

# Now hiring: Assistant in Private International Law in Freiburg (Germany)

At the Institute for Foreign and Private International Law of the **Albert-Ludwigs-University Freiburg im Breisgau** (Germany), a **vacancy** has to be filled at the chair for **private law, private international law and comparative law** (**chairholder: Prof. Dr. Jan von Hein**), from 1 April, 2016 with

**a legal research assistant (salary scale E 13 TV-L, personnel quota 50%)  
limited for 2 years.**

The assistant is supposed to support the organizational and educational work of the chairholder, to participate in research projects of the chair as well as to teach his or her own courses (students' exercise). Applicants are offered the opportunity to obtain a doctorate.

Applicants are expected to be interested in the chair's main areas of research. They should possess an above-average German First State Examination (at least "vollbefriedigend") or a foreign equivalent degree and be fluent in German. In addition, a thorough knowledge of German civil law as well as conflict of laws, comparative law and/or international procedural law is a necessity. Severely handicapped persons will be preferred provided that their qualification is equal.

Please send your application (curriculum vitae, certificates and, if available, further proofs of talent) to Prof. Dr. Jan von Hein, Institut für ausländisches und internationales Privatrecht, Abt. III, Peterhof, Niemensstr. 10, D-79098 Freiburg (Germany) no later than 1 March, 2016.

As the application documents will not be returned, applicants are kindly requested to submit only unauthenticated copies. Alternatively, the documents may be sent as a pdf-file via e-mail to [ipr3@jura.uni-freiburg.de](mailto:ipr3@jura.uni-freiburg.de).

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As the application documents will not be returned, applicants are kindly requested to submit only unauthenticated copies. Alternatively, the documents may be sent as a pdf-file via e-mail to [ipr3@jura.uni-freiburg.de](mailto:ipr3@jura.uni-freiburg.de).

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# Out now: Commentary on the EU Succession Regulation

Ulf Bergquist, Domenico Damascelli, Richard Frimston, Paul Lagarde, Felix Odersky and Barbara Reinhartz have written an article-by-article commentary on the new EU Succession Regulation that recently entered into force. Authored by members of the Experts Group that drafted the Commission's Proposal for the Regulation the commentary discusses all crucial points of the new legal framework including:

- law applicable to a succession,
- election as to the applicable law,
- recognition and enforcement,
- authentic instruments,
- the European Certificate of Succession.

The commentary is available in English, French and German. More information is available [here](#) and [here](#).

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## European Succession Regulation in Force

On 17 August 2015 the European Succession Regulation has entered into force. It provides for uniform rules on the applicable law as well as recognition and enforcement of decisions in matters of succession. It also creates a European Certificate of Succession that enables person to prove his or her status and rights as heir or his or her powers as administrator of the estate or executor of the will without further formalities.

More information is available on the European Commission's website.

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# Issue            2015.2            Nederlands Internationaal Privaatrecht

The second issue of 2015 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht*, includes the following contributions:

- Xandra Kramer, 'Editorial: Empirical legal studies in private international law' , p. 195-196.
- S.H. Barten and B.J. van het Kaar, "Grensverleggend' derdenbeslag: over de reikwijdte van een Nederlands beslagverlof onder de Herschikking Brussel I', p. 197-204.

*This article deals with the new opportunities that the revised Brussels Regulation ('Recast') may offer to claimants who wish to obtain a Dutch pre-judgment garnishee order against garnishees located in other Member States. Under the former Brussels Regulation, the recognition and enforcement of 'ex parte' provisional measures in another Member State than that of the courts ordering the measures fell outside the scope of Chapter III Brussels Regulation in accordance with the case law from the European Court of Justice (Denilauler/Couchet). The Recast, in contrast, allows the enforcement of 'ex parte' garnishee orders in other Member States, provided the court issuing the order has jurisdiction as to the subject-matter of the proceedings. However, the enforcement of a Dutch ex parte garnishee order in other Member States may give rise to practical difficulties. The Recast requires the ex parte judgment to be served upon the debtor before the enforcement (garnishment) takes place. It may therefore prove to be difficult for claimants to ensure that garnishment will take place only shortly after the garnishee order was served on the debtor in order to prevent the dispersal of funds by the debtor. It is argued that these problems may be solved by good coordination between the competent enforcement authorities of the Member States. However, in all likelihood, successful coordination by the creditor is only possible in the event of a limited number of garnishees involved.*

*In light of this abolition of impediments at the European level, the article considers whether Dutch national procedural law may restrict courts in the Netherlands from issuing extraterritorial garnishee orders against garnishees who do not have their domicile in the Netherlands. Based on the current guidelines and case law it is to be expected that the Dutch courts will exercise restraint when dealing with a request for an extraterritorial order. It is argued that, although Dutch law does require a certain connection with Dutch territory, the said connection may also be established if the creditor can make a reasonable case that one of the anticipated garnishees has its domicile within the Netherlands and that there are clear indications that the funds will be dispersed. This could, for instance, succeed if the debtor and garnishee are in a close relationship to one another (e.g. a parent company and its subsidiary). It remains to be seen whether the Dutch courts are willing to issue orders against garnishees outside the Netherlands. If they are, this jurisdiction may soon offer a solution for creditors of Dutch parent companies having claims against their subsidiaries in other Member States. In the Netherlands it is relatively easy to obtain a prejudgment garnishee order. Under the Recast, even EU jurisdictions not familiar with a pre-judgment garnishee order will have to recognize and enforce a Dutch order.*

- Miriam Kullmann, 'Tijdelijke grensoverschrijdende detachering en gewoonlijk werkland: over de verhouding tussen de Rome I-Verordening en de Detacheringsrichtlijn en de rol van de Handhavingsrichtlijn', p. 205-216.

*The cross-border posting of workers involves the applicability of two EU laws: the Posting of Workers Directive 96/71/EC and the Rome I Regulation. In neither of these legal regulations are the terms 'temporariness' and the 'country in/from which the employee habitually carries out his work' concretised. This contribution aims at clarifying the meaning of these two terms in both legal regulations in the context of the temporary cross-border posting of workers. Moreover, it assesses the role of the Enforcement Directive, adopted in May 2014, supplementing the Posting of Workers Directive. The new Directive introduces a provision containing criteria by which to identify a 'genuine posting'. In practice it seemed that often no country where the work was being habitually carried out could be identified. The question then was whether the Posting of Workers Directive would be applicable and what role*

*Articles 8 and 9 Rome I Regulation would play in identifying the applicable law. In addition, the unclear relationship between the Posting of Workers Directive and the Rome I Regulation is analysed.*

- Steven Stuij, 'De wetsontduiking in het ipr: de ervaring van een leerstuk?', p. 217-225.

*Recital 26 of the preamble to the EU Regulation (650/2012) on Succession and Wills allows national authorities to suppress evasions of the law by using the doctrine of fraude à la loi. The referral to this doctrine is an interesting development, since the Regulation is the first in a series of EU Regulations in the field of private international law to expressly mention fraude à la loi as a potential corrective mechanism. Besides, this doctrine is rather underdeveloped in Dutch private international law. It will therefore be interesting to analyse this doctrine and to assess its added value in contemporary (EU) private international law. First, several aspects of fraude à la loi will be scrutinised, as well as its acceptance in both Dutch and European private international law. Furthermore, the aforementioned point 26 of the preamble and its rationale will be focused upon. Finally, the relevance of fraude à la loi for contemporary private international law will be observed, with a special emphasis on the Dutch situation.*

- E.C.C. Punselie, 'Verordening wederzijdse erkenning van Beschermingsmaatregelen in burgerlijke zaken', p. 226-228 (overview article)

*In this article an overview is given of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on the mutual recognition of protection measures in civil matters and the way this regulation is implemented in the Netherlands. The Regulation provides for a mechanism by which a person at risk of violence can also rely on a protection measure issued against the person causing this risk in his or her home country – a member state of the European Union – when he or she travels or moves to another member state. For that purpose the protected person can achieve a certificate in the issuing member state with which the protection measure is recognised in another member state without any special procedure being required.*

- Pauline Kruiniger, 'Book presentation: Pauline Kruiniger, Islamic Divorces in Europe: Bridging the Gap between European and Islamic Legal Orders, Eleven International Publishing, The Hague 2015', p. 229-230.

*A Dutch-Moroccan woman has been repudiated in Morocco. She remarries a Moroccan man. Then she moves from the Netherlands to Belgium. Although the preceding repudiation had been recognized in the Netherlands, the Belgian authorities refuse to recognize that repudiation. Consequently she is still seen as being married to her former husband in Belgium and cannot bring her latest husband from Morocco to Belgium. There is discontinuity concerning her personal status and thus a limping legal relationship emerges.*

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# Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)

## 3/2015: Abstracts

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

### *Jochen Hoffmann*, **“Button-click” Confirmation and Cross Border Contract Conclusion**

Section 312j paragraph 3 and 4 of the German Civil Code (BGB) addresses and secures effective consumer protection with regard to the issue of internet-related “cost traps”. Cost traps are websites that are designed to lead to the conclusion of contracts without the consumer’s awareness of an obligation to pay. At the same time this regulation transposes Art. 8 par. 3 of the Consumer Rights Directive into German law. In effect, this provision ensures that an e-commerce contract between a trader and a consumer cannot be concluded if the trader does not ensure that the consumer is made aware, prior to placing his order, that he is assuming an obligation to pay, in connection with internet contracts specifically by using an unambiguously labelled button. Since this regulation is applicable to

all e-commerce contracts it not only applies to “cost traps”, but also to legitimate internet trading. This article addresses the problems arising from the new provision for cross border contracts in the light of the applicable conflict of laws rules.

*Jan von Hein*, **Authorization Requirements for a Guardian’s Transaction Concerning a Vulnerable Adult’s Immovable Property - Jurisdiction and Conflict of Laws**

The Court of Justice excluded, in Case C-386/12 – Siegfried Janós Schneider, the applicability of the Brussels I-Regulation to a court’s authorization that an adult’s guardian required for a transaction concerning immovable property belonging to the adult (Article 1(2)(a) of the Regulation). In his case note, von Hein agrees with the Court’s ruling because the authorization requirement was the main object of the proceedings. If the necessity to obtain an authorization arises merely as an incidental question in litigation related to property, however, the Regulation, including the forum rei sitae, remains applicable. Moreover, the author analyses which court is competent to rule on granting an authorization to an adult’s guardian for the sale of immovable property and which law is applicable to this question. He looks at this problem both from the point of view of autonomous German PIL and of the Hague Convention on the International Protection of Adults. The article shows that autonomous PIL and the Hague conflicts rules differ considerably and that in the Hague Convention’s framework, authorization requirements are treated in a very differentiated manner.

*Astrid Stadler*, **A uniform concept of consumer contracts in European civil law and civil procedure law? - About the limits of a comprehensive approach**

In “Vapenik”, the ECJ had to decide whether Article 6 para 1 lit. d of Regulation 805/2004 prevents the confirmation of a judgment by default as a European enforcement order if the judgment was based on a c2c-relation and the plaintiff had not sued the defendant in the Member State where he was domiciled but in the courts where the contractual obligation had to be fulfilled. The question raised was whether Article 6 para 1 lit. d applied only to b2c situations or also to cases in which both parties were consumers. The ECJ denied the application of the provision based on the reasoning that the defendant was not a “weaker party”. This interpretation of the EEO Regulation was deduced from the rationale of “consumer contracts” in the Brussels I Regulation, the Rom I Regulation and



Directive 93/13. The ECJ, however, provided only a very cursory comparison of the underlying policies of consumer protection. Particularly the idea of granting consumers a preferential treatment with respect to international jurisdiction differs from the purpose of consumer protection in substantive law and conflict of laws. With respect to Regulation 805/2004 the ECJ's decision does not adequately balance the interests of the two consumers involved and unnecessarily privileges the plaintiff. It increases the defendant's risk to suffer from a deficient cross-border service of documents without the chance of objecting to the enforcement of the judgment by raising grounds for non-recognition.

*Jörg Pirrung*, **Brussels IIbis Regulation and Child Abduction: Stones Instead of Bread ? - Urgent preliminary ruling procedure regarding the habitual residence of a child aged between four and six years**

After twelve mostly satisfactory decisions on the interpretation of the Brussels IIbis Regulation with respect to parental responsibility cases, the ECJ has given only conditional answers to the questions referred to it by the Irish Supreme Court. In this case it was not adequate to use the urgent preliminary ruling procedure instead of an expedited procedure. In substance, the Court interprets Articles 2 (11), 11 of the Regulation as meaning that, where a child was removed in accordance with a judgment later overturned by an appeal judgment fixing the child's residence with the parent living in the Member State of origin, the failure to return the child to that State following the latter judgment is wrongful, if it is held that the child was still habitually resident in that State immediately before the retention, taking into account the (subsequent) appeal and that the judgment authorising the removal was (only) provisionally enforceable. If it is held, conversely, that the child was at that time no longer habitually resident in the Member State of origin, a decision dismissing the application for return based on Article 11 is without prejudice to the application of the rules established in Chapter III of the Regulation relating to the recognition and enforcement of judgments given in a Member State. On the whole, the opinion of Advocate General Szpunar stating expressly that the fact that proceedings relating to the child's custody were still pending in the State of origin is not decisive as habitual residence is a factual concept and not depending on whether or not there are legal proceedings, seems more convincing than the judgment itself.

*Marianne Andrae*, **First decisions of the ECJ to the Interpretation of Article 12(3) Regulation (EC) No 2201/2003, Comment to Cases C 436/13 and C**

Article 12 (3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 applies to separated matters of parental responsibility. The ECJ classifies this rule as a prorogation of jurisdiction for the holders of parental responsibility. This paper submits several arguments against this judgment. The jurisdiction of the courts is always justified for the particular application and it does not continue after pending proceedings have been brought to a close. This acceptance must be obtained at the time the matter is seized to the courts including the specific issues of the proceeding. An agreement, after the matter was brought to court, does not justify jurisdiction. The tight time requirements must be transferred to the jurisdiction under Article 8 (1) of that regulation. An interpretation whereupon the requirements of the jurisdiction can be fulfilled after pendency and which orientates to the best interests of the child remains for an amendment of the regulation.

*Tobias Helms, **The independent contestability of interlocutory judgments on international jurisdiction in family law cases***

The Stuttgart Higher Regional Court correctly held in its judgment of May 6, 2014 that, contrary to the wording of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG), German courts can pass interlocutory judgments on questions of their international jurisdiction in all family law cases. This conclusion can rightly be reached – in light of the statutory history of the FamFG – by way of an analogous application of Sec. 280 of the Code of Civil Procedure (ZPO).

*Rainer Hüßtege, **Grenzüberschreitende Wohngeldzahlungen***

*Wulf-Henning Roth, **Applicable contract law in German-Danish trade***

Given the opt-out of Denmark from the Area of Freedom, Security and Justice, Danish courts do not apply the conflict rules of the Rome I-Regulation, but still the EC Convention on the Law Applicable to Contractual Obligations of 1980 (Rome Convention). As Germany has not yet given notice of a termination of the Rome Convention, it appears to be not beyond doubt whether in settings relating to Denmark German courts have to apply the conflict rules of the Rome I-Regulation, given its call for universal application (Article 2) and in the light of Article 24 (1), whereby the Rome Convention shall (“in the Member States”) be deemed replaced by the Rome I-Regulation. In contrast, the OLG Koblenz, pointing to Article 1 (4), holds Article 24 (1) to be inapplicable in the specific case

as Denmark may not be regarded as a “Member State”. The Appellate Court applies the Rome Convention despite the fact that the German legislator has explicitly excluded the direct applicability of the Rome Convention.

*Malte Kramme*, **Conflict law aspects of the successor’s responsibility for debts of the acquired business, before and after the Rome-Regulations**

The German Federal Court of Justice deals, in its decision of 23 October 2013, with several current questions in the field of private international law. Firstly, the court adopts a position on the question of which conflict rule applies to the liability claim against the successor to a mercantile business carrying on the business under an identical trade-name (section 25 para. 1 sentence 1 German Commercial Code). Furthermore, the court decided which law applies to forfeit and limitation of claims underlying the United Nations Convention on Contracts for the International Sale of Goods. As the court applied the old legal regime prior to the entry into force of the Rome-Regulations, the article focuses on the question of how the case has to be solved under the new legal regime. This analysis shows that the Regulations “Rome I” and “Rome II” do not cover the law of obligations in an exhaustive manner. Remaining gaps need to be filled applying nonunified German private international law.

*Dieter Henrich*, **Children of Surrogate Mothers: Whose Children?**

The legal parentage of children, born by surrogate mothers and handed over to the intended parents, is a highly debated question. Strictly forbidden in Germany, surrogacy is allowed in other countries. In a case of children born by a surrogate mother in California the German intended fathers (a same sex couple) applied for recognition of the decision of the California court, which established a parent-child relationship between the child and the couple. While the lower courts in Germany denied the application because of incompatibility with German public policy (cf KG IPRax 2014, 72) the Bundesgerichtshof (the Federal Court of Justice) decided in favour of the applicants, but restrained explicitly the recognition on cases of foreign court decisions and to cases, where at least one of the intended parents is the biological parent of the child. So the recognition of foreign birth certificates (e.g. from the Ukraine) is still an open question as well as the recognition of parentage decisions, if neither of the intended parents is a biological parent.

*Susanne Lilian Gössl*, **Constitutional Protection of ‘Limping’ Marriages and the ‘Principle of Approximation’**

The Court decides how to treat a “limping” marriage which is not valid under German law but nevertheless falls in the scope of and is therefore protected by the concept of “marriage” of the German Constitution (Art. 6 para. 1 Basic Law). The article examines how the German status registration law over the last four decades has subsequently been adapted to the needs of cross-border status questions.

*Susanne Lilian Gössl*, **Adaptation of Status Registration Rules in Cases of ‚Limping‘ Status**

The subject of this article is how to handle the birth registration of a child born by a surrogate mother according to German and Swiss law. Both legal systems are absolutely opposed to surrogacy but also under the obligation to protect the child’s right to know his/her decent. The Swiss Court found a possibility to resolve the resulting legal tension. The author shows that the court’s resolution, an adaptation of the national civil status registry law, is a mechanism which has already been frequently used by German courts in other situations of “limping” status. She proposes to extend that existing jurisprudence to cases of cross-border surrogacy.

*Alexander R. Markus*, **Jurisdiction in Matters Relating to a Contract Under the Brussels/Lugano Regime: Agreements on the Place of Performance of the Obligation in Question and the Principle of Centralisation of Jurisdiction**

According to the Swiss Federal Supreme Court, parties can by agreement only specify the place of performance of the characteristic obligation under article 5(1)(b) of the 2007 Lugano Convention; contractual specifications of the place of performance of non-characteristic obligations are irrelevant in terms of jurisdiction.

*Jörn Griebel*, **Investment Arbitration Awards in Setting Aside Proceedings in the US - Questions Regarding the Review of Local Remedies Clauses Within Investment Treaties**

National setting aside proceedings are more and more often concerned with investment arbitration awards. This is due to a constant rise of investment arbitration proceedings. Although two thirds of all investment disputes are adjudicated according to the ICSID rules, which provide for a special review mechanism, the remaining awards may be subject to review before national courts. The US Supreme Court decision had to decide on the degree of review in a

dispute concerning local remedies clauses within an investment treaty and the possible impact of such clauses on the consent to arbitrate. The Court held that it had no competence to review the award in respect of such clauses.

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## Fourth Issue of 2014's *Rivista di diritto internazionale privato e processuale*

*(I am grateful to Prof. Francesca Villata - University of Milan - for the following presentation of the latest issue of the RDIPP)*

✘ The fourth issue of 2014 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features two articles and five comments.

*Francesco Salerno*, Professor at the University of Ferrara, examines fundamental rights in a private international law – and namely a public policy – perspective in **“I diritti fondamentali della persona straniera nel diritto internazionale privato: una proposta metodologica”** (Fundamental Rights of the Foreigner in Private International Law: A Methodological Proposition; in Italian).

Namely focusing on the role of public policy, this paper examines how personality rights of foreign individuals are ensured under the Italian private international law system. While personality rights are meant to reflect the identity of an individual at a universal level, private international law is aimed at ensuring the continuity of an individual's rights and status across borders. Art. 24 of the Italian Statute on Private International Law (Law No 218/1995) underlies this concern in that it provides, as regards personality rights, for the application of the law of nationality of the individual in question. However, as a result of the fact that personality rights are closely intertwined with human rights, it becomes inevitable to explore the link between the somehow neutral technique traditionally employed by conflict-of-law provisions and the fundamental values

shared within the international community, in particular those values safeguarded by international obligations regarding the protection of human rights. As this paper portrays, the tension between personality rights under an individual's national law and fundamental rights is crucial to Art. 24 of the Italian Statute, as shown, in particular, by the process with which rights are characterized as falling within the scope of the provision: where a given right is perceived as fundamental by the *lex fori*, that right should enjoy protection in the forum regardless of its status according to the law of nationality of the concerned individual (proceedings on sex reassignment provide some significant examples in this respect). This approach embodies a "positive" expression of the notion of public policy: cross-border uniformity is foregone, here, as a means to ensure the primacy of the fundamental policies of the forum. However, as the paper illustrates, the role of public policy in ensuring fundamental rights goes even further: in fact, public policy may also serve as a guide whenever the need arises to adapt the applicable foreign law, should such law fail to provide solutions that are equivalent to those enshrined in the *lex fori*.

*Fabrizio Vismara*, Associate Professor at the University of Insubria, discusses agreements as to successions and family pacts in **"Patti successori nel regolamento (UE) n. 650/2012 e patti di famiglia: un'interferenza possibile?"** (Agreements as to Succession in Regulation (EU) No 650/2012 and Family Pacts: A Possible Interference?; in Italian).

Law No 55 of 14 February 2006 enacted the regime on family pacts and amended Art 458 of the Italian Civil Code repealing the prohibition against agreements as to succession. This article analyzes the relationship between family agreements and agreements as to succession with reference to the regime enacted by Regulation (EU) No 650/2012 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. After examining the different solutions with respect to the characterization of family agreements (donation, division, contract), this article highlights how family agreements may be referred to the application of Regulation (EU) No 650/2012 as a form of waiver agreement as to succession. In this respect, family agreements may be governed by Regulation (EU) No 650/2012 and, in particular, by the rules on the determination of the applicable law provided therein.

In addition to the foregoing, the following comments are also featured:

*Michele Nino*, Researcher at the University of Salerno, examines State interests in labor disputes in “**State Immunity from Civil Jurisdiction in Labor Disputes: Evolution in International and National Law and Practice**” (in English).

This article examines the evolution of the international rule on State immunity from civil jurisdiction in labor disputes. After having shed light on the notion and content of the international rule at issue, this article examines the relevant international legal instruments (such as the 1972 European Convention on State Immunity and the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property), the national practice of civil law and common law States, as well as the case law of the European Court of Human Rights and of the European Court of Justice. In light of this analysis, this papers illustrates that, although an important trend aimed at promoting in labor disputes stable criteria of jurisdiction of the State of the forum (such as the nationality or the residence of the worker and the place of the execution of the employment relationship), the criterion based on the distinction between *acta jure imperii* and *acta jure gestionis* continues to be applied rather permanently in such disputes. As a result, in the conclusions, solutions are put forth so that the application of such criterion be subject to revision, at national and international levels, and that, as a consequence, an effective protection of workers be guaranteed in labor disputes against the need to safeguard State interests.

*Giulia Vallar*, Fellow at the University of Milan, addresses the topic of intra-EU investment arbitration in “**L’arbitrabilità delle controversie tra un investitore di uno Stato membro ed un altro Stato membro. Alcune considerazioni a margine del caso *Eureko/Achmea v. The Slovak Republic***” (Arbitrability of Disputes between an Investor from a Member State and another Member State. Some Remarks on *Eureko/Achmea v. The Slovak Republic*; in Italian).

The present paper deals with one of the issues that has recently been considered within the *Eureko/Achmea v. The Slovak Republic* case, namely the arbitrability of the so called intra-EU BITs disputes. In essence, it focuses on whether the investor of an EU member state can rely on the compromissory clause contained in a BIT that its country of origin had signed with another country that, in turn, at a later time, became an EU member State. To such a question arbitral tribunals

have answered in the positive, while the EU in the negative, without however adopting a normative act in this sense. Throughout the paper, an analysis is conducted of those aspects of international law and of EU law that come into play in relation to the matter at hand. It is submitted that, in the absence of a definite/hard law solution, the way out should consist, for the time being, in applying soft law principles and, in particular, that of comity; nevertheless, the EUCJ and the arbitral tribunals do not appear to be very much keen to act in this sense. EU member states, on their part, are more and more frequently opting for the termination of the relevant BITs, allegedly on the basis of a law and economics analysis. This attitude, however, might produce negative effects on the economy of these states, since investors, seeking the protection of a BIT, could be encouraged to move their seats in third countries.

*Giovanna Adinolfi*, Associate Professor at the University of Milan, tackles the issue of financial instruments and State immunity from adjudication in **“Sovereign Wealth Funds and State Immunity: Overcoming the Contradiction”** (in English).

The increasing number of sovereign wealth funds (SWFs) and the growth in the value of their assets are among the main current trends in the global financial markets. The governments of recipient States have voiced their concerns, contending that SWFs are financial vehicles used by States to pursue general public aims but acting like private economic agents. The question this contribution tackles is whether SWFs, as “sovereign” investment vehicles, come within the scope of international and national rules on sovereign immunity. This topic will be analyzed from three perspectives. As a starting point, the definition of “foreign State” given by immunity legal regimes will be investigated in order to define in which circumstances SWFs meet it. Next, the issue of SWFs’ immunity from adjudication will be ascertained. In this regard, the main point is whether SWFs investments are to be understood as actions engaged in within the exercise of sovereign authority, or as mere commercial activities, over which immunity from judgment on the merits is removed. As it may not be excluded that courts render judgments against SWFs, the rules on immunity from pre-judgment and post-judgment measures of constraint are to be considered, so as to identify the property against which jurisdictional rulings may be enforced for the full satisfaction of the legitimate expectations of judgment creditors. The enquiry mainly focuses on the rules established under the UN and the Council of Europe



conventions; the content and practice under national regimes is also considered, mainly the US Foreign Sovereign Immunities Act and the UK State Immunity Act. The main result is that there is no univocal answer to the question whether rules on sovereign immunity are helpful in overcoming the contradiction between the different but complementary public and private natures of SWFs. The form through which funds have been established and the content of the specific legal regime on the basis of which courts have to judge in their regard are the fundamental variables, and their combination in each case may lead to different results in terms of immunity from both the adjudicative process and enforcement measures.

*Laura Carpaneto*, Researcher at the University of Genoa, examines the interface of the Brussels II-bis Regulation and the European Convention of Human Rights in **“In-Depth Consideration of Family Life v. Immediate Return of the Child in Abduction Proceedings within the EU”** (in English).

The paper focuses on the EU regime on child abduction provided by Regulation No 2201/2003 and, in particular, on its Art. 11(8) expressly providing for the replacement of a Hague non return order by a subsequent judgment (the so called “trumping order”) imposing the return of the child made by the courts of the State where the child was habitually resident prior to the wrongful removal or retention. Starting from the analysis of some recent decisions of the European Court of Human Rights, stating that some return orders held by domestic courts in applying the 1980 Hague Convention (*Neulinger and Shuruk v. Switzerland and X v. Latvia*) as well as the Brussels II-bis Regulation (*Sneerson and Campanella v. Italy*) were not in compliance with Art. 8 of ECHR, the paper is aimed at demonstrating that a too strict “Art. 8 ECHR’s test” is capable of undermining the functioning of the Brussels II-bis trumping order and that a specific human rights’ test for intra-EU child abduction should be carried out. In this light, the paper firstly highlights the added value of the Brussels II-bis regime on child abduction compared to the 1980 Hague Convention; it goes on to critically analyze the recent decisions of the European Court of Human Rights on the return orders in child abduction cases, and it finally proposes a possible human rights test capable of protecting the “effet utile” of the EU regime on child abduction.

*Matteo Gargantini*, Senior Research Fellow at the Max Planck Institute Luxembourg, examines and shares some considerations on the AG’s Opinion in

*Kolassa* in “**Jurisdictional Issues in the Circulation and Holding of (Intermediated) Securities: The Advocate General’s Opinion in *Kolassa v. Barclays*”** (in English).

This article addresses the Advocate General’s Opinion in *Kolassa v. Barclays* (released on September 3, 2014, in the case C-375/13) from the perspective of financial markets law. The case raises some issues on the establishment of jurisdiction in disputes concerning securities offerings. The article suggests that a restrictive interpretation should be given of the Opinion (as well as of the CJEU decision on the case, which substantially follows the Opinion). On the one hand, the interpretation affirmed by the Advocate general may in fact, if read extensively, rule out the possibility that investors enjoy the protective regime of Brussels I Regulation *vis-à-vis* the issuer if they purchase securities on the secondary market, as it denies the possibility of establishing jurisdiction on the basis of Articles 15 and 16 of the Brussels I Regulation where a consumer has purchased a security not from the issuer but from a third party that has in turn obtained it from the issuer. On the other hand, the Opinion may expose offering companies to the risk of being sued by professional investors in multiple jurisdictions on the basis of tortious liability, even in cases where a prospectus was not published and, therefore, such companies did not intend to conduct any activity in other countries, on the basis that no contractual relationship can be identified in *Kolassa* between the issuer of the certificate and the final investor. Tortious liability, which is admitted by the Opinion, may therefore sometimes be an imperfect substitute for contractual liability. Hence, the article proposes that the Advocate General’s (and the CJEU’s) reasoning should be narrowly interpreted so as to confine its purview to the issues raised by the holding of certificates through trusts and other similar devices. On the contrary, further reflections are needed before a conclusive position is taken on the effects of circulation of securities under the Brussels I Regulation.

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale. This issue is available for download on the publisher’s website.

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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 Pötter*)

## 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*)

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# Investor Protection and Issuer Confidence after Kolassa

*By Matteo Gargantini, Senior Research Fellow MPI Luxembourg*

The decision rendered by the ECJ in *Kolassa* (Case C-375/13) offers a good opportunity to assess the European rules on jurisdiction from the point of view of investor protection and issuer confidence. A first comment on *Kolassa* has already been published on this Blog by Professor Matthias Lehmann. In his post, Professor Lehmann mainly focuses on the application of Art. 5(3) Brussels I Regulation to prospectus liability and on the evidence a court needs to consider when the disputed facts are relevant both for establishing jurisdiction and for deciding on the merit (these topics are addressed respectively in the third and the fourth questions referred to the ECJ). Full reference can therefore be made to Professor Lehmann’s accurate analysis both for such points and for the

description of the relevant facts. This post will instead sketch some general remarks from the perspective of financial markets law (for a more detailed analysis based on the Opinion of the Advocate General in *Kolassa* see Gargantini, Jurisdictional Issues in the Circulation and Holding of (Intermediated) Securities: The Advocate General's Opinion in *Kolassa* V. Barclays, *Rivista di diritto internazionale privato e processuale* (2014), 1095).

To better understand the issues raised by *Kolassa*, it is worth considering in more detail the first two questions referred by the Austrian court, namely whether for the purpose of Art. 15 Brussels I Regulation Barclays, the issuing company, and Mr Kolassa, the final investor, are part of a contract, or whether for the purpose of Art. 5(1) Brussels I Regulation the relationship between them can at least be considered contractual. As opposed to the claim considered by the third question – which only refers to prospectus liability and to “breach of obligations to protect and advise” – the claims dealt with by the first two questions were also based on “the bonds terms and conditions”. Hence, it appears that Mr Kolassa was relying not only on prospectus liability, but also on a direct violation of the bond terms, that being the missing payments. Therefore, the clarifications provided by the ECJ on prospectus liability are not the full story. First, nothing prevents investors from filing claims exclusively – or, as Mr Kolassa did, also – on the basis of violation of the bond terms and conditions. Second, it might well be the case that a security offering is carried out with no prospectus being published at all, for example because one of the exemptions set forth by Art. 4 Directive 2003/71/EC (on the prospectus to be published when securities are offered to the public or admitted to trading) applies.

The first two questions referred to the ECJ raise difficult problems because, in *Kolassa*, not only are the securities bought on the secondary market, with no direct contact between issuer and investor, but they are also held by Mr Kolassa's bank (*direktanlage*) rather than by Mr Kolassa himself. In such a scheme, Mr Kolassa only has a claim against his bank and cannot be regarded as the holder of the securities. The distinction between the problems raised by security circulation, on the one hand, and security holding, on the other, is clearly drawn in the questions referred by the Austrian courts. Both the Opinion of the Advocate General and the ECJ decision deny that Art. 5(1) and Art. 15 apply, but they are unfortunately not as clear as the referring court in discerning the two aspects. Para. 26 of the decision seemingly links the absence of a contract to the fact that

Mr Kolassa is not the bearer of the bond. Hence, it could be inferred that the “chain of contracts through which certain rights and obligations of the professional [...] are transferred to the consumer” (para. 30) refers to the contracts that compose the holding chain of the securities. However, para. 35 is more elliptical and might also include security circulation when it refers to “an applicant who, as a consumer, has acquired a bearer bond from a third party professional, without a contract having been concluded between that consumer and the issuer of the bond”. Likewise, the applicability of Art. 5(1) is excluded on the basis that “a legal obligation freely consented to by Barclays Bank with respect to Mr Kolassa is lacking”, it being unclear whether this is linked to the fact that the bonds were purchased on the secondary market or to the fact that *direktanlage*, rather than Mr Kolassa, should be regarded as the bearer of the certificate (para. 40).

Whether the inapplicability of Arts. 5(1) and 15 Brussels I derives from the fact that the bonds are bought from previous purchasers rather than underwritten directly from the issuer or, instead, from the fact that Mr Kolassa is not the holder of the securities is however key to understanding the implications of the decision. If the first explanation prevailed, the consumer protection regime of Art. 15 would not easily apply in securities offerings whenever – as is often the case – a bank syndicate first underwrote the securities and then resold them to investors at large (so-called “firm commitment syndicate”). At the same time, ruling out a contractual obligation pursuant to Art. 5(1) on similar grounds would imply that issuers might be held liable for violation of the bonds’ terms and conditions in any jurisdiction where their investors suffered economic loss according to Art. 5(3). Such a system would exclude retail investor protection with no economic rationale and would paradoxically expose the offering companies to the risk of being sued by professional investors in jurisdictions where they published no prospectus and, consequently, addressed no investor.

Therefore, although the distinction between circulation and holding of securities may not be decisive in *Kolassa*, its implications remain whenever the investor/accountholder is the bearer of the relevant securities. Since *Kolassa* does not provide a conclusive answer to these questions, it might be appropriate to give a narrow reading to the decision, hence considering the intermediated and indirect holding of the securities through *direktanlage* as the reason why Arts. 5(1) and 15 do not apply.

To be sure, even a restrictive reading of *Kolassa*, although preferable, is no panacea. First, it would leave open the question whether the circulation of the securities might still prevent the identification of a contract or even a contractual obligation between issuers and investors pursuant to Arts. 15 and 5 respectively. This would seem to be the case for Art. 15, because ECJ case law usually requires a direct contact between the two parties (see Von Hein, *Verstärkung des Kapitalanlegerschutzes: Das Europäische Zivilprozessrecht auf dem Prüfstand*, in *Eur. Zeitschrift für Wirtschaftsrecht*, 2011, 370). A different result may perhaps be reached for Art. 5(1), considering that it might apply in the absence of a direct contact and that the ECJ has stated that conditions incorporated in a security may be transferred along with the security when this is handed over (see e.g. *Coreck*, Case C-387/98), which is exactly the purpose of incorporating a restitution obligation into a bond. Second, linking the applicability of Arts. 5(1) and 15 to the formal qualification of the investor as security holder might easily create a differential treatment of investors that are regarded as mere beneficial owners in countries such as the United Kingdom, where security holding is mainly based on trusts. In this context, the strict interpretation of Art. 15 and the *raison d'être* of the autonomous interpretation of jurisdictional rules come into conflict.

To what extent a different reading of the applicable rules could ensure a better regulatory framework remains to be seen. The Brussels I Regulation does not always seem to leave room for different interpretations, at least in the light of consolidated case law. Art. 15 and its traditional understanding is a clear example. What is sure, from the point of view of securities law, is that the drawbacks of the current system reduce both issuer confidence and investor protection.

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## **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 injunctive 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 injunctive 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, Avotiņš v. Latvia, rendered on 25.2.2014, where Regulation Brussels I was applied. Avotiņš 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.