Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (1/2013)

Recently, the January/February issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

- ***Heinz-Peter Mansel/Karsten Thorn/Rolf Wagner***: "European conflict of laws: Progressing process of codification– patchwork of uniform law"

The article gives an overview on the developments in Brussels in the judicial cooperation in civil and commercial matters from November 2011 until November 2012. 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 on a national level in Germany which are a consequence of the new European instruments. Furthermore, the article shows areas of law where the EU has made use of its external competence. The article discusses both important decisions and pending cases before the ECJ touching the subject matter of the article. In addition, the present article turns to the current projects of the Hague Conference as well.

- ***Stefan Leible/Doris Leitner***: "Conflict of laws in the European Directive 2008/122/EG"

The following essay is about the conflict of laws in the European Directive 2008/122/EG on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, being effective since 2/23/2008 and being transformed into German law since 1/17/2011, and its relevance for German law. After giving information about the regulation's history, scope and content, the authors make a detailed analysis on the directive's conflict of laws rule art. 12 par. 2 as well as its national transformation rule art. 46b EGBGB and demonstrate the differences to the former legal norms.

- ***Christoph Benicke***: "Haager Kinderschutzübereinkommen" – the

English abstract reads as follows:

The 1996 Hague Protection of Children Convention provides a modern legal instrument in the field of international child protection and overcomes the shortcomings of the 1961 Hague Protection of Minors Convention. International jurisdiction is primarily assigned to the authorities of the State of habitual residence of the child. In addition, a flexible consideration of the particularities of the case is made possible by the fact that the jurisdiction may be transferred to the authorities of a State with which the child has a close relationship e.g. based on nationality. The principle that the court applies its own law promotes rapid and effective procedures. Since the general jurisdiction lies with the authorities in the State of the habitual residence of the child, the law of the habitual residence of the child will be applied in most proceedings. This is consistent with the choice of law rule in Article 16, which establishes the applicable law outside the realm of protective measures. The Convention also includes a modern system for the recognition and enforcement of decisions from other Contracting States. The international jurisdiction of the authority which issued the decision can still be checked, but the recognizing State is bound in respect to the factual findings in the decision to be recognized. Once recognition and enforceability are certified, the foreign decision will be enforced under the same conditions as a national one. Difficult questions arise about the relationship between the Hague Child Protection Convention and the Brussels II regulation. Among Member States the Brussels II regulation displaces the Protection of Children Convention for the jurisdictional issues in most cases. The same is true for the recognition and enforcement of decisions from other Member States of the Brussels II regulation. On the other hand, the choice of law rules of the Protection of Children Convention apply in all procedures, even when the jurisdiction is based on the Brussels II regulation.

- ***Jan von Hein***: "Jurisdiction at the place of performance according to Art. 5 no. 1 Brussels I Regulation in the case of a gratuitous consultancy agreement"

The annotated judgment of the OLG Saarbrücken deals with the question whether a gratuitous consultancy agreement falls within the scope of Art. 5 no. 1 Brussels I Regulation. After establishing that the present decision concerns a contract and not a mere act of courtesy, it is discussed whether Art. 5 no. 1(b)

or Art. 5 no. 1(a) Brussels I Regulation is applicable to a gratuitous consultancy agreement. Subsequently, the reasons why the non-remuneration is the decisive factor for ruling out the application of Art. 5 no. 1(b) Brussels I Regulation are elaborated followed by some remarks concerning the determination of the place of performance of the obligation in question under Art. 5 no. 1(a) Brussels I Regulation. The possibility of establishing a concurring competence – a forum attractivitatis – of the court having special jurisdiction in contract for related tort claims e.g. resulting from product liability is analysed. The annotation concludes with final remarks on the revision of the Brussels I Regulation and the proposed changes concerning the jurisdiction at the place of performance.

- ***Markus Würdinger***: "Language and translation barriers in European service law – the tension between the granting of justice and the protection of defendants in the European area of justice"

The problem of languages implicates considerable obstacles in international legal relations. Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (European Regulation on the service of documents) provides in Article 8, in which cases the addressee may refuse to accept the document to be served. This right exists if the document is not written in, or accompanied by a translation into a language which the addressee understands (1. lit. a) or the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected (1. lit. b). The article analyses this statute on the basis of a judgment of the LG Bonn (District Court Bonn), formulates principles of interpretation and arrives at the conclusion that the language of correspondence has by right a great importance in commercial legal relations. Whoever engages here in a certain language and is able to communicate adequately in it, has in case of doubt not the right provided by Article 8 of the Regulation to refuse the acceptance of the document to be served.

- ***Christian Tietje***: "Investitionsschiedsgerichtsbarkeit im EU-Binnenmarkt" – the English abstract reads as follows:

More than 170 Bilateral Investment Treaties (BITs) exist between the EU Member States. In the last years several investment arbitrations were initiated by investors from EU Member States against other Member States. This has led to an intense legal and political discussion on intra-EU BITs with regard to their validity and enforceability as well as the effects of public international law on European Union Law in general. In this context, the EU Commission calls on the EU Member States to denounce the existing intra-EU BITs because of an alleged incompatibility with Union law. This contribution discusses and illustrates relevant legal issues of this debate based on a recent Decision of the Regional High Court of Frankfurt, Germany. The Court in its decision of 10 May 2012 intensively discussed the question of whether intra-EU-BITs are in violation of EU law and thus not applicable as a base for jurisdiction of an international tribunal. The Court convincingly rejects all arguments in this regard and declares intra-EU-BITs in full conformity with EU law.

- ***Johannes Weber***: "Actions against Company Directors from the Perspective of European Rules on Jurisdiction"

The interaction of European and International Company Law has until now been primarily viewed in the context of conflict of laws. The practice of national and European courts, however, indicates that issues of international jurisdiction are getting more and more important. Focusing on the Brussels I Regulation, this paper deals with jurisdiction on actions against company directors for breach of their duties. It argues that these actions fall within the scope of Art. 5 (1)(b) BR and that the courts both in the state of the company's statutory and administrative seat may claim competence.

- ***Bernd Reinmüller/Alexander Bücken:*** "The scope of an arbitration clause in the event of a "brutal termination of an existing business relationship" under French Law"

The contribution deals with a decision by the Cour de Cassation (1ère civ. of 8 July 2010 – Case no. 09-67.013) on the scope of an arbitration clause in respect of damage claims on grounds of a "brutal breach" of a trade relation- ship.

Art. L 442-6 I 5 of the French Commercial Code stipulates that persons engaged in a trade or business who "brutally" breach an established trade relationship

are obliged to compensate the ensuing damages. This provision serves for the upholding of law and order (ordre public) and as part of the French law of torts it is not subject to the disposition of the parties.

The Cour de cassation held that an action based on this legal norm can be covered by a contractual arbitration clause regardless of its tortious nature and its coercive character, because it has a sufficient contractual reference. This presupposes a sufficiently broad formulation of the arbitration clause.

- ***Wilfried Meyer-Laucke***: "Zur Frage der Anerkennung russischer Urteile auf dem Gebiet des Wirtschaftsrechts" – the English abstract reads as follows:

Up to now no Russian judgments have been admitted in the Republic of Germany and declared enforceable due to the rule that this can only be done in case reciprocity is ensured. The same rule is applied in the Russian Federation. It let into a dead end.

However, things have changed. Since 2006 Russian arbitrage-courts handling commercial matters have admitted foreign judgments to be enforced in Russia despite the lack of international agreements. Following this line the arbitrage-court of St. Petersburg has applied this practice to an order of the local court of Frankfurt a.M. by which a bankruptcy procedure has been opened, and has based its grounds on general rules in particular on Art. 244 of the Arbitrage Procedure Rules. These grounds are given in accordance with the jurisdiction of the High Arbitrage Court of Russia. Thus, it can be taken as granted for the German jurisdiction that reciprocity is ensured from now on as far as judgments of arbitrage-courts are concerned.

- ***Francis Limbach***: "About the End of the "Witholding Right" in French International Law of Succession"

The "withholding right" ("droit de prélèvement") has been a singular instrument in French international private law for nearly 200 years. In succession cases where foreign (i.e. non-French) law of succession applied and a French citizen was to inherit as a legal heir, the withholding right aimed to protect the latter from disadvantages related to applicable foreign provisions.

Thus, if it occurred that his share determined by foreign law was less than what he would have received under French law, his withholding right entitled him to seek adequate compensation by "withholding" assets of the estate located on French territory. Criticized for decades in scholarly literature as a "nationalist rule", the provision pertaining to the withholding right has eventually been declared unconstitutional by the French Constitutional Council on August 5th, 2011 on the grounds of un- equal treatment of French and foreign nationals. The present article aims to determine the impact of this decision on French international law of succession, especially on French-German cross-border cases.

- ***Erik Jayme/Carl Zimmer*** on the question whether there is a need for a Rome Regulation on the general part of the European PIL:"Brauchen wir eine Rom 0-Verordnung? – Überlegungen zu einem Allgemeinen Teil des Europäischen IPR"
- ***Erik Jayme*** on methodical questions of European PIL: "Systemfragen des Europäischen Kollisionsrechts"
- ***Jan Jakob Bornheim*** on the conference on the European law on the sale of goods held in Tübingen on 15./16.6.2012: "GPR-Tagung zum Gemeinsamen Europäischen Kaufrecht und Kollisionsrecht in Tübingen, 15./16.6.2012"

Reminder: Journal of Private International Law Conference 2013 (Madrid) Call for Papers

The organisers of the conference are delighted that many people have already submitted their abstracts for the next Journal of Private International Law

Conference in Madrid (announced here) but more abstracts are still very welcome. You are politely reminded that you have until the end of Friday 25 January 2013 to email your abstract if you would like to be considered as a speaker at the conference either at the plenary or the panel sessions.

Heidelberg-Vienna Report on the Application of the Insolvency Regulation

Today the EU-Commission published on its website the study on the application of the Insolvency Regulation in the 27 Member States (JUST/2011/JCIV/PR/0049/A4). This Report features the evaluation and the proposals for reforming the Insolvency Regulation which were presented by the EU-Commission in December 2012. It can be downloaded here.

The Report was elaborated and is presented by Prof. Burkhard Hess (Max Planck Institute for Procedural Law, Luxembourg), UnivProf. Paul Oberhammer (University of Vienna) and Prof. Thomas Pfeiffer (University of Heidelberg). The Report consists of several parts: It is based on 27 national reports drafted by a network of academics and practitioners on the basis of a questionnaire. The findings of the national reports were presented and discussed in a conference which took place in Heidelberg in July 2012. They are summarized in the synopsis annexed to the General Report which was elaborated by the Heidelberg team. . In addition, the Vienna Team comprehensively compiled the case-law available in pertinent databases. Overall, the General Report provides for an evaluation of the findings of the national reports and of several proposals for reforming the Regulation. These findings have been constantly discussed with the EU-Commission in the course of the last year. The Report and its Annexes (Annex I: National Reports in tabular form, Annex II: National Reports, Annex III: Compilation of Case-law) are also available here.

As the EU-Commission is envisaging further reforms in the area of insolvency, the network shall continue its cooperation in the next years – additional stakeholders are invited to join the discussion group. This continuing cooperation will be organized by the new Max Planck Institute for Procedural Law in Luxembourg. Further information will be available soon at the Institute's website.

Comparing Rome II

The Rome II Regulation returns to the spotlight in a seminar to be held at the British Institute of International and Comparative Law's London fortress on Thursday 31 January 2012 (5:30-7:30pm).

The seminar, entitled "Comparative Torts before the Courts: The Impact of Rome II", is part of the Herbert Smith Freehils Private International Law Seminar Series and comes at a time when the Regulation is under review by the European Commission. It will focus, in particular, on aspects relating to the application of foreign law rules under the Regulation.

The panel, chaired by Lady Justice Arden, will include Avvocato Marco Bona (Turin), Marie Louise Kinsler and Robert Weir QC (London) and Maître Carole Sportes (Paris) (as well as the author of this post).

Further details and online registration are available here.

Zhu on Harmonization of PIL in East Asia

Weidong Zhu, who is a professor of law at Xiangtan University, has posted A Plea for Unifying or Harmonizing Private International Law in East Asia: Experiences

from Europe, America and Africa on SSRN.

> *The unification and harmonization of laws in East Asia is widely discussed in recent years with the development of regional integration in this area. The author proposes that private international law in East Asia should first be unified and harmonized based on the experiences from Europe, America and Africa and taking into account the conflicts of private international law in the region. A unified and harmonized private international law will in turn help enhance the regional integration and create an internal market. Then the author discusses the possibility and approach of unifying and harmonizing private international law in East Asia.*

Brussels I Recast No 1215/2012 published in OJ

The Brussels I Regulation Recast has been published in the Official Journal, OJ 20 December 2012, L 351/1. The Brussels I Regulation Recast will apply from 10 January 2015 (see Article 81). The full name of this new born is: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

See also our previous post.

ECJ Rules on Deemed Service and

Mandatory Appointment of Representative

On December 19th, 2012, the Court of Justice of the European Union delivered its judgment in case C-325/11 *Alder v. Orlowska.*

The issue was whether national provisions providing that defendants residing abroad are obliged to appoint a local representative for service purposes, and that will be deemed to have been served if they fail to do so, comport with EU law.

At issue was Article Article 1135^5 of the Polish Code of Civil Procedure, which provides:

> *1. A party whose place of residence or habitual abode or registered office is outside the Republic of Poland and who has not appointed, for purposes of the conduct of proceedings, an authorised representative resident in the Republic of Poland must appoint a representative who is authorised to accept service of documents in the Republic of Poland.*
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> *2. If no representative authorised to accept service is appointed, court documents addressed to that party shall be placed in the case file and shall be deemed to have been effectively served. The party must be notified to that effect at the time of the first service. That party must also be informed of the possibility of submitting a response to the document initiating the proceedings and written statements of position, and must also be informed of those persons who can be appointed as an authorised representative.*

Following Advocate General Bot's Opinion, the Court ruled that such provisions were incompatible with Regulation No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

When the Regulation applies, service must be carried out by one of the means of transmission provided by the Regulation. Other means existing in national laws are precluded.

32 (…) as those means of transmission of the judicial documents were the only ones laid down in an exhaustive manner in the scheme established by that regulation, it is clear that it does not provide any place for, and therefore precludes, a procedure for notional service such as that in force in Poland by virtue of Article 1135[5] of the Code of Civil Procedure.

Furthermore, the Polish provision simply does not comport with fundamental rights:

40 (…) it is clear that a system for notional service, such as that laid down in Article 1135[5] of the Code of Civil Procedure, is incompatible with the objective of protecting the rights of the defence envisaged in Regulation No 1393/2007.

41 Indeed, as the Advocate General has noted in points 52 to 54 of his Opinion, that system deprives of all practical effect the right of the person to be served, whose place of residence or habitual abode is not in the Member State in which the proceedings take place, to benefit from actual and effective receipt of that document because it does not guarantee for that addressee, inter alia, either knowledge of the judicial act in sufficient time to prepare a defence or a translation of that document.

Final ruling:

Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State, in which the judicial proceedings are taking place.

Sterk on Personal Jurisdiction and Choice of Law

Stewart Sterk, who is a professor of law at Cardozo Law School, has posted Personal Jurisdiction and Choice of Law on SSRN.

> *A New Jersey resident, injured while working in his home state, seeks relief from the United Kingdom manufacturer of a shearing machine marketed at trade shows held at various American locations. What reason is there to prevent New Jersey from providing a forum for its injured resident? In J. McIntyre Machinery, Ltd. v. Nicastro, a plurality of the United States Supreme Court invoked both "individual liberty" and "sovereign authority" to justify its conclusion that New Jersey lacked personal jurisdiction over the British defendant. But the plurality's failure to identify the liberty and sovereignty interests at stake have left personal-jurisdiction jurisprudence even more conceptually muddled and practically confused than it was before the Court's most recent foray into the area.*
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> *When Pennoyer v. Neff controlled issues of personal jurisdiction, sovereignty's role was clear: a state could not exercise personal jurisdiction over a defendant unless the state had physical power over that defendant. Since the Court abandoned Pennoyer and replaced it with International Shoe's emphasis on "traditional notions of fair play and substantial justice," the Court has struggled to explain why state lines should be relevant at all in personal-jurisdiction cases. In World-Wide Volkswagen Corp. v. Woodson, the Court offered its best explanation to date, recognizing that "the sovereign power to try causes in their courts" was an essential attribute of state sovereignty, but emphasizing that "[t]he sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States." As abstract as it is, that explanation provides a touchstone for invocations of sovereignty in personal-jurisdiction cases: The inquiry must focus on the impact a forum state's exercise of jurisdiction will have on the sovereign interests of other states or countries, not on the connection between the defendant and the forum state. If the United Kingdom*

were prepared to require its corporations to submit to worldwide jurisdiction as the price for obtaining corporate status, there would be no sovereignty-based reason for the Supreme Court to limit New Jersey's power to assert jurisdiction over an entity incorporated in the United Kingdom.

Recognizing that personal jurisdiction's concern with sovereignty should focus on whether the forum state's assertion of jurisdiction impermissibly interferes with the interests of some other state also sheds light on the liberty interest emphasized in the J. McIntyre opinion. If limits on New Jersey's personal jurisdiction protect the United Kingdom's interest in regulating persons, entities, and activities within the United Kingdom's sphere of sovereign authority, the same limits also safeguard the liberty interests of persons and entities who act in accordance with the United Kingdom's regulatory scheme. That is, jurisdictional rules protect an entity against defending itself in a forum likely to ignore the legal norms and rules the entity might reasonably expect to govern its legal affairs.

These concerns about the sovereign interests of other jurisdictions and the expectations of parties who rely on particular rules of law dominate the discussion in a closely related doctrinal area: choice of law. Not surprisingly, choice of law is the "elephant in the room" in most personal-jurisdiction cases. The Supreme Court's explicit acknowledgment that choice of law plays a role in jurisdictional determinations has been grudging at best. But the Court's holdings (and the doctrinal rules it has developed) have — with narrow exceptions — been consistent with the premise that choice of law is a critical factor in jurisdictional determinations. The cases in which the Court has held that the forum lacked personal jurisdiction have almost uniformly been cases in which application of forum law posed an unjustified threat to the regulatory scheme of another jurisdiction and a concomitant danger to defendants who assumed that their actions would be governed by that regulatory scheme. Goodyear Dunlop Tires Operations, S.A. v. Brown, decided concurrently with J. McIntyre, fits that pattern; J. McIntyre does not.

Part I explores the reasons for imposing limits on personal jurisdiction and argues that both the sovereignty and liberty bases for those limits are rooted in choice-of-law concerns: balancing the forum state's interest against the power of the defendant's home state to regulate local activity, and the right of local actors to rely on their home state's regulatory scheme. When application of

forum law would not interfere with the power of the home state to regulate purely local activity and would not interfere with the reasonable reliance interests of the defendant, there is no persuasive reason to limit the forum's exercise of personal jurisdiction.

Part II explains how many of the principal features of existing personal-jurisdiction doctrine — including the decline of in rem jurisdiction, the narrow limits on general jurisdiction, and the "purposeful availment" standard for specific jurisdiction — are consistent with a primary focus on choice of law.

Part III then examines the implications of J. McIntyre for personal-jurisdiction jurisprudence. The plurality opinion — if it were ever to become law — would repudiate much of the jurisdictional learning of the past forty years and would jeopardize the ability of states to protect their citizens against defective products purchased through e-commerce. The concurring opinion, however, holds out hope that J. McIntyre will prove to be a momentary aberration, and that the Court will ultimately expand the scope of personal jurisdiction to reflect the diminished incidence and significance of truly local markets.

The paper is forthcoming in the *Iowa Law Review*.

ECJ Rules on European Order for Payment

On December 6th, 2012, the Court of Justice of the European Union delivered its first judgment on the European order for payment procedure in Case C-215/11, *Iwona Szyrocka v. SiGer Technologie GmbH.*

In 2011, Mrs Szyrocka, a Polish resident, applied to a Polish court for a European order for payment to be issued against SiGer Technologie Gmbh, a German based company. However, that application did not comply with certain formal requirements laid down by Polish law, in particular the requirement to specify the

value of the subject-matter of the dispute, expressed in Polish currency, the principal amount of the claim being stated in euros. Moreover, Mrs Szyrocka claimed interest from a specified date until the date of payment of the principal claim.

Specifying the value of the claim in Polish Zloty.

As a matter of principle, the Court rules that both the wording of the Regulation and its objectives require an interpretation to the effect that Article 7 of Regulation No 1896/2006 governs exhaustively the requirements to be met by an application for a European order for payment.

However, this is different when the Regulation specifically refers to national law.

> *With regard, in particular, to the question whether the national court may, in circumstances such as those in the main proceedings, request the claimant to complete the application for a European payment order by indicating the value of the subject?matter of the dispute expressed in Polish currency, in order to enable the fee for issuing the application to be calculated, it is permissible for that court to rely, for that purpose, on Article 25(2) of Regulation No 1896/2006, which provides that the amount of the court fees is to be fixed in accordance with national law.*

Interest up to the Date of Payment

Article 4 of Regulation No 1896/2006 provides that pecuniary claims the collection of which is sought under the European order for payment procedure must be for a specific amount and have fallen, whereas Article 7(2)(c) of the regulation provides that if interest on the claim is demanded, the application for a payment order must state the interest rate and the period of time for which that interest is demanded.

The Court rules that it follows from a combined reading of these two provisions that the requirements that the claim must be for a specific amount and have fallen due do not apply to interest, and that Article 7(2)(c) should not be interpreted to the effect that it is not possible to claim interest which has accrued up to the date of payment of the principal, as it might increase the duration and complexity of the European order for payment procedure and add to the costs of

such litigation, and eventually deter applicants from resorting to the European procedure.

Final ruling:

1. ***Article 7 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment.***

   Pursuant to Article 25 of that regulation and subject to the conditions laid down therein, the national court remains free to determine the amount of the court fees in accordance with rules laid down by domestic law, provided that those rules are no less favourable than those governing similar domestic actions and do not make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law.

2. ***Articles 4 and 7(2)(c) of Regulation No 1896/2006 must be interpreted as not precluding a claimant from demanding, in an application for a European order for payment, interest for the period from the date on which it falls due until the date of payment of the principal.***

3. ***Where the defendant is ordered to pay to the claimant the interest accrued up to the date of payment of the principal, the national court is free to determine the way in which the European order for payment form, set out in Annex V to Regulation No 1896/2006, is to be completed in practice, provided that the form thus completed enables the defendant, first, to be fully aware of the decision that he is required to pay the interest accrued up to the date of payment of the principal and, second, to identify clearly the rate of interest and the date from which that interest is claimed.***

Belgian Empirical Study on Cross Border Family Law

A book version of a PhD recently defended at the University of Ghent (Belgium) has just been published. The author, Ms Jinske Verhellen, has endeavored to examine how well the Code of Private International law, adopted in Belgium in 2004, has fared in practice. More precisely, the research sought to find out whether the objectives set out by the Belgian legislator when codifying its private international law, have been met in practice. The PhD research was supervised by Johan Erauw and Marie-Claire Foblets.

Although the PhD focuses on the practice in Belgium of cross-border family law, with scant attention to comparative law, the research carried out by Ms Verhellen is remarkable because she applied an empirical methodology : far from relying on the works of learned authors and scholars, Ms Verhellen has attempted to study the actual practice of cross-border family law in Belgium. In order to do so, she has relied mainly on a very impressive database of the KMI, a first and second line helpdesk providing advice to lawyers, courts, social workers and city authorities in the field of cross-border family law. This database bundles more than 3.000 files, going from very simple questions put to the helpdesk to more elaborate advice given by the lawyers working at the KMI. Ms Verhellen has also conducted semi-structured interviews with people in the field – mainly judges with a proven track record in cross-border family cases. Finally, she had access to a wealth of cases, many of which unpublished, which allowed her to get a very good grasp of how the rules are applied by courts and administrations alike.

The results of this research are very interesting. Ms Verhellen whose previous publications also touched upon cross-border family law, shows for example how little use has been made of the possibility offered by the Code to spouses who may select the applicable law in case of divorce. This does not bode well for the party autonomy under Rome III. Another finding is that courts and practitioners have

been struggling with name issues in mixed families. Although the Garcia Avello ruling should have made it easier for dual nationals to obtain the same name in the two countries they are nationals of, the research shows that children born in Belgium out of parents with different nationalities, are still frequently treated as if they were only Belgian nationals. This may explain why the Commission recently instituted infringement proceedings against Belgium.

Building upon these findings and many other, the book concludes with an impressive list of policy recommendations. Although its focus is rather narrow, as it almost exclusively deals with conflict of laws rules adopted by the Belgian legislator, this PhD could nonetheless be inspiring as it allows the reader to sense the added value of an empirical methodology for private international law research.