ERA Summer Courses: Cross-Border Insolvency Proceedings and Cross-Border Civil Litigation

ERA Summer course on cross-border insolvency proceedings

Trier, 11-13 June 2018

This intensive course on insolvency law will introduce lawyers to practical aspects of cross-border insolvency proceedings: different national insolvency laws, EU legislation and major CJEU case law will be presented.

The course will focus on the recast EU Regulation No 2015/848 on insolvency proceedings, including the following key topics:

- Centre of main interest (COMI) and forum shopping
- Coordination of proceedings
- Insolvency, cross-border security and rights in rem

Following an introduction to different insolvency law systems within the EU, participants will discuss the recent proposal for a Directive on insolvency and post-Brexit implications for insolvency and restructuring. Participants will be able to deepen their knowledge through case studies and workshops.

Cross-border civil litigation: summer course

Trier, 2-6 July 2018

“How do I recover money owed to me by my business partner residing abroad?” This is a problem that many companies and individuals are facing nowadays. The ERA summer course will provide you with answers. Get to know Brussels Ia, Rome I, Rome II, the European Account Preservation Order, the European Enforcement Order, the European Payment Order, the Small Claims Regulation, the Regulation on service of documents and taking of evidence, and the EU framework on mediation, ADR & ODR – and find out which path best to take!

You will learn:

- …which court is competent to hear your case
- …how to serve a judicial document
- …how to take evidence abroad
- …to advice on how to enforce a judgment abroad
- …to apply the recent CJEU case law in the field
- …which way to choose to recover money owed to your client
- …to provide guidance on how to efficiently freeze monies in foreign bank accounts
- …how to best apply the Rome I & II Regulations
- …what is the added value of ADR & mediation

This course will provide you with hands-on experience on cross-border civil litigation cases and the recent jurisprudence of the European Court of Justice. All relevant EU instruments will be presented and analysed, both by way of lectures and case studies. You will profit from daily workshops where active participation is encouraged.

Draft Withdrawal Agreement 19 March 2018: Still a Way to Go

Today, the European Union and the United Kingdom have reached an agreement on the transition period for Brexit: from March 29 of next year, date of disconnection, until December 31, 2020. The news are of course available in the press, and the Draft Withdrawal Agreement of 19 March 2018 has already been published… coloured: In green, the text is agreed at negotiators' level and will only be subject to technical legal revisions in the coming weeks. In yellow, the text is agreed on the policy objective but drafting changes or clarifications are

still required. In white, the text corresponds to text proposed by the Union on which discussions are ongoing as no agreement has yet been found. For ongoing judicial cooperation in civil and commercial matters (Title VI of Part III, to be applied from December 31, 2020: see Art. 168), this actually means that subject to "technical legal revisions", the following has been accepted:

- Art. 62: The EU and the UK are in accordance as to the application by the latter (no need to mention the MS for obvious reasons) of the Rome I and Rome II regulations to contracts concluded before the end of the transition period, and in respect of events giving rise to damage, and which occurred before the end of the transition period.
- Art. 64: There is also agreement as to the handling of ongoing cooperation procedures, whereby requests for service abroad, the taking of evidence and in the frame of the European Judicial Network are meant.
- Art. 65: There is agreement as well as to the way Council Directive 2003/8/EC (legal aid), Directive 2008/52/EC on certain aspects of mediation in civil and commercial matter, and Council Directive 2004/80/EC (relating to compensation to crime victims) will apply after the transition period.

Conversely, no agreement has been found regarding Art. 63, i.e., how to deal with jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities (but whatever is agreed will also be valid in respect of the provisions of Regulation (EU) No 1215/2012 as applicable by virtue of the agreement between the European Community and the Kingdom of Denmark, see Art. 65.2, in green).

In the light of this it may be not really worth to start the analysis of the Title as a whole: Art. 63 happens to be the less clear provision. Some puzzling expressions such as "as well as in the Member States in situations involving the United Kingdom" are common to approved texts, but may change in the course of the technical legal revision. So, let's wait and see.

NoA: Another relevant provision agreed upon – in green- is Art. 124, Specific arrangements relating to the Union's external action. Title X of Part III, on pending cases and new cases before the CJEU, remains in white.

And: On the Draft of February 28, 2018 see P. Franzina's entry here. The Draft

was transmitted to the Council (Article 50) and the Brexit Steering Group of the European Parliament; the resulting text was sent to the UK and made public on March 15.

A European Law Reading of Achmea

Written by Prof. Burkhard Hess, Max Planck Institute Luxembourg.

An interesting perspective concerning the *Achmea* judgment of the ECJ[1] relates to the way how the Court addresses investment arbitration from the perspective of European Union law. This paper takes up the judgment from this perspective. There is no doubt that *Achmea* will disappoint many in the arbitration world who might read it paragraph by paragraph while looking for a comprehensive line of arguments. Obviously, some paragraphs of the judgment are short (maybe because they were shortened during the deliberations) and it is much more the outcome than the line of arguments that counts. However, as many judgments of the ECJ, it is important to read the decision in context. In this respect, there are several issues to be highlighted here:

First, the judgment clearly does not correspond to the arguments of the German Federal Court (BGH) which referred the case to Luxembourg. Obviously, the BGH expected that the ECJ would state that intra EU-investment arbitration was compatible with Union law. The BGH's reference to the ECJ argued in favor of the compatibility of intra EU BIT with Union law.[2] In this respect, the *Achmea* judgment is unusual, as the ECJ normally takes up positively at least some parts of the questions referred to it and the arguments supporting them. In contrast,

the conclusion of AG Wathelet were much closer to the questions asked in the preliminary reference.

Second, the Court did not follow the conclusions of Advocate General Wathelet.[3] As the AG had pushed his arguments very much unilaterally in a (pro-arbitration) direction, he obviously provoked a firm resistance on the side of the Court. In the *Achmea* judgment, there is no single reference to the conclusions of the AG[4] – this is unusual and telling, too.

Third, the basic line of arguments developed by the ECJ is mainly found in paras 31 – 37 of the judgment. Here, the Court sets the tone at a foundational level: the Grand Chamber refers to basic constitutional principles of the Union (primacy of Union law, effective implementation of EU law by the courts of the Member States, mutual trust and shared values). In this respect, it is telling that each paragraph quotes Opinion 2/13[5] which is one of the most important (and politically strongest) decisions of the Court on the autonomy of the EU legal order and the role of the Court itself being the last and sole instance for the interpretation of EU law.[6] *Achmea* is primarily about the primacy of Union law in international dispute settlement and only in the second place about investment arbitration. *Mox Plant*[7] has been reinforced and a red line (regarding concurrent dispute settlement mechanisms) has been drawn.

Although I don't repeat here the line of arguments developed by the Grand Chamber, I would like to invite every reader to compare the judgment with the Conclusions of AG Wathelet. In order to understand a judgment of the ECJ, one has to compare it with the Conclusions of the AG – also in cases where the Court does (exceptionally) not follow the AG. In his Conclusions, AG Wathelet had tried to integrate investment arbitration into Union law and (at the same time) to preserve the supremacy of investment arbitration over EU law even in cases where only intra EU relationships were at stake. Or – to put it the other way around: For the ECJ, the option of investors to become quasi-international law subjects and to deviate of mandatory EU law by resorting to investment arbitration could not be a valuable option – especially as their home states (being EU Member States) are not permitted to escape from mandatory Union law by resorting to public international law and affiliated dispute resolution mechanisms. Therefore, from a perspective of EU law the judgment does not come as a surprise.

Finally, this judgment is not only about investment arbitration, its ambition goes obviously further: If one looks at para 57 the perspective obviously includes future dispute settlement regimes under public international law and their relationship to the adjudicative function of the Court. One has to be aware that Brexit and the future dispute resolution regime regarding the Withdrawal Treaty is in the mindset of the Court. In this respect the wording of paragraph 57 seems to me to be telling. It states:

"It is true that, according to settled case-law of the Court, an international agreement providing for the establishment of a court responsible for the interpretation of its provisions and whose decisions are binding on the institutions, including the Court of Justice, is not in principle incompatible with EU law. The competence of the EU in the field of international relations and its capacity to conclude international agreements necessarily entail the power to submit to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions, *provided that the autonomy of the EU and its legal order is respected*[8]."

Against this background of European Union law, the *Achmea* judgment appears less surprising than the first reactions of the "arbitration world" might have implied. Furthermore, the (contradictory[9]) statement in paras 54 and 55 should be read as a sign that the far reaching consequences with regard to investment arbitration do not apply to commercial arbitration (*Eco Swiss*[10] and *Mostaza Claro*[11] are explicitely maintained).[12] Finally, it is time to start a discussion about the procedural and the substantive position of individuals in investment arbitration in the framework of Union law. As a matter of principle, EU investors should not expect to get a better legal position as their respective home State would get in the context of EU law. Investment arbitration does not change their status within the Union. In this respect, *Achmea* is simply clarifying a truism. And, as a side effect, the disturbing *Micula* story should now come to an end, too.[13]

Footnotes

[1] ECJ, 3/6/2018, case C-284/16, *Slovak Republic v. Achmea BV*, EU:C:2018:158.

[2] BGH, 3/3/2016, ECLI:DE:BGH:2016:030316BIZB2.15.0

[3] Conclusions of 9/19/2017, EU:C:2017:699. The same outcome had occured in case C-536/13, *Gazprom*, EU:C:2015:316, which was also related to investment

arbitration.

[4] The Court only addresses the issue whether the hearing should be reopened because some Member States had officially expressed their discomfort with the AG's Conclusions, ECJ, 3/6/2018, case C-284/16, *Amchea*, EU:C:2018:158, paras 24-30.

[5] ECJ, 12/18/2014, Opinion 2/13 (*Accession of the EU to the ECHR*), EU:C:2014:2454.

[6] For the political connotations of Opinion 2/13, cf. *Halberstam*, "'It's the Autonomy, Stupid!' A Modest Defense of Opinion 2/13 on EU Accession to the ECHR, and a Way Forward." German L.J. 16, no. 1 (2015): 105 ff.

[7] ECJ, 5/30/2015, case C-459/03 *Commission v Ireland,* EU:C:2006:345.

[8] Highlighted by B.Hess.

[9] Both, commercial and investment arbitration are primarily based on the consent of the litigants, see *Hess*, The Private Public Divide in International Dispute Settlement, RdC 388 (2018), para 121 – in print

[10] ECJ, 6/1/1999, case C?126/97, *Eco Swiss*, EU:C:1999:269.

[11] ECJ, 10/26/2006, case C?168/05, *Mostaza Claro*, EU:C:2006:675.

[12] It is interesting to note that the concerns of the ECJ (paras 50 ss) regarding the intervention of investment arbitration by courts of EU Member States did not apply to the case at hand as German arbitration law permits a review of the award (section 1059 ZPO). The concerns expressed relate to investment arbitration which operates outside of the NYC without any review of the award by state court, especially in the context of articles 54 and 55 ICSID Convention.

[13] According to the ECJ's decision in *Achmea*, the arbitration agreement in the *Micula* case must be considered as void under EU law. However, Micula was given by an ICSID arbitral tribunal and, therefore, there is no recognition procedure open up a review by state courts of the arbitral award, see articles 54 and 55 ICSID Convention.

The Brussels jurisdictional regime at 50. A conference at Leuven on 23 March.

Sharing from GAVC LAW

In 2018 we celebrate the 50th year since the adoption of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. The 1968 attempt to facilitate the free movement of judgments in the EU, helped lay the foundations for the exciting developments in European private international law which have occurred since. Many of the outstanding issues in what is now the Brussels I Recast (also known as EEX-bis; or Brussels Ibis) continue to have an impact on other parts of European civil procedure.

Co-organised by Leuven Law's Institute of Private International Law and Jura Falconis, KU Leuven's student law review, this event will consider, capita selecta wise, the application and implications of the Convention and its successors. It will also discuss the future direction of EU private international law both for civil and commercial matters, and for issues outside of commercial litigation. At a time when in most Member States the majority of commercial transactions have some kind of international element, this is a timely refresher for practitioners, judges, students and scholars alike.

Registration and program are here.

PROGRAM

Morning program. Chaired by professor Jinske Verhellen (U Gent)

10:00 – 10:30
Registration and welcome

10:30 – 10:35

Opening by Jura Falconis

10:35 – 11:00
Les grands courants of 50 years of European private international law
Professor Geert Van Calster (KU Leuven)

11:00 – 11:30
Regulatory competition in civil procedure between the Member States
Professor Stéphanie Francq (UC Louvain)

11:30 – 12:00
The application of Brussels I (Recast) in the Member States
Professor Burkhard Hess (Max Planck Institute Luxembourg)

12:00 – 12:15
Discussion

12:15 – 13:00
Lunch

Afternoon program. Chaired by professor Karen Vandekerckhove (European Commission's Directorate General for Justice and Consumers, UC Louvain)

13:00 – 13:30
Brussels calling. The extra-EU application of European private international law
Professor Thalia Kruger (U Antwerpen)

13:30 – 14:00
The (not so symbiotic?) relation between the Insolvency and the Brussels I regimes
Arie Van Hoe (NautaDutilh, U Antwerpen)

14:00 – 14:30
Alternative Dispute Resolution and the Brussels Regime
Professor Stefaan Voet (KU Leuven)

14:30 – 15:00
Brussels I Recast and the Hague Judgments Project
Professor Marta Pertegas (U Antwerpen)

15:00 – 15:15
Discussion

15:15 – 15:45
Coffee break

15:45 – 16:10
Provisional measures under the Brussels regime
Professor Arnaud Nuyts (ULB)

16:10 – 16:30
Brussels falling. The relationship between the UK and the EU post Brexit
Dr Helena Raulus (UK Law Societies' Brussels office)

16:30 – 16:50
The current European Commission agenda for the development of European private international law
Dr Andreas Stein (European Commission's Directorate General for Justice and Consumers)

16:50 – 17:15
The CJEU and European Private International Law
Ilse Couwenberg (Judge in the Belgian Supreme Court/Hof van Cassatie)

17:15 – 17:30
Close of conference
Professor Geert Van Calster (KU Leuven)

17:30 – 18:30
Drinks

The domino effect of international

commercial courts in Europe – Who's next?

Written by Georgia Antonopoulou and Erlis Themeli, Erasmus University Rotterdam (PhD candidate and postdoc researchers ERC project Building EU Civil Justice)

On February 7, 2018 the French Minister of Justice inaugurated the International Commercial Chamber within the Paris Court of Appeals following up on a 2017 report of the Legal High Committee for Financial Markets of Paris (*Haut Comité Juridique de la Place Financière de Paris* HCJP, see here). As the name suggests, this newly established division will handle disputes arising from international commercial contracts (see here). Looking backwards, the creation of the International Commercial Chamber does not come as a surprise. It offers litigants the option to lodge an appeal against decisions of the International Chamber of the Paris Commercial Court (see previous post) before a specialized division and thus complements this court on a second instance.

According to the press release, litigants will have the possibility to conduct proceedings not only in English, but also in other foreign languages. The parties can submit documents in a foreign language without official translation and hearings can be held in a foreign language as well. However, a simultaneous translation of the oral hearing will take place. In addition, the parties may submit their briefs in a foreign language accompanied by a French translation. Finally, the court will render its decisions in French accompanied by a translation in the relevant foreign language. Contrary to the respective German and Dutch legislative proposals, which allow for the conduct of proceedings, including the decisions of the court, entirely in English, the French initiative appears more modest setting multiple translation requirements.

However, France is one more domino piece affected by the civil justice system competition in the European Union. In light of Brexit, the list of European Union Member States opting for the creation of international commercial courts is growing. The legislative proposal for the establishment of Chambers for International Commercial Disputes in Germany (*Kammern für Internationale Handelssachen*) was the first -though unsuccessful- attempt. Nevertheless, the

recent ‘Frankfurt Justice Initiative’ came to revive the seemingly dormant German debate (see previous post). Not far away from Germany, the Netherlands is launching the Netherlands Commercial Court (NCC), which is expected to open its doors in the second half of 2018. Finally, in October 2017, the Belgian Minister of Justice announced the government’s initiative to establish a specialized court in commercial matters, called the Brussels International Business Court (BIBC) (see previous post).

Competing Member States try to attract cross-border litigation, and thus increase the work of the local legal community and related services. As accepted in the press release of this latest French initiative, a good competitive court is a positive signal to foreign investors. It should be reminded that this is not the first time that competitive activities erupt. A few years ago, competing Member States were focused on publishing brochures to highlight the best qualities of their jurisdictions. This time, competitive activities seem to be more vigorous and seem to better address the needs of international litigants. Only time will show how dynamic competition will unfold, and who the winners will be.

Issue 2017.4 of Dutch Journal on Private International Law (NIPR)

The fourth issue of 2017 of the Dutch Journal on Private International Law, Nederlands Internationaal Privaatrecht, contains contributions on the likely response of developing countries to the Principles on Choice of Law in International Commercial Contracts 2015 developed by the Hague Conference on Private International Law, the interpretation of Article 9(3) of the Rome I Regulation by the Court of Justice of the European Union in the case *Nikiforidis v. Republik Griechenland*, the consequences of a ‘hard Brexit’ for the Family Law areas currently covered by EU regulations, and new developments in China’s recognition and enforcement of foreign judgments.

Matthijs ten Wolde & Kees de Visser, ‘Editorial’, p. 725-726.

Akinwumi Ogunranti, 'The Hague Principles – a new dawn for developing countries?', 727-746

This paper focuses on the likely response of developing countries to the Principles on Choice of Law in International Commercial Contracts 2015 (hereafter: Principles) developed by the Hague Conference on Private International Law. It makes two claims: that Article 2(4) of the Principles which permits parties to make an unrelated choice of law in international contracts, without generally protecting weaker parties, may not be favourably received by developing countries. Second, that Article 3 of the Principles on non-state law may also not be viewed favourably by developing countries because such provisions are always seen with distrust. In effect, this paper examines the likely reactions of developing countries to these pivotal provisions of the Principles. It then asks the question of whether a new dawn has arrived in private international legislations relating to choice of law or whether developing countries should be charting roads that lead to more places than just The Hague.

A.E. Oderkerk, 'Buitenlandse voorrangsregels in de context van de Griekse crisis: geen rol voor het unierechtelijk beginsel van loyale samenwerking', p. 747-758

In its ruling of 18 October 2016, the Court of Justice of the European Union (CJEU) answers a number of questions related to the interpretation of Article 9(3) of the Rome I Regulation, two of which confirm the current legal doctrine on this matter. Firstly, it is confirmed that Article 9 should be interpreted restrictively; no other overriding mandatory rules than those of the forum State or the State where the obligations in the agreement are (to be) fulfilled can be applied. Secondly, it is acknowledged that a national court may take into account other overriding mandatory rules as facts in so far as this is in accordance with the lex causae. In this ruling the Court departs from the doctrine with regard to the temporal scope of the Regulation, holding that the phrase 'the conclusion of the agreement' in Article 28 must be interpreted autonomously. The Court also clarifies under which circumstances a long-term contract concluded before 17 December 2009 may fall within the temporal scope of the Regulation. Finally, it is of interest that the Court takes the position that the principle of loyal cooperation has no influence on the (strict)

interpretation of Article 9(3).

Just van der Hoeven, 'Zachte conclusies over de betekenis van een harde Brexit voor het internationaal personen- en familierecht', p. 759-771

This article gives an overview of the consequences of a 'hard Brexit' for the Family Law areas currently covered by EU regulations. It examines the applicability of various international instruments in these areas, and gives a brief answer to the question how the current EU regulations differ from these international instruments.

Yahan Wang, 'A turning point of reciprocity in China's recognition and enforcement of foreign judgments: a study of the *Kolmar* case', p. 772-789

In the case of Kolmar Group AG v. Jiangsu Textile Co. Ltd. (the Kolmar case), a Chinese court has for the first time recognized and enforced a foreign civil judgment based on reciprocity. This article regards this case as a turning point of reciprocity in China's recognition and enforcement of foreign judgments. Before 2016, the reliance on treaty-based and factual reciprocity led to some defects in China's judicial practice, which could be attributed to the strict standards of reciprocity and deficient judicial interpretations. Through the Belt and Road initiative, China is seeking to improve international transactions between China and foreign countries – including some EU countries. In line with this development, the Chinese Supreme People's Court seems to be transforming the strict criteria of reciprocity, adopting presumed reciprocity in its judicial practice. This article argues that execution of the Belt and Road initiative, establishing an efficient court reporting system and participating in international conventions are essential to China's judicial reform.

International and Comparative Law Quarterly 67 (2018), Issue 1

The most recent issue of the International and Comparative Law Quarterly (ICLQ) features two articles relating to private international law:

Louise Merrett, The Future Enforcement of Asymmetric Jurisdiction Agreements, ICLQ 67 (2018), pp. 37-71:

> *Asymmetric jurisdiction clauses are clauses which contain different provisions regarding jurisdiction for each party. They are widely used in international financial markets. However, the validity of this form of agreement has been called into doubt in several European jurisdictions. Furthermore, following Brexit, there may well be an increasing focus on alternative methods of enforcement under the Hague Convention and at common law, claims for damages and anti-suit injunctions. As well as considering recent developments in the case law and the implications of Brexit, this article will emphasize that all of these questions can only be answered after the individual promises contained in any particular agreement are properly identified and construed. Once that is done, there is no reason why the asymmetric nature of a clause should be a bar to its enforcement.*

Giesela Rühl, Judicial Cooperation in Civil and Commercial Matters after Brexit: Which Way Forward? ICLQ 67 (2018), pp. 99-128:

> *Judicial cooperation in civil and commercial matters is generally perceived to be of a rather 'specialist and technical nature'. However, for the many UK and EU citizens, families and businesses who work, live, travel and do business abroad, the current European framework for choice of law, jurisdiction and recognition and enforcement is of paramount importance. The article, therefore, explores how that framework might look like after Brexit and discusses the merits and demerits of the various ways forward.*

Full texts are available via Cambridge Core.

Third Issue of 2017'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 third issue of 2017 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released.

It features two articles and three comments.

Manlio Frigo, Professor at the University of Milan, **'Methods and Techniques of Dispute Settlement in the International Practice of the Restitution and Return of Cultural Property'** (in English)

This article focuses on the international practice in the field of cultural property disputes and examines the most effective and reliable dispute resolution methods in restitution and return of cultural property. Particularly in cases of disputes between Governmental authorities and foreign museums concerning the return or restitution of cultural property, one of the privileged solutions may consist in negotiating contractual agreements. The recent international and Italian practice have proved that these agreements may either prevent any judicial steps, or lead to a conclusion of pending administrative or judicial proceedings and have been successfully tested in recent years, more frequently within a wider frame of agreements of cultural cooperation. These agreements provide new forms of cooperation between the parties involved in such disputes and represent a mutually beneficial way out with a view to a future of collaboration.

Paolo Bertoli, Associate Professor at the University of Insubria, **'La «Brexit» e il diritto internazionale privato e processuale'** ('"Brexit" and Private International and Procedural Law'; in Italian)

This article discusses the implications of the forthcoming withdrawal of the United Kingdom from the European Union on the private international law rules applicable in the relationships between the EU Member States and the UK. Traditionally, the UK has been skeptic vis-à-vis the EU policy in the area of judicial cooperation in civil matters, as demonstrated, inter alia, by the opt-in regime provided for by the EU Treaties in respect of the UK's participation to such policy and by the hostile reactions against the ECJ case law holding certain procedural norms eradicated in the UK tradition as conflicting with EU law. In the absence of any agreement between the EU and the UK, "Brexit" will imply that virtually all of the EU *acquis* in the field of private international law will cease to apply in the relationships between the EU Member States and the UK. Notwithstanding its historical skepticism vis-à-vis the EU policy in the field of private international law, the UK seems to be the party more interested in maintaining such rules to the greatest possible extent, in order not to jeopardize the attractiveness of its Courts and to protect its businesses.

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

Zeno Crespi Reghizzi, Associate Professor at the University of Milan, **'Succession and Property Rights in EU Regulation No 650/2012'** (in English)

In modern systems of private international law, "succession" and "property rights" form the subject matter of distinct conflict-of-laws provisions, with different connecting factors. Drawing the line between these two categories implies a delicate characterisation problem, which now has to be solved in a uniform manner in all the Member States, by interpreting the scope of Regulation No 650/2012. Compared to the solutions traditionally adopted by the national systems of private international law, Regulation No 650/ 2012 has increased the role of the *lex successionis*, which now governs not only the determination of the heirs and their shares in the estate, but also the transfer of the assets forming part of the succession estate. This solution gives rise to several coordination issues which are examined in the present paper.

Federica Falconi, Researcher at the University of Pavia, **'Il trasferimento di competenza nell'interesse del minore alla luce dell'interpretazione della Corte di giustizia** ('Transfer of Jurisdiction in the Child's Best Interests in Light of the Interpretation by the Court of Justice'; in Italian)

By way of exception, Article 15 of Regulation (EC) No 2201/2003 allows the court having jurisdiction to transfer the case, or a specific part thereof, to a court of another Member State, with which the child has a particular connection, provided that this latter is better placed to hear the case in the light of the best interests of the child. Based on the *forum non conveniens* doctrine, such a provision confers judges with significant discretion, with a view to ensure the best interests of the child in line with Article 24 of the EU Charter of Fundamental Rights. The aim of this paper is to illustrate the main features of this original mechanism, by looking firstly to its effects on the general grounds of jurisdiction established by the Regulation and then focusing on the strict conditions set out for its application. Particular attention is paid to the assessment of the child's best interests, which appears most problematic as the relevant factors will in fact vary depending on the circumstances of the case. In this regard, some guidance has been recently provided by the Court of Justice, that has pointed out that the court having jurisdiction may take into account, among other factors, the rules of procedure in the other Member State, such as those applicable to the taking of evidence required for dealing with the case, while the court should not take into consideration the substantive law of that other Member State, which might be applicable if the case were transferred to it. The Court of Justice has further clarified that the court must be satisfied, having regard to the specific circumstances of the case, that the envisaged transfer of the case is not liable to be detrimental to the situation of the child concerned.

Sondra Faccio, Doctor of Law, **'Trattati internazionali in materia di investimenti e condizione di reciprocità'** ('International Investment Treaties and the Reciprocity Requirement'; in Italian)

This paper discusses the interaction between international investment agreements and the condition of reciprocity set forth by Article 16 of the Preliminary provisions to the Italian civil code. It aims to assess whether investment agreements in force for the Italian State prevail over the application of the condition of reciprocity, in relation to the governance of the investment established in Italy by a foreign investor coming from a country outside the European Union. The analysis highlights that the fair and equitable treatment, the most favored nation treatment and the national treatment standards, included in most of the Italian investment agreements, protect foreign investors against unreasonable or discriminatory measures which could affect the management of

their investments and therefore their application should prevail over the application of the condition of reciprocity in relation to the governance of the investment. This interpretation reflects the object and purpose of investment agreements, which is to promote and protect foreign direct investments and to develop international economic relations between States.

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the *Rivista di diritto internazionale privato e processuale*.

Key issues of the UK government's policy paper from a dispute resolution perspective

I was recently asked to shortly analyse the key issues of the UK government's policy paper on providing a cross-border civil judicial cooperation framework with the EU after Brexit from a dispute resolution perspective. The text of the inteview is available here.

Commercial Issues in Private International Law Conference, Sydney, 16 February 2018

The University of Sydney Law School is hosting a conference on Commercial Issues in Private International Law on 16 February 2018. The organisers have provided the following information about the conference's theme:

‘As people, business, and information cross borders, so too do legal disputes. Globalisation means that courts need to invoke principles of private international law with increasing frequency. Thus, as the Law Society of New South Wales recognised in its 2017 report on the Future of Law and Innovation in the Profession, knowledge of private international law is increasingly important to the practice of law.

This conference will bring together members of the judiciary, the profession, academia, and government to discuss private international law as it relates to commercial law. The conversation will be timely. In late 2016, the Uniform Civil Procedure Rules were amended in respect of service outside of the jurisdiction. In 2017, Australia is likely to accede to the Hague Convention on Choice of Court Agreements, and to implement the Hague Principles on Choice of Law in International Commercial Contracts.

The extraterritorial application of the Australian Consumer Law is under consideration by the Full Court of the Federal Court of Australia. While Brexit and the rise of Trump may have signalled a retreat from globalism, arguably, that is not the experience of private international law in Australia.’

Further details are available here: http://sydney.edu.au/news/law/457.html?eventcategoryid=39&eventid=11728

Registration will open and the full conference programme will be released later in 2017.