

Conference: Second Forum on EU Immigration and Asylum Policy - The Hague Programme and the Way Forward

From the conference website: In 2004 the Hague Programme set the direction for the EU in the second phase of its development of a common policy on asylum, migration and borders. Two years later, in June 2006, with a comprehensive package of Communications, the European Commission took stock of the progress made and assessed the level of implementation of the Hague Programme at EU and national level. In presenting this package of measures, the Commission wished to stimulate and structure the discussion with the Member States and the other Institutions on new policy initiatives and on possible ways to improve the functioning of Freedom, Security and Justice policies.

This forum will look at the challenges presented by these measures in the field of Asylum and Immigration. It will discuss the perceived need for the EU to manage migration flows more effectively with special emphasis on the global approach to migration. The continuing attempts to set up a common asylum policy acceptable to all EU member states will also be discussed. Furthermore, the role and powers of the Frontex agency in combating illegal migration will be scrutinised with reference to specific problems concerning the management of operational cooperation at national level. Whilst looking mainly to the future, the seminar will also review from a legal perspective the achievements of EU immigration and asylum policy since Tampere in 1999. The present forum follows the pattern of the "First Forum on Asylum and Immigration: Challenges of the Hague Programme" in Rome on 25-26 November 2005, which was co-ordinated by ERA and the Italian Ministry of the Interior.

Target audience: Asylum and immigration lawyers and judges, ministry officials, academics, NGO's.

This conference to be held in Milan, 9-10 November 2007, is organised by ERA in cooperation with Prof. Bruno Nascimbene, University of Milan. The conference

programme can be downloaded from the conference website.

Conference: The European Traffic Law Days

From the conference website: The European Traffic Law Days have established themselves as a forum for professional training and the exchange of experience between traffic law experts. The congress will provide experts in liability and insurance law with an opportunity to obtain a comprehensive overview of current developments in European traffic law relevant to daily practice.

The main emphasis of this year's event will be on the development of case law in the European Union on punitive damages. A working group will be set up, initially to determine the status quo, on the basis of which the fundamental problems involved in punitive damages will be discussed. Further topics are: Experience of the implementation of the fifth Directive; Elements of a sixth Directive (discussion on the progress achieved with the suggestions made during Trier VII); Minor accidents (improved enforcement of low-value claims involving traffic accidents abroad); The statute of limitations (European Parliament initiative); Rome II, the Regulation that governs the law applicable to traffic accidents abroad; The introduction of the recording of accident data Europe-wide; Simpler registration of motor vehicles abroad. Finally, current developments in European law and initiatives and developments in the harmonisation of European civil law will be discussed.

Target audience: All persons professionally involved in traffic law.

This conference to be held in Trier, 17-19 October 2007, is organised by ERA in cooperation with the Institute for European Traffic Law. This event will take place for the eighth time and will continue to be organised on an annual basis. The conference programme can be downloaded from the conference website.

Conference on Current Developments in European Family Law and Law of Succession

From the conference website: Lawyers are required to deal ever more with legal questions arising from cross-border family and parental responsibility cases. The following topics will be discussed:

Parental responsibilities: The application of the Brussels II Regulation in judicial practice in the Member States; Hague Convention on protection of children and Brussels II bis; Family mediation; Opportunities and limitations of cross-border mediation in family matters.

Cross-border supervision: Hague Convention on international protection of adults. **Current developments in the member states:** Divorce and its consequences; Descent and custody; Recognition of formalised same-sex relationships in Europe; Current issues in Europe; New legal framework for marriage issues in the EU; Regulation of matrimonial property regime on the Community level; Developments in European law of succession.

Target audience: Lawyers, especially those specialising in family law and law of succession, notaries, judges, academics.

This conference to be held in Trier, 1-2 October 2007, is organised by ERA. The conference programme can be downloaded from the conference website.

Conference on European Civil

Procedure for Civil Law Notaries

From the conference website: The conference will be devoted to the practical analysis of certain Community legislative instruments and initiatives of great importance for notary practice, such as: The “Brussels I” Regulation on the jurisdiction, recognition and enforcement of judgements in civil and commercial matters; The Regulation creating a European Enforcement Order for Uncontested Claims; The European Judicial Network in Civil and Commercial Matters; The Network of the Notariats of the European Union; The Regulation on the service of documents and the Regulation on the cross-border taking of evidence in Europe; The proposed “Rome I Regulation” on the law applicable to contractual obligations; Mediation in civil and commercial matters and the role of civil law notaries. Target audience: Civil law notaries of all EU Member States.

This conference to be held in Trier, 12-13 November 2007, is organised by ERA in cooperation with in cooperation with the Council of the Notariats of the European Union (CNUE). The conference programme can be downloaded from the conference website.

Workshop on Cross-border Security over Receivables and Comparative and Private International Law Issues

From the conference website: This workshop will provide an in-depth examination of financing based on receivables – both assignments and transfers for security, a subject of increasing importance in Europe and around the world. The case-study method will be used to highlight differences and similarities among more than half a dozen European countries. Leading writers in the field, prominent academics and experienced practitioners will present specific national solutions

to domestic and cross-border assignment of receivables encountered in current commercial practice. Important current developments in relevant private international law issues, including the issue of assignment in the context of the future Rome I Regulation, will be discussed. Participants at this interactive workshop from all over Europe will be invited to raise questions, share their experience and provide information about the law of additional jurisdictions. This programme will assist market participants and their counsel to understand better cross-border security over receivables and relevant private international law rules of their own and other countries and assist those involved in national, EU and global law reform efforts. The cases will be devised especially for this workshop by Eva-Maria Kieninger and Harry C. Sigman.

This conference to be held in Trier, 25-26 October 2007, is organised by ERA in cooperation with Eva-Maria Kieninger, Würzburg and Harry C. Sigman, Los Angeles. The conference programme can be downloaded from the conference website.

Forum Non Conveniens and Jurisdiction Clauses in Ontario

The Court of Appeal for Ontario has released *Red Seal Tours Inc. v. Occidental Hotels Management B.V.* (available [here](#)). The decision is of note for three reasons.

- The court reverses the motions judge's decision not to grant a stay of proceedings. When these sort of conflicting decisions happen on the same facts, it can raise concerns about the way these motions prolong preliminary disputes in litigation.
- The court treats a contract that did not contain a jurisdiction clause as "part and parcel" of a series of related contracts that did contain such a clause (in favour of Aruba). The motions judge gave no effect to the clause, but the appeal court gives it central and crucial weight.

- The court's order is to "permanently stay" the proceedings. For more on this language see C. Dusten and S.G.A. Pitel, "The Right Answer to Ontario's Jurisdictional Questions: Dismiss, Stay or Set Service Aside" (2005) 30 *Advocates' Quarterly* 297 at 308. I have troubles with the concept of a permanent stay, since by its nature a stay has a temporary quality (unlike a dismissal). I wonder if a "permanent stay" here could be seen to signal a move towards the notion of dismissing cases on the basis of forum non conveniens recently seen in the United States Supreme Court in *Sinochem*.
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Economics of Conflict of Laws

Edward Elgar Publishing has published an edited collection of works on  "**Economics of Conflict of Laws**", edited by Erin A. O'Hara (Vanderbilt). Here's the blurb:

For this important collection, Professor O'Hara has selected some cutting-edge previously-published work on the application of economic analysis to the conflict of laws. This authoritative two-volume set offers theoretical and empirical insights into existing approaches to choice of law and the effects of conflicting choice-of-law approaches on judicial decision-making. It investigates several competing proposals for more efficient choice-of-law systems, including a special section on torts. Further topics include evaluations of contract clauses (including choice-of-law and choice-of-forum provisions), and the effects of party choice on jurisdictional competition by states to provide more desirable laws, with examples relating to securities regulation, bankruptcy rules, law firm rules of ethics, same-sex marriage laws and asset protection trust law. A game theoretic analysis of interstate judgment recognition is also included.

The work includes 25 articles, dating from 1963 to 2003. Contributors include: W. Baxter, A. Guzman, B. Hay, L. Kramer, R. Rasmussen, L.E. Ribstein, R. Romano, P. Stephan, S.E. Sterk and M. Whinco.

ISBN: 978 1 84720 076. Price: £275.00, but you can purchase it from the Edward Elgar website for the discounted price of £247.50.

Latest Issue of “Praxis des Internationalen Privat- und Verfahrensrechts” - Annotation on “Color Drack”

Recently, the latest issue of the German legal journal *Praxis des Internationalen Privat- und Verfahrensrecht* (“IPRax”) has been published.

I.) Annotation on *Color Drack*

The issue contains *inter alia* an annotation by *Peter Mankowski* (Hamburg) on the ECJ’s judgment in *Color Drack GmbH./Lexx International Vertriebs GmbH* of 3 May 2007 where the Court had to deal with the question of jurisdiction in cases where there are several places of delivery within a single Member State.

Mankowski outlines in his annotation six potential solutions, pointing out, however, that none of them is - due to the complexity of the issue - completely convincing. This is, according to *Mankowski*, also true with regard to the approach adopted by the ECJ, which has developed a two-stage solution for identifying the competent court in cases where there are several places of delivery within a single Member State: According to the ECJ, “the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice.”

Mankowski examines this solution critically and points out that determining the

main focus of the deliveries, as advocated by the Court, implied uncertainty which contravened the aims of the Regulation. Also the subsidiary solution of the Court which shall be applied in cases where no main focus can be ascertained, the claimant's choice, is regarded sceptically since the Court's premise, in these cases all places of (part) deliveries were equivalent, could not be agreed with.

Due to the uncertainties which are attended with determining the main focus, *Mankowski* asks for further concretizing criteria and suggests to proceed - following choice of law rules which try to designate the law with the closest link to the case - from the assumption that it is decisive where the deliverer's place of business which is in charge of the contract is situated. In cases where nothing is delivered at this place, Art. 5 (1) lit. c Brussels I Regulation referred to Art. 5 (1) lit. a Brussels I Regulation and consequently to national law.

See regarding this case also our previous posts on the Advocate General's opinion, the judgment and further annotations.

II.) Contents

In addition to this annotation the new issue of the "IPRax" contains *inter alia* the following contributions:

- Article by *Axel Halfmeier* (Bremen) on the action raising an objection to the judgment claim ("Die Vollstreckungsgegenklage im Recht der internationalen Zuständigkeit")
- *Wolf-Georg Ringe* (Oxford) examines the impact of the ECJ's jurisprudence regarding companies' freedom of establishment on international civil procedure law ("Überseering im Verfahrensrecht - Zu den Auswirkungen der EuGH-Rechtsprechung zur Niederlassungsfreiheit von Gesellschaften auf das Internationale Zivilprozessrecht")
- Annotation by *Herbert Roth* (Regensburg) on a decision of the Court of Appeal Düsseldorf concerning the question of whether the debtor's identity has to be clarified - in case of uncertainties - already during the proceedings for a declaration of enforceability ("Der Streit um die Schuldneridentität im Verfahren der Vollstreckbarerklärung nach Art. 41, 43 EuGVVO")
- Annotation by *Urs Peter Gruber* (Halle) on a decision of the Court of Appeal Bamberg dealing with the question of whether proceedings for a

declaration of enforceability according to Artt. 51, 31 et seq. Brussels Convention are suspended in case insolvency proceedings are opened with regard to the respondent's assets *abroad* ("Inländisches Vollstreckbarerklärungsverfahren und Auslandskonkurs")

- Annotation by *Stefan Kröll* (Cologne) on two decisions of the Court of Appeal Karlsruhe regarding the question of whether procedural irregularities which have allegedly occurred at the place of arbitration can be raised in the proceedings for a declaration of enforceability ("Die Präklusion von Versagungsgründen bei der Vollstreckbarerklärung ausländischer Schiedssprüche")
- Annotation by *Marcus Mack* (Heidelberg) on the U.S. Supreme Court decision in *Sinochem* ("Forum Non Conveniens - Abweisung ohne Zuständigkeitsprüfung")
- Article by *Stephan Balthasar* (Munich) on the recognition and enforcement of German judgments on the Channel Islands ("Anerkennung und Vollstreckung deutscher Urteile nach *common law* auf den Kanalinseln und Verbürgung der Gegenseitigkeit")

The full contents as well as news in private international law can be found at the journal's website.

ALI principles published

Members of the American Law Institute (ALI) approved on their annual meeting on May 15, 2007 principles on jurisdiction, recognition of judgments, and applicable law in transnational intellectual property civil disputes (a legal area believed to need reform). The project is the result of several years of intense cooperation, examination and analysis between a broad council, reporters, advisers, liaisons and consultants under the support of ALI. This highly competent group scholarship is made available here. **Highly recommendable!**

Recent Articles on Recognition and Enforcement in Canada

Readers of this site might be interesting in the following two articles:

Antonin I. Pribetic, "Thinking Globally, Acting Locally: Recent Trends in the Recognition and Enforcement of Foreign Judgments in Canada" in *Annual Review of Civil Litigation 2006*, T. Archibald and R. Echlin, eds (Toronto: Thomson-Carswell, 2007) at 141-199 (available on SSRN [here](#)).

Antonin I. Pribetic, "Enforcing Foreign Summary/Default Judgments: The Damoclean Sword Hanging Over Pro Se Canadian Corporate Defendants? *The United States of America v. Shield Development Co.*" (2007) 7(1) *Canadian International Lawyer* 8-23, 2007 (available on SSRN [here](#)).