the sanction. The SV Wilhelmshaven challenged the relegation before the Bremen Court of Appeal relying on the *Bosman* decision of the CJEU (Case C-415/93) and arguing the incompatibility of the "training compensation" with article 45 TFEU. The Bremen court held that the relegation was indeed incompatible with European Union law, hence it was void. Again, an arbitral award of the CAS was not recognized, this time for non-compliance with mandatory European Union law.

The *SV Wilhelmshaven* litigation may still be appealed before the German Federal Supreme Court. As with the *Pechstein* case it remains to be seen whether the Supreme Court will uphold the decision of the lower court. At any rate, the two controversies clearly demonstrate that arbitration in sports law must, like all arbitration proceedings, abide by minimum standards of procedural fairness (*Pechstein*) and apply mandatory law (*SV Wilhelmshaven*). Otherwise, the awards will be successfully challenged in state courts, and the *de facto* immunity of sports law from state court interference (which is based on arbitration) will find its limits.

Cross-border activities in the EU – Making life easier for citizens

Meeting at the European Parliament (Room ASP 5 G 3) on 26 February 2015 on Cross-border activities in the EU – Making life easier for citizens.

See Programme.

The meeting is primarily aimed at European and national Parliamentarians. Other participant observers who need an access badge must register by filling in the registration form (attached: European_Parliament_Registration_form_20150226) by **16 February**. Seats are limited.

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Funded PhD Positions/Call for Applications

The **International Max Planck Research School for Successful Dispute Resolution in International Law (IMPRS-SDR)** is a doctoral school located in Heidelberg (Germany) and Luxembourg. Founded in 2009, the Research School's aim is to examine and analyse different mechanisms for solving international disputes. The participating institutions are the **Max Planck Institute Luxembourg** for International, European and Regulatory Procedural Law, **Heidelberg University**, the **University of Luxembourg**, the **Max Planck Foundation** for International Peace and the Rule of Law, and the **Max Planck Institute** for Comparative Public Law and International Law (both in Heidelberg). In cooperation with the **Permanent Court of Arbitration** in The Hague, the

IMPRS-SDR runs an internship program in international arbitration for its doctoral students.

Ten PhD positions are available from June 1, 2015. An additional five positions will become available in January 2016. Applicants who are admitted to the IMPRS-SDR will pursue their research within the framework of the Research School. The IMPRS-SDR will offer funding in the form of scholarships and research contracts to its new members.

The deadline for applications is **April 1, 2015.**

To view the complete call for applications, please visit www.mpi.lu/imprs-sdr/. To view the official poster click here.

State Attribution, Extraterritorial Torts and Sovereign Immunity: A New Case to be Heard at the U.S. Supreme Court

The United States Supreme Court just last week granted a Petition for a Writ of Certiorari in *OBB Personenverkehr AG v. Sachs*, a case that involves a key issue of state attribution under the U.S. Foreign Sovereign Immunities Act ("FSIA"). This is an issue that has not been addressed by the Supreme Court for over thirty years

The plaintiff in this case is a California resident who bought a Eurail pass from an online ticket seller based in Massachusetts. She suffered severe injuries while trying to board a train in Innsbruck, Austria. She sued OBB, an agency of the

Austrian government, for her injuries in U.S. federal court. The seller and OBB have no direct contractual relationship. OBB argues that United States courts lack jurisdiction because the acts of the U.S. based ticket seller cannot be imputed to OBB.

Over a strong dissent, an *en banc* panel of the Ninth Circuit Court of Appeals held that the Massachusetts-based Internet site that sold Sachs her train ticket was OBB's agent in the U.S., and therefore the railway had conducted commercial activity in the U.S. giving rise to jurisdiction. OBB said in its petition to the Supreme Court that the appeals court ignored the FSIA's definition of "agency" of a foreign state — creating a precedent "divorced from the statutory text" — and instead improperly relied on common law principles of agency. OBB has also argued that the Ninth Circuit was mistaken when it held that Sachs' claims were based upon the sale of the rail pass in the U.S., rather than OBB's alleged mistakes on the Austrian rail platform. The Solicitor General, on behalf of the United States, had urged the Court to deny certiorari in the case.

The Court will answer the following questions: (1) Whether, for purposes of determining when an entity is an "agent" of a "foreign state" under the first clause of the commercial activity exception of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(2), the express definition of "agency" in the FSIA, the factors set forth in First National City Bank v. Banco Para el Comercio Exterior de Cuba, or common law principles of agency, control; and (2) whether, under the first clause of the commercial activity exception of the FSIA, 28 U.S.C. § 1605(a)(2), a tort claim for personal injuries suffered in connection with travel outside of the United States is "based upon" the allegedly tortious conduct occurring outside of the United States or the preceding sale of the ticket in the United States for the travel entirely outside the United States.

A date for argument has not yet been set, but it will be in the 2014 Term. The briefs filed in this case can be found here.

INTEREULAWEAST – call for papers

INTEREULAWEAST, or Journal for International and European Law, Economics and Market Integrations, announced its call for papers. It is looking to publish papers in both the field of law and the field of economics, with an international focus. Topics of particular interest include:

1. legal and economic aspects of European Union and other market integrations, market freedoms and restrictions,
2. competition and intellectual property,
3. company law and corporate governance,
4. international trade and
5. international private and public law.

Additional information is available at the Journal web page.

La Ley Unión Europea, Nº 22 (January 2015)

Number 22 of the Spanish periodical La Ley-Unión Europea (January 2015) has just been released. You will find therein:

Under the heading *Doctrina*

An article by Prof. Jiménez Blanco (University of Oviedo), on "social tourism", entitled "Derecho de residencia en la Unión Europea y turismo social".

Abstract: The judgment of the ECJ of 11 November 2014 (Case C-333/13: Elisabeta Dano, Dano and Jobcentre Florin Leipzig) restates the problem of access to social benefits of the host State by EU citizens. However, the real problem lies

in the limited right of residence of European citizens when they are non-active EU citizens and manifestly lack of economic resources. In such cases, European citizenship, stated in the art. 20 TFEU, does not legitimize a residence in the host State based on «social tourism».

A paper by Dr. Muleiro Parada (University of Vigo), entitled “La cooperación reforzada en el impuesto sobre transacciones financieras”.

Abstract: Some countries of the European Union are willing to the implementation of a financial transaction tax since 2016. In order to achieve this goal, it´s necessary to use the enhanced cooperation mechanism regulated in the EU Treaties. The Commission have been formulated several proposals which will culminate in a fi nal one. It will be expected that the final proposal can be less ambitious. In this paper we analyzes these European proposals, the most problematic issues and the future of European regulation, on the basis of recent political agreements.

Under the heading *Tribuna*

A contribution by Dr. Oró Martínez (Max Planck Institute Luxembourg), entitled “Las reclamaciones por daños derivados de una infracción del Derecho de la competencia de la UE: primeras observaciones sobre la Directiva 2014/14/UE”, analizing Directive 2014/104/EU

Abstract: This comment makes some general remarks on the recent Directive 2014/104/EU, on actions for damages arising out of infringements of EU competition law. After presenting its background and the legal context of the Directive, we examine the scope of application of the Directive, the general design of these actions for damages, as well as the relationship between the Directive and the Commission Recommendation on collective redress mechanisms. The different procedural and substantive provisions of the text are examined, together with the rules on coordination with public enforcement and consensual dispute resolution. The comment concludes with some remarks on the scarce impact of cross-border situations in the content of the Directive.

A study on the 2005 Hague Convention by Prof. Arenas García (University Autónoma, Barcelona), under the title “La aprobación por la UE del Convenio de La Haya sobre acuerdos de elección de foro: un cruce de caminos”.

Abstract: The acceptance by the EU of the Hague Convention of 2005 on Choice of Court Agreements will allow the entry into force of the Convention since Mexico has already ratifi ed it. In this work we deal with the fundamental issues of the Convention and also with the particularities linked to the participation in the Convention of the EU and its Member States.

Two comments are included under the chapter *Sentencia seleccionada*.

The first one, "Trabajadores extranjeros en situación irregular e instituciones de garantía salarial", focus on the CJEU ruling on case C-311/13, *O. Tümer*. It's signed by Prof. Espiniella Menéndez (University of Oviedo).

Abstract: The Court of Justice rules that a national legislation as the Dutch legislation, which denies the insolvency benefit in favor of foreign employees in irregular situation, is contrary to the EU Law. The Judgment can be analyzed from the two legal rationales under the issue: the social policy and the immigration policy. This approach permits to conclude that the ruling is right, although some arguments are unconvincing.

The second one, under the headline "Ley aplicable a los contratos internacionales en defecto de elección: la interpretación del artículo 4 del Convenio de Roma y su proyección sobre el Reglamento Roma I" corresponds to the ruling on case C-305/13. The author is Dr. Unai Belintxon Martín (Univesity of the País Vasco).

Abstract: The aim of this study is to analyze and evaluate the European Court of Justice Judgement in the Haeger & Schmidt case, on the interpretation of Article 4 of the Rome Convention of 1980 on the Law Applicable to Contractual Obligations. In particular, the research will focus on analyzing the interpretive contribution of the Court in this new decision and its repercussion on articles 4 and 5 of the Rome I Regulation.

The current issue includes a section on case law (*Jurisprudencia*) and another one on updated EU news and events (*Actualidad de la Unión Europea*) as well.

Call for papers: Extraterritorial application of EU Law

Erasmus+ Program/Jean Monnet Project:
EU Law between Universalism and Fragmentation: Exploring the Challenge of Promoting EU Values beyond its Border

Call for papers (Young researchers)

THE EXTRATERRITORIAL APPLICATION OF EU LAW

Vigo (Spain)

The Spanish Association of Professors of International Law and International Relations (AEPDIRI) is the beneficiary of a Jean Monnet project on the pressures experienced by EU law in a globalized world that become apparent in the conflicting trends towards universalism on the one hand and states' legal fragmentation on the other hand. Overall objective of the project is promoting research on EU policies from the viewpoint of the Association's research areas – public international law, private international law and international relations – with a view to enhancing EU values beyond its borders.

It is in the framework of this Jean Monnet project that AEPDIRI will organize an international Conference in Vigo (Spain) on **June 18/19, 2015** entitled ***The Extraterritorial Application of EU Law***. In order to draw the attention of young researchers to this field of study, the AEPDIRI is pleased to make this call for papers.

While under public international law states cannot exercise their sovereign rights in the territory of another state without the concurrence of its consent, there are some areas of law in which this principle may experience exceptions or modulations. These are areas that show the complexity of this issue both in theory

and in practice. Among the possible topics of research the following can be mentioned:

1. *Law of Treaties*: Despite the general principle of treaties' being binding on the territory of each contracting party, there are cases where these instruments may have application beyond that scope for various reasons such as containing provisions concerning third States, regulating an area beyond national jurisdiction, or because it is a human rights convention.

2. *Compulsory enforcement of International law*: In this framework it could fit both claw-back clauses adopted by other countries and sanctions.

3. *Competition law and its extraterritorial effect*: Reference could be made here to tensions with other jurisdictions such as those arising from extraterritorial application of US antitrust law and the corresponding European reactions, the conduct and effects tests, and so on.

4. *Data protection and intellectual property law*: Possible topics could be protection of intellectual property on the Internet, telecommunications and broadcasting, Internet communications and sale of private data, the role of state intelligence agencies in monitoring the activities of citizens, duties of carriers with particular reference to the agreement between the United States and the European Union on data registries on names of passengers (PNR), and so on.

5. *Environmental Law*: marine and air pollution caused by ships, protection of endangered species, illegal fishing, trading systems of emission rights, protecting the environment and tort law.

All those interested in presenting a paper on any of the items listed or other related issue should send their proposal by April 1, 2015. The proposal must contain, in addition to a title, a 5-line abstract and a 1-2 pages excerpt in word format. Proposals dealing with public international law and international relations issues should be sent to Professor Montserrat Abad Castelos (mabad@der-pu.uc3m.es) and those on private international law issues to Professor Laura Carballo Piñeiro (laura.carballo@usc.es). A CV and a letter of recommendation must be attached as well.

Presentations can be made in Spanish or English and the papers will be published in either language in a book. The publishing house will be announced in due time.

The organization will be responsible for the costs of selected candidates' participation in the Conference, always within the limits of the allocated budget.