ECJ Rules on Set-Off and Exequatur

On October 13th, 2011, the European Court of Justice held in Prism Investments BV v. Jaap Anne van der Meer (Case C-139/10) that enforcing courts may not deny exequatur to foreign judgments on the ground that they were already paid by way of set-off.

Facts

In a nutshell, a Dutch company, Arilco Holland, had transfered monies (Euro 1 million) to a Dutch investment company, Prism Investment BV. Several companies of the Arilco group had originally received the monies from a Finish bank. When they were sued in Belgium to reimburse the monies, Arilco asked in turn Prism Investment to return the million it had received.

In 2006, the Court of appeal of Brussels ordered Prism to pay Arilco Holland the said million. In August 2007, Arilco Holland was declared isolvent. In September 2007, the trustee sought and obtained that the Belgian judgment be declared enforceable in Holland. Prism appealed the declaration of enforceablity on the ground that it had already paid the jugdment by way of set-off in Belgium.

The ECJ's Decision

The ECJ held that declarations of enforceability may only be challenged on the grounds provided by the Brussels I Regulation.

> *Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.*

Payment of the judgment in the state of origin is not one of those grounds:

34 In the present case, it is apparent from the order for reference that the ground for revocation of the declaration of enforceability relied upon by the appellant in the main proceedings and relating to compliance with the judgment in the Member State of origin – that is to say, Belgium – is not one of those grounds which the court or tribunal of the Member State in which enforcement is sought – in the present case, the Kingdom of the Netherlands – has jurisdiction to review. The fact that that ground was not raised before the Belgian court is irrelevant in that regard.

Although this does not seem to have been central to the decision, the court found interesting to underscore that the set-off was actually disputed:

35 Furthermore, as the Advocate General has noted in point 47 of her Opinion, the argument of the appellant in the main proceedings against the declaration of enforceability is derived from the alleged satisfaction of the claim at issue by means of a financial settlement. However, in his written observations, Mr van der Meer, acting in his capacity as receiver in the liquidation of Arilco Holland, challenges that financial settlement in detail. The answer to the question whether or not the requirements of that financial settlement were fulfilled will therefore be neither straightforward nor swift and could require an extensive examination of the facts regarding the claim in relation to which that financial settlement may have been reached and would thus be difficult to reconcile with the objectives pursued by Regulation No 44/2001.

It was thus for the courts of the enforcing state to rule, at a a later stage, on the issue:

40 Such a ground may, by contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts (see Case 148/84 Deutsche Genossenschaftsbank [1985] ECR 1981, paragraph 18; Case 119/84 Capelloni and Aquilini [1985] ECR 3147, paragraph 16; and Hoffmann, paragraph 27).

Clearer Patrimonial Regimes for International Couples: Joint Conference of the European Commission and CNUE

On Monday 17 October 2011 **the Council of the Notariats of the European Union (CNUE)** is organising, **jointly with the EU Commission**, a conference in Brussels on the proposals for two regulations on property rights of "international" married couples and registered partnerships: **"Clearer Patrimonial Regimes for International Couples"**. A dedicated section of the CNUE website has been set up for the event, for further information and registration (there are still some places left to attend the conference). Here's the programme (interpretation will be available in English, French, German, Italian, Polish, Romanian and Spanish):

9.30 – 9.40 Opening: *Rudolf Kaindl*, CNUE President

9.40 – 10.20 Keynote speeches:

- *Viviane Reding*, Vice-President of the European Commission
- *Frank Molitor*, President of the Luxembourg Chamber of Notaries

10.20 – 10.40 Proposals for Regulations on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and regarding the property consequences of registered partnerships: *Salla Saastamoinen*, Head of Unit, DG Justice, European Commission

11.00 – 12.40 Panel discussion: Session 1 – The applicable law

Moderator: *Prof. Katharina Boele-Woelki*, University of Utrecht

Speakers:

- *Prof. Paul Lagarde*, University of Paris I "Panthéon Sorbonne"
- *Prof. Brigitta Lurger*, University of Graz
- *Prof. Barbara Reinhartz*, University of Amsterdam
- *Franco Salerno Cardillo*, Civil Law Notary in Palermo
- *Alexandra Thein*, Member of the European Parliament
- *Richard Frimston*, STEP, Solicitor and Notary Public in London

14.00 – 15-15 Panel discussion: Session 2 – The competent court

Moderator: *Sjef van Erp*, Maastricht University, Deputy-Justice, Court of Appeal, 's-Hertogenbosch

Speakers:

- *Ulf Bergquist*, Lawyer in Stockholm
- *Prof. Patrick Wautelet*, University of Liège
- *Katarzyna Lis*, Judge, Polish Ministry of Justice

15.15 – 16.30 Panel discussion: Session 3 – Recognition and enforcement in cross-border cases

Moderator: *Pedro Carrión García de Parada*, Chair of the CNUE's Family Law Working Group

Speakers:

- *Matthias Neumayr*, Judge at the Austrian Supreme Court
- *Prof. Philippe De Page*, Université Libre de Bruxelles
- *Prof. Dieter Martiny*, European University Viadrina
- *Edmond Jacoby*, Civil Law Notary in Forbach

16.30 – 17.00 Information session – More information and services for European citizens

- The patrimonial property regimes website project, *Harald Steinwendter*, University of Graz
- The European Directory of Notaries, *Thomas Diehn*, Federal Council of the German Notariat

17.00 – 17.30 Closing speech: *Paraskevi Michou*, Director, DG Justice, European Commission.

Weber on Creditor Protection in International Civil Procedure

Johannes Weber, a research fellow at the Max Planck Institute for Comparative and International Law in Hamburg, has written a book on "Gesellschaftsrecht und Gläubigerschutz im Internationalen Zivilverfahrensrecht. Die Internationale Zuständigkeit bei Klagen gegen Gesellschafter und Gesellschaftsorgane vor und in der Insolvenz" [Corporate Law and Creditor Protection in International Civil Procedure. The International Jurisdiction for Actions against Shareholders and Directors before and during Insolvency]. Here is an English abstract:

> *Creditor protection in respect of limited liability corporations is a topic assuming an increasingly central role in corporate law and private international law. Whereas the scholarly discussion has primarily focused on substantive law issues and the appropriate connecting factors from a private international law perspective, the question of international civil procedure has thus far received relatively little attention. In his work "Gesellschaftsrecht und Gläubigerschutz im Internationalen Zivilverfahrensrecht" (Corporate Law and Creditor Protection in International Civil Procedure), Dr. Johannes Weber, research fellow at the Max Planck Institute for Comparative and International Private Law, addresses the question of which court may claim international jurisdiction when it comes to the enforcement of creditor protection in respect of corporations. Analyzing the question in the context of EU international civil procedure, Weber's analysis offers in particular a comparison of German and English substantive law. Revealing a number of significant substantive contrasts between the two distinct legal traditions, the inquiry is also of considerable relevance in light of the number of business entities incorporated*

under British law. Each chapter of the work concludes with a discussion on the perspectives for future legal reform.

More information is available on the publisher's website.

French Conference on Arbitration and EU Law

A conference on Arbitration and European Union Law (*Arbitrage et droit de l'Union europeenne*) will be held in Paris on November 4th, 2011.

8h30 – Accueil et inscription des participants

9h00 – Allocution introductive
M Philippe LEBOULANGER
Président du Comité français de l'arbitrage
Avocat au Barreau de Paris

PREMIERE PARTIE – L'EXCLUSION DE L'ARBITRAGE DU DOMAINE DU REGLEMENT BRUXELLES 1 ET SON EVENTUELLE SUPPRESSION
9H10

Président de séance
M Gérard PLUYETTE
Conseiller Doyen à la première Chambre civile de la Cour de cassation

Les questions liées à l'appréciation et aux effets de la convention d'arbitrage
M Sylvain BOLLEE
Professeur à l'Ecole de droit de la Sorbonne (Paris I)

Les questions liées au déroulement de la procédure arbitrale et à l'efficacité de la sentence
M Cyril NOURISSAT

Recteur de l'Université de Bourgogne

Table ronde et discussion générale
Mme Sandrine CLAVEL
Professeur à l'Université Versailles Saint Quentin,
M Laurent JAEGER
Avocat au Barreau de Paris, Associé, Orrick
Philippe PINSOLLE
Avocat au Barreau de Paris, Associé Shearman & Sterling
François-Xavier TRAIN
Professeur à l'Université Paris-Ouest.

11h15 : Pause-café

DEUXIEME PARTIE – ARBITRAGE ET DROIT MATERIEL EUROPEEN
11H45

Président de séance :
M Guy CANIVET
Président honoraire de la Cour de cassation
Membre à la Cour de cassation

L'application du droit européen de la concurrence par l'arbitre
M Olivier CAPRASSE
Doyen de la Faculté de droit de Liège
Professeur à l'Université de Bruxelles
Avocat au Barreau de Bruxelles, Cabinet Hanotiau & Van Den Berg

Le contrôle judiciaire sur le respect du droit européen de la concurrence par l'arbitre
M Matthieu DE BOISSESON
Avocat au Barreau de Paris, Associé, Darrois Villey Maillot Brochier

12h45 – Déjeuner

DEUXIEME PARTIE (SUITE) – ARBITRAGE ET DROIT MATERIEL EUROPEEN (suite)
14H15

Arbitrage et droit européen de la consommation

M Christophe SERAGLINI,
Professeur à l'Université Jean Monnet (Paris XI)

Table ronde et discussion générale
M Santiago MARTINEZ LAGE
Avocat au Barreau de Madrid, Associé Howrey LLP
M Pierre MAYER
Professeur à l'Ecole de droit de la Sorbonne (Paris I)
Avocat au Barreau de Paris, Associé, Dechert LLP
M Jean-Baptiste RACINE
Professeur à l'Université de Nice-Sophia Antipolis
M Luca RADICATI DI BROZOLO
Professeur à l'Université Catholique de Milan
Avocat associé, Bonelli Erede Pappalardo

15h45 : Pause

TROISIEME PARTIE – L'ARBITRAGE ET LE CONTROLE DES ENGAGEMENTS EN DROIT DE LA CONCURRENCE (PRATIQUES ANTICONCURRENTIELLES ET CONTROLE DES CONCENTRATIONS)
16H00

Président de séance :
Mme Catherine KESSEDJIAN
Professeur à l'Université Panthéon- Assas (Paris II)
Membre du Collège européen de Paris

Description du système, objectifs et bilan
Mme Ana GARCIA CASTILLO
Direction Générale de la Concurrence
Membre de la Commission européenne

Analyse du système
Mme Laurence IDOT
Professeur à l'Université Panthéon-Assas (Paris II)
Membre du Collège européen de Paris

Discussion générale

QUATRIEME PARTIE – LE ROLE DE LA COMMISSION DE L'UNION EUROPEENNE DANS LA NEGOCIATION DES TRAITES COMPORTANT DES CLAUSES RELATIVES A L'ARBITRAGE
17H00

Président de séance :
Mme Catherine KESSEDJIAN
Professeur à l'Université Panthéon- Assas (Paris II)
Membre du Collège européen de Paris

Exposé
M Eric LOQUIN
Professeur à l'Université de Bourgogne
Doyen honoraire de la Faculté de droit
Directeur du CREDIMI
Sébastien MANCIAUX
Maître de Conférences à l'Université de Bourgogne

Discussion générale

18h00 – Clôture du colloque

The conference will be held at the *Maison du Barreau* on the *Ile de la Cite*. Speeches will be delivered in French without translation.

More information is available here.

New EU Rules on Consumer Rights to Enter into Force

Thanks to Marta Otero for the tip-off

Source: Europa Press Releases

The new EU Consumer Rights Directive was formally adopted by Member States last Monday in the EU's Council of Ministers . The new legislation will strengthen consumers' rights in all 27 EU countries, particularly when shopping online. After publication in the EU's Official Journal, governments will have two years to implement the rules at national level. Today's approval follows an overwhelming vote to back the rules by the European Parliament on 23 June 2011 (MEMO/11/450). The European Commission put forward the proposal in October 2008 (IP/08/1474). The final agreement between Parliament and Council on the Consumer Rights Directive was brokered by EU Justice Commissioner Viviane Reding in June this year.

Top 10 benefits for consumers in the new Directive:

1) The proposal will eliminate hidden charges and costs on the Internet

Consumers will be protected against "cost traps" on the Internet. This happens when fraudsters try to trick people into paying for 'free' services, such as horoscopes or recipes. From now on, consumers must explicitly confirm that they understand that they have to pay a price.

2) Increased price transparency

Traders have to disclose the total cost of the product or service, as well as any extra fees. Online shoppers will not have to pay charges or other costs if they were not properly informed before they place an order.

3) Banning pre-ticked boxes on websites

When shopping online – for instance buying a plane ticket – you may be offered additional options during the purchase process, such as travel insurance or car rental. These additional services may be offered through so-called 'pre-ticked' boxes. Consumers are currently often forced to untick those boxes if they do not want these extra services. With the new Directive, pre-ticked boxes will be banned across the European Union.

4) 14 Days to change your mind on a purchase

The period under which consumers can withdraw from a sales contract is extended to 14 calendar days (compared to seven days legally prescribed by EU law today). This means that consumers can return the goods for whatever reason

if they change their minds.

- Extra protection for lack of information: When a seller hasn't clearly informed the customer about the withdrawal right, the return period will be extended to a year.
- Consumers will also be protected and enjoy a right of withdrawal for solicited visits, such as when a trader called beforehand and pressed the consumer to agree to a visit. In addition, a distinction no longer needs to be made between solicited and unsolicited visits; circumvention of the rules will thus be prevented.
- The right of withdrawal is extended to online auctions, such as eBay – though goods bought in auctions can only be returned when bought from a professional seller.
- The withdrawal period will start from the moment the consumer receives the goods, rather than at the time of conclusion of the contract, which is currently the case. The rules will apply to internet, phone and mail order sales, as well as to sales outside shops, for example on the consumer's doorstep, in the street, at a Tupperware party or during an excursion organised by the trader.

5) Better refund rights

Traders must refund consumers for the product within 14 days of the withdrawal. This includes the costs of delivery. In general, the trader will bear the risk for any damage to goods during transportation, until the consumer takes possession of the goods.

6) Introduction of an EU-wide model withdrawal form

Consumers will be provided with a model withdrawal form which they can (but are not obliged to) use if they change their mind and wish to withdraw from a contract concluded at a distance or at the doorstep. This will make it easier and faster to withdraw, wherever you have concluded a contract in the EU.

7) Eliminating surcharges for the use of credit cards and hotlines

Traders will not be able to charge consumers more for paying by credit card (or other means of payment) than what it actually costs the trader to offer such means of payment. Traders who operate telephone hotlines allowing the

consumer to contact them in relation to the contract will not be able charge more than the basic telephone rate for the telephone calls.

8) Clearer information on who pays for returning goods

If traders want the consumer to bear the cost of returning goods after they change their mind, they have to clearly inform consumers about that beforehand, otherwise they have to pay for the return themselves. Traders must clearly give at least an estimate of the maximum costs of returning bulky goods bought by internet or mail order, such as a sofa, before the purchase, so consumers can make an informed choice before deciding from whom to buy.

9) Better consumer protection in relation to digital products

Information on digital content will also have to be clearer, including about its compatibility with hardware and software and the application of any technical protection measures, for example limiting the right for the consumers to make copies of the content. Consumers will have a right to withdraw from purchases of digital content, such as music or video downloads, but only up until the moment the actual downloading process begins.

10) Common rules for businesses will make it easier for them to trade all over Europe.

These include:

- A single set of core rules for distance contracts (sales by phone, post or internet) and off-premises contracts (sales away from a company's premises, such as in the street or the doorstep) in the European Union, creating a level playing field and reducing transaction costs for cross-border traders, especially for sales by internet.
- Standard forms will make life easier for businesses: a form to comply with the information requirements on the right of withdrawal;
- Specific rules will apply to small businesses and craftsmen, such as a plumber. There will be no right of withdrawal for urgent repairs and maintenance work. Member States may also decide to exempt traders who are requested by consumers to carry out repair and maintenance work in their home of a value below €200 from some of the information requirements.

Masri Settles

The extraordinarily long-running litigation in *Masri v Consolidated Contractors* is over – the parties have settled. Brick Court (which represented the 'successful' claimant) has a useful summary of the various judgments of the English courts in *Masri* over the last five years.

[Thanks to Tom Cleaver for the tip-off.]

EU's Proposed Sales Law Hits the Shelves

The Commission has, today, published its Proposal for a Regulation on a Common European Sales Law, as a consequence of its 2010 consultation on contract law in the EU and the work of the Commission's (not uncontroversial) expert group. As expected, the proposed Common European Sales Law (CESL) takes the form of an optional instrument, which would apply only through the agreement of the parties to a contract falling within the scope of the instrument (which has contracts for the sales of goods at its core).

The Proposal marks the start of what seems likely to be a lively debate within and outside the institutions of the European Union. As a first reaction (and admittedly without having had sufficient time to explore the detail of the Proposal, which runs to 115 pages), it is suggested that two introductory points may be of particular interest to followers of this site.

First, the sole proposed legal basis of the measure is the internal market harmonisation power in TFEU, Art. 114. No reliance is placed on the civil justice power in TFEU, Art. 81.

Secondly, it is proposed that the Regulation should operate alongside (and not in lieu of) the choice of law regime established by the Rome I Regulation. According to Recital (10):

> *The agreement to use the Common European Sales Law should be a choice exercised within the scope of the respective national law which is applicable pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007), or any other relevant conflict of law rule. The agreement to use the Common European Sales Law should therefore not amount to, and not be confused with, a choice of the applicable law within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules.*

Recital (12) emphasises that, since the CESL contains a complete set of fully harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area where the parties have chosen to use the CESL. Consequently, Art. 6(2) of the Rome I Regulation, which guarantees to the consumer the protection of non-derogable provisions of the law of his country of habitual residence, is said to have "no practical importance for the issues covered by the Common European Sales Law". Recitals (27) and (28) emphasise that the national law applicable under the Rome I and Rome II Regulations (or other rules of private international law) will apply in any event to matters falling outside the CESL.

The exclusive character of the CESL, when chosen by the parties, is affirmed by the first sentence of Article 11 of the Regulation, which provides that, where the parties have validly agreed to use the CESL for a contract (see Art. 8), only the European Sales Law shall govern the matters addressed in its rules. The second sentence of Art. 11 addresses pre-contractual duties.

This seems all very well when the law applicable to the contract under Arts. 3, 4 or 6 the Rome I Regulation (as applicable) is the law of a Member State, but what if it is the law of a non-Member State? Can Art. 10 be taken at face value in preserving the integrity of the Rome I and Rome II Regulations, or must the CESL

be understood as being superimposed on the law applicable under the Rome I Regulation and (if so) on what basis? Recital (14) touches on this issue. It states that the CESL should not be limited to cross-border situations involving only Member States, but should also be available to facilitate trade between Member States and third countries. It continues by suggesting that:

> *Where consumers from third countries are involved, the agreement to use the Common European Sales Law, which would imply the choice of a foreign law for them, should be subject to the applicable conflict-of-law rules.*

It appears, therefore, that the proposed Regulation may contemplate that the choice of the CESL would involve an implicit choice under the Rome I Regulation of a law other than that of the third country consumer's country of habitual residence. The question is "Which law?", as Art. 3(1) of the Rome I Regulation requires that the law chosen be the law of a country, and not a choice of non-national law such as the CESL? In a contract between a seller habitually resident in an EU Member State and a consumer habitually resident in a non-Member State, one might argue that the choice of the law of the seller's State (including the CESL, as applicable in that State under the proposed CESL Regulation) may be demonstrated with sufficient clarity by the terms of the contract (Art. 3(1))? What, however, if the contract also (perversely) contains a choice of a third country's law? Does Art. 11 of the proposed Regulation then confer on the CESL rules the status of (party chosen) overriding mandatory provisions under Art. 9(2) of the Rome I Regulation, so as to trump the expressly chosen law, or does the CESL take effect as if incorporated by reference into the contract insofar as this is possible under the chosen law? Finally, even if a choice of a particular Member State's law can be clearly demonstrated, so as to give effect to the CESL, can the third country consumer still rely on more favourable protection under the law of his habitual residence, in line with Art. 6(2) of the Rome I Regulation (and in apparent contradiction of Recital (12))? These questions are likely to see more air time in the forthcoming legislative process. The point made here is that the proposed CESL and the Rome I Regulation do not, as Recital (10) and other parts of the Proposal appear to suggest, pass like ships in the night.

Commentaire romand LDIP/CL

Commentaire Romand. Loi sur le droit international privé. Convention de Lugano, is the first comment that involves both the analysis of the law on private international law and the new Lugano Convention. Thanks to the emphasis on case law, the practitioner and the researcher will find a comprehensive data base on Swiss private international law.
The book covers a wide range of topics, such as family law and inheritance, property rights and securities, contract law, trusts and corporations and bankruptcy. It also includes an updated review of the law of international arbitration. All these matters are also discussed in the context of the Lugano Convention, insofar as it applies to them.

Edited by Andreas Bucher, professor emeritus of the Faculty of Law, University of Geneva. Authors: Andrea Bonomi, Andrea Braconi, Andreas Bucher, Philippe Ducor, Louis Gaillard, Florence Guillaume and Pierre-Yves Tschanz.

ISBN 978-3-7190-2151-1

Ruehl on Statut und Effizienz: Ökonomische Grundlagen des Internationalen Privatrechts

Giesela Ruehl (Friedrich-Schiller University Jena and our new editor for Germany) has published her *Habilitationsschrift* on **Statut und Effizienz: Ökonomische Grundlagen des Internationalen Privatrechts [Applicable**

Law and Efficiency. Economic Foundations of Private International Law]. Here's an English description (the monograph itself is in German):

> *Is private international law an efficient answer to the problems of international transactions? In her recent book on the economic foundations of private international law, Giesela Rühl explores this question in great detail.*
>
> *She analyses choice of law-rules on a broad comparative basis and uses economic theory to tackle fundamental conceptual issues just as well as specific problems in the private international law of contracts and torts. Focusing on the recently adopted Rome I- and Rome II-Regulations she contributes to the understanding of the developing European private international law.*
>
> *The book is organized in four parts. In the first part, the author analyses the problems of international transactions from an economic perspective. She takes a closer look at the specific problems associated with international transactions and asks whether private international law – as compared to other governmental, non-governmental, regulatory or non-regulatory mechanisms – is a suitable or at least necessary instrument to deal with these problems. In the second part, the author lays the theoretical foundation for an economic analysis of private international law. She explores whether economic theory may be used to analyse issues in private international law and whether the basic assumptions and assessment criteria of economic theory may claim application. In the third part, the author re-conceptualises private international law from an economic perspective. She develops a general economic framework for the determination of the applicable law essentially based on free choice of law. In the fourth and final part, the author applies this framework to specific issues in choice of law, most importantly contracts and torts.*

ISBN 978-3-16-150698-7. Leinen € 99.00. More information is available on the publisher's website.

The Controversial Succession of Dali

Prof. Pilar Jiménez Blanco (University of Oviedo) published recently an article on the *Dali* ECJ's ruling, a case referred to the Court by the Tribunal de Grande Instance de Paris, af. C-518/08. I have asked her to summarize her opinion. Here it goes:

> The most important aspect of the ECJ judgment in the *Dali* case (C-518/08) is what the Court of Justice *does not say*: which law determines the beneficiaries of the resale right of Dali's original work . The problem is analysed within French law, which establishes a specific system of succession to the *droit de suite*. But, is French law applicable to the instant case?. Actually, neither the approach from the perspective of intellectual property rights nor the approach from the viewpoint of succession law justify determining the beneficiaries of the resale right under French law. It should be for Spanish law, as the law applicable to the succession, to determine both the validity of Dali's will and whether the Spanish State is beneficiary of the resale right. However, it is unlikely that the French judge, who is the one to rule on the merits, obviates the special rule of the *Code de la propriété intellectuelle*. Even if this will be a wrong solution that does not correspond neither with the will of the artist, nor with the assumed trend in the European Union towards a unitary conception of the succession.

Pilar Jiménez's article appeared in *Noticias de la Unión Europea*, 2011, núm. 220.