

# ERA Conference on the Optional European Sales Law

On 9 and 10 February 2012, the European Law Academy will host a conference on the Optional European Sales Law in Trier, Germany. The objective of the conference is to discuss the Proposal for a Common European Sales Law, which was published by the EU Commission in October 2011. Registration and further information can be found on the ERA website. The programme reads as follows:

## Thursday, 9 February 2012

08:30 Arrival and registration

09:00 **Welcome**, *Angelika Fuchs*

**Chair:** *Hugh Beale*

### I. SETTING THE SCENE

09:05 **The ongoing political debate**

- European Parliament: *Diana Wallis* *Polish*
- EU Presidency: *Aneta Wiewiórowska*
- Danish EU Presidency: *Morten Fogt*

09:45 **Discussion**

### II. LEGAL CHALLENGES FOR THE CESL

10:00 **Legal basis, content and scope**

*Christiane Wendehorst*

10:20 **CESL and the conflict of laws**

*Gilles Cuniberti*

- CESL and Rome I
- How to fill the gaps? Set-off, assignment, representation and other issues

10:45 **Discussion**

11:00 Coffee break

**Chair:** *Diana Wallis*

### **III. CESL RULES FOR B2C SALES CONTRACTS**

#### **11:30 Pre-contractual information**

*Eric Clive*

- Distance / off-premises contracts
- Contents and sanctions

#### **11:50 Making a binding contract**

*Anna Veneziano*

- Offer and acceptance
- Defects in consent
- Right of withdrawal

#### **12:15 Discussion**

#### **12:30 Unfair contract terms: assessing unfairness**

*Friedrich Graf von Westphalen*

#### **12:50 Discussion**

13:00 Lunch

**Chair:** *Friedrich Graf von Westphalen*

#### **14:00 Obligations and remedies of the parties**

*Hugh Beale*

- Consumer choices
- Requirements
- Prescription periods

#### **14:25 Discussion**

#### **14:40 Goods, supply of digital content and provision of related services**

*Matthias Storme*

#### **15:00 Discussion**

### **IV. WORKSHOP (with coffee & tea)**

#### **15:15 Life-cycle of a contract: a case study on the CESL in legal practice**

*Martin Schmidt-Kessel*

17:00 End of the first conference day

19:00 Evening programme and dinner

## Friday, 10 February 2012

**Chair:** *Anna Veneziano*

### V. CONSUMER AND COMMERCIAL CONTRACTS

09:00 **Comparing B2C and B2B contracts**, *Dora Szentpaly-Kleis*

*Ursula Pachl*

- Which rules are different
- Why?

09:40 **What is required to make the optional instrument work in practice?**

*Dirk Staudenmayer*

10:00 **Discussion**

10:30 Coffee break

**Chair:** *Morten Midtgaard Fogt*

### VI. PANEL DISCUSSION

11:00

**B2C: Added value for consumers or cost driver for enterprises?**

*Hanne Melin*

*Bob Schmitz*

**B2B: What does the CESL offer to businesses?**

*Tina Sommer*

*Andreas Dietzel*

13:00 **Lunch and end of the conference**

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# Buxbaum and Michaels on International Antitrust Law

Hannah Buxbaum (Indiana) and Ralf Michaels (Duke) have posted Jurisdiction and Choice of Law in International Antitrust Law – A U.S. Perspective on SSRN.

*This essay was written for a forthcoming book on international antitrust litigation in Europe. It provides a comparative perspective on the U.S. approach to the jurisdictional and choice-of-law issues raised in international antitrust litigation. The chapter examines personal jurisdiction over foreign defendants involved in anticompetitive conduct, as well as the question of applicable law in cross-border antitrust litigation — including the possibility of applying foreign antitrust law. It also focuses on the intersection between antitrust claims and contract claims, and on the special conflict-of-laws issues that arise in the context of class actions.*

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## Sciences Po PILAGG Workshop Series, January-February 2012

The list of speakers at the workshop on Private International Law as Global Governance at the Law School of the Paris Institute of Political Science (*Sciences Po*) has been updated and is available on the PILAGG website.



The speakers for January and February will be:

- 20th January: Mads ANDENAS (*“External effects of national ECHR judgments”*)
- 25th January (doctoral workshop): Shotaro HAMAMOTO (*“L’arbitrage investisseur-État est-il hostile aux intérêts publics?”*)
- 27th January: Ingo VENZKE (*“On words and deeds: How the practice of interpretation develops international norms”*)
- 9th February (doctoral workshop): Benoit FRYDMAN (*“Approche pragmatique*

*du droit global*")

- 11th February (doctoral workshop): David KENNEDY ("*The renewal of political economy and global governance*")
- 16th February: Michael WEIBEL ("*Privatizing the adjudication of sovereign defaults*")

PILAGG has also launched a new stream on epistemology and methodology of human-rights in transnational context.

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## Another Comment on Aguirre Pelz

Dr. Mónica Herranz, full time Professor of Private International Law at the National Distance Education University in Madrid (Spain), has just published a paper on the ECJ ruling *Aguirre Pelz* (C- 491/10 PPUU), under the title "El control por el juez de origen de las decisiones dictadas en aplicación del artículo 42 del R. 2201/2003: el asunto *Aguirre Pelz*", *Revista General de Derecho Europeo*, (25) 2011.

The author analyzes critically the reasoning of the parties in the proceedings, as well as the approach taken by the General Advocate and the solution adopted by the ECJ. Other relevant ECJ rulings in kidnapping cases are discussed. The paper also includes an explanation of the different legal channels for appealing a decision when a fundamental right has been violated (in the State of origin, in the destination State and before the ECHR).

The study shows the need to review the legal solution for intra-community kidnapping cases.

*Mónica Herranz*: [mherranz@der.uned.es](mailto:mherranz@der.uned.es)

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# Cross-Border Civil Litigation in Peru: a New Draft

A Bill for International Litigation was presented to the Congress of Peru in November 2011. Based on the Latin American Model Bill for International Litigation of 2004, it is an apparently simple draft – just ten articles-, which nevertheless covers some of the most important topics in cross-border litigation: service of process; evidence; damages (compensation); appeals; settlements; *lis pendens*; actionability; and mass claims.

The Peruvian project aims to provide a practical tool for Peruvians plaintiffs in Peruvian cross-border conflicts. Article 1 makes this task easier by accepting summons in any form admitted in the country where the documents are to be served, therefore allowing an enormous saving of time and money.

Article 2 declares the admissibility of evidence already used in a foreign proceeding; such materials will nevertheless be considered again by the Peruvian judge “according to the principles of sound criticism.” Only the relevant part of the foreign documents needs translation: again, a measure to save time and money.

Article 3 deals with damages, which will be awarded (calculated) following the parameters of the relevant foreign law. Though the conflict rule is adequate, it could still be improved through a *favor laesi*.

Appeal as a delaying tactic is prevented by Article 4. Appeal will normally deploy only suspensive effect, thus allowing the international procedure to be carried out speedily.

Article 5 prevents defendant and plaintiff from reaching an agreement without the latter’s counsel being informed. The purpose of the rule is to protect both the lawyer who has invested time and money in the process and the actor who, pressed by necessity, accepts an inconvenient settlement.

Article 6 recalls an already existing rule: in cases of concurrent international proceedings the court where the lawsuit was filed first keeps jurisdiction, just as it happens in domestic cases.

Article 7 of the Bill provides with a separate action against all unjustifiable harm committed abroad. The rule tends to the protection of Peruvians interests when no other remedy is available.

The project includes a ten-year statute of limitations that can be extended to fifteen years in case of debtor's bad faith. Prescription is interrupted under several circumstances: for instance, when the creditor did not know about the damage or its source; the fact of filing overseas also suspends the limitation period. This is reasonable and should be welcomed in view of the technical development that has led, for example, to diseases with a long period of latency, as it happens with exposure to chemicals products.

Consolidation of claims in cases involving a large number of actors or defendants is provided for in Article 9. It is for the judge to take "practical steps for the case to develop rapidly within the limits of due process." It seems that this Article contains the seeds of mass action or class actions.

The overall conclusion is that the Bill, if approved, will certainly help cross-border litigation to be easier and more efficient in Peru.

*Many thanks to Henry Saint Dahl, Inter-American Bar Foundation, for the hint.*

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## **Brand on Rome I and Party Autonomy**

Ronald Brand, who is a professor at the University of Pittsburgh School of Law, has posted Rome I's Rules on Party Autonomy for Choice of Law: A U.S. Perspective on SSRN.

*This chapter was presented at a conference in Dublin on the (then) new Rome I Regulation of the European Union in the fall of 2009. It contrasts the Rome I rules on party autonomy with those in the United States. In particular, it*

*considers the rules in the Rome I Regulation that ostensibly protect consumers by discouraging party agreement on a pre-dispute basis to the law governing a consumer contract. These rules are compared with the absence of private international law restrictions on choice of forum and choice of law in the United States, even in consumer contracts. The result in Europe is the “protection” of the right of the consumer to his or her home law, but often with the resulting reduction of consumer choice and increase of consumer cost. In the United States, cases have instead provided more of an economic analysis, often tying a consumer to the merchant’s choice of law (and choice of forum), but resulting in increased access to goods and services at what is generally a lower cost. Both systems “protect” consumers, they just choose to protect different consumer interests.*


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## **Ecuador Court Upholds Ruling against Chevron**

See these posts [here](#) and [here](#) over at *Opiniojuris*.

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## **Unidroit Seeks to Recruit its Deputy Secretary-General**

UNIDROIT is inviting applications for the position of Deputy Secretary-General of the Organization. The position is for two years, renewable for periods of five years. 

*The ideal candidate is an outstanding lawyer who, in addition to a distinguished*



*career in his/her field (governmental, academic, intergovernmental or other), has a solid knowledge of comparative private law, commercial and private international law and experience in international negotiations or domestic law reform projects.*


*A national of a member State of UNIDROIT, he (or she) is a good communicator with excellent interpersonal relations skills, judgment and discretion who brings strong organisational, planning, analytical and drafting skills to support the Secretary General in representing UNIDROIT and managing a small team of professionals and technical support staff. Other essential qualifications include sensitivity to a multicultural environment; ability to work under pressure; knowledge and experience in strategic planning, management and promotion; as well as proficiency in using computer systems and standard office software.*

The deadline for applications is March 12th, 2012, for an entry on duty no later than September 2012.

More information is available [here](#).

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## **Third Edition of Niboyet & La Pradelle's Droit international privé**

The third edition of the manual of Marie-Laure Niboyet and Géraud Geouffre de la Pradelle (both professors at Paris Ouest Nanterre La Défense University) on the French conflict of laws was published earlier this fall. 

In the French tradition, the book covers not only choice of law, jurisdiction and judgments, but also the law of citizenship and emmigration.

It is an excellent book. Marie-Laure Niboyet being one of the finest French scholars of international civil procedure, the book is especially comprehensive in this respect, discussing topics often neglected by many other books.

More information on the book can be found [here](#).

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## Franzina on Negrepontis v. Greece

Pietro Franzina (University of Ferrara) has published Some Remarks on the Relevance of Article 8 of the ECHR to the Recognition of Family Status Judicially Created Abroad in the last issue of the Italian journal *Diritti umani e diritto internazionale*.

The paper is a note discussing the implications of the recent judgment of the European Court of Human Rights in *Negrepontis v. Greece* where the court held that Greece had violated Article 8 by denying recognition to an adoption order issued by a Michigan court.

The note is also available on the website of the Italian society for international law.