

# **New Instrument of the European Law Institute - Rescue of Business in Insolvency Law**

The European Law Institute has approved and published its new instrument, the report “Rescue of Business in Insolvency Law”. The report is available on SSRN as well as on the website of the ELI. The abstract on SSRN reads as follows:

*Since the global financial crisis, insolvency and restructuring law have been at the forefront of law reform initiatives in Europe and elsewhere. The specific topic of business rescue appears to rank top on the insolvency law related agenda of both the European Union (EU) and national legislators faced by a rapid growth of insolvencies, which clearly highlighted the importance of efficient mechanisms for dealing with distressed, but viable business. For the European Law Institute (ELI), this fuelled the momentum to launch an in-depth project on furthering the rescue of such businesses across Europe. The European Law Institute, established in 2011, is an independent non-profit organisation established to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. Building on the wealth of diverse legal traditions, ELI’s mission is the quest for better law-making in Europe and the enhancement of European legal integration. By its endeavours, ELI seeks to contribute to the formation of a more vigorous European legal community, integrating the achievements of the various legal cultures, endorsing the value of comparative knowledge, and taking a genuinely pan-European perspective. As such, its work covers all branches of the law: substantive and procedural; private and public (see <http://www.europeanlawinstitute.eu/>).*

*In September 2013, the ELI Council approved the proposal for a project on the ‘Rescue of Business in Insolvency Law’ (‘Business Rescue Project’) and appointed Prof. em. Bob Wessels (Leiden, Netherlands) and Prof. Stephan Madaus (Halle-Wittenberg, Germany) as Project Reporters to lead this two-stage project. The first stage comprised the drafting of National Inventory and Normative reports by National Correspondents (NCs) from 13 EU countries. In addition, Gert-Jan Boon, University of Leiden, prepared an inventory report on international recommendations from standard-setting organisations, such as UNCITRAL, the*

*World Bank, the American Bankruptcy Institute or the Nordic-Baltic Business Rescue Recommendations, under the supervision of the Reporters. Based primarily on these detailed reports, the second stage consisted of drafting the ELI Instrument on Business Rescue ('ELI Business Rescue Report') that elaborates recommendations for a legal framework enabling the further development of coherent and functional rules for business rescue in Europe. After the Project Team finalised the draft Instrument in early 2017, ELI Fellows and Members of the ELI Council voted to approve the 'ELI Business Rescue Report' at the ELI General Assembly, representing ELI Members, and Annual Conference in Vienna (Austria) on 6 September 2017 with no objection. It consists of 115 recommendations explained on more than 375 pages. Oxford University Press will published it soon. The Report is electronically available here as well as on the website of the ELI.*

*The Rescue of Business in Insolvency Law project is timely and may have a significant and positive impact on the harmonisation efforts of the European Commission as laid down in the November 2016 Proposal for a Directive on preventive restructuring frameworks. The Report contains recommendations on a variety of themes affected by the rescue of financially distressed businesses: legal rules for practitioners and courts, contract law, treatment and ranking of creditors' claims, labour law, laws relating to transaction avoidance and corporate law. The Report's ten chapters cover: (1) Actors and procedural design, (2) Financing a rescue, (3) Executory contracts, (4) Ranking of creditor claims; governance role of creditors, (5) Labour, benefit and pension issues, (6) Avoidance transactions in out-of-court workouts and pre-insolvency procedures and possible safe harbours, (7) Sales on a going-concern basis, (8) Rescue plan issues: procedure and structure; distributional issues, (9) Corporate group issues, and (10) Special arrangements for small and medium-sized enterprises (SMEs) including natural persons (but not consumers). The Report also includes a glossary of terms and expressions commonly used in restructuring and insolvency law.*

*The topics addressed in the Report are intended to present a tool for better regulation in the EU, developed in the spirit of providing a coherent, dynamic, flexible and responsive European legislative framework for business rescue. Mindful of the European Commission's commitment to better legal drafting, the Report's proposals are formulated as comprehensibly, clearly, and as consistently*

*as possible. Still, the recommendations are not designed to be overly prescriptive of specific outcomes, given the need for commercial flexibility and in recognition of the fact that parties will bargain in the 'shadow of insolvency law'. The Report is addressed to the European Union, Member States of the EU, insolvency practitioners and judges, as well as scholars. The targeted group many times flows explicitly from the text of a recommendation or the context in which such a recommendation is developed and presented. The Reporters cherish the belief that the report will assist in taking a next, decisive step in the evolutionary process of the European side of business rescue and insolvency law.*

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# **HCCCH Draft Guide to Good Practice on Article 13(1)(b) of the Hague Child Abduction Convention**

The Permanent Bureau of the Hague Conference on Private International Law (HCCCH) has just released the final French and English versions of the draft Guide to Good Practice on Article 13(1)(b) of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (Child Abduction Convention) for the attention of the *Special Commission meeting of October 2017 on the practical operation of the 1980 Child Abduction Convention and of the 1996 Child Protection Convention*. A Spanish translation of the document is also available.

Further information relating to the Special Commission meeting is available here: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6545&dtid=57>

In my view, this topic will likely spark some debate at the meeting given the heightened awareness of some of the pitfalls of the Child Abduction Convention in relation to cases of domestic violence. See, for example, Taryn Lindhorst and Jeffrey L. Edleson, *Battered Women, their Children, and International Law - the*

*Unintended Consequences of the Hague Child Abduction Convention* (Boston: Northeastern University Press, 2012) and Honourable Brenda Hale (Baroness Hale of Richmond), “Taking Flight—Domestic Violence and Child Abduction”, *Current Legal Problems* (13 August 2017).

*Please note that the meeting above-mentioned is open only to delegates or experts designated by the Members of the Hague Conference, invited non-Member States and International Organisations that have been granted observer status.*

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# **Van Den Eeckhout on Private International Law and Globalisation**

*Written by Veerle Van Den Eeckhout*

In February 2017, the working paper “Internationaal privaatrecht in tijden van globalisering. “Neutraal” internationaal privaatrecht!?”) of Veerle Van Den Eeckhout was posted on ssrn. This paper was written in Dutch.

Meanwhile, an English, slightly extended version of the paper (“Private International Law in an Era of Globalisation. “Neutral” Private International Law? I could be brown, I could be blue, I could be violet sky”) has been made available.

The abstract reads as follows: “In times of (discussions about) globalisation, due attention must be given to the operation of rules of private international law. Examination of the ongoing developments in private international law itself and in private international law in its interaction with other disciplines from the perspective of “protection of weak parties” and “protection of planetary common goods” allows carrying out the analysis to which current developments invite.”

The English paper can be found [here](#).

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# China has signed the Choice of Court Convention

More (not much more) information is here. Guangjian Tu provided a Chinese perspective on the Convention ten years ago. Two other recent publications are in this context: Zheng Sophia Tang and Alison Lu Xu on Choice of Court Agreements in Electronic Consumer Contracts in China, and King Fung Tsang, Chinese Bilateral Judgment Enforcement Treaties, 40 Loy. L.A. Int'l. & Comp. L. Rev. 1 (2017) (only on heinonline).

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## Focus Latin America: International Conflicts and Legal Order – Conference in Hamburg, 6-7 October 2017

On the occasion of the 80th birthday of *Jürgen Samtleben*, a Symposium will be held on 6 and 7 October 2017 at the Max-Planck-Institute in Hamburg, under the title: ***Focus Latin America – International Conflicts and Legal Order***.

There will be presentations in German, Spanish, and Portuguese.

Registration is free, and due until **15 September 2017**, through e-mail: [veranstaltungen@mpipriv.de](mailto:veranstaltungen@mpipriv.de).

The program is available here.

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# **A Private International Law Comparative and Prospective Analysis of Sino-European Relations**

The Center of Legal Studies on Efficiency of the Contemporary Law Systems (Cejesco - University of Reims) organizes a conference at the Faculty of Law on **13 September 2017** on the evolution of Law in China.

In this occasion, the book “International Sale of Goods - A Private International Law Comparative and Prospective Analysis of Sino-European Relations” (N. Nord and G. Cerqueira, Springer, 2017) will be presented to the academic community.

## **Topics and speakers:**

The Evolution of the Law in China - Nicolas Nord, Associate Professor, University of Strasbourg

Book Comments - Cyril Nourissat, Professor, University Jean Moulin - Lyon 3.

The conference will be chaired by Gustavo Cerqueira, Associate professor, University of Reims.

For further information on the conference:  
<https://univ-droit.fr/actualites-de-la-recherche/manifestations/24173-l-evolution-du-droit-en-chine>

For further information on the book:  
<http://www.springer.com/us/book/9783319540351>

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# Private International Law in Film

Can we teach private international law through film? Yes we can, and not only through Green Card. Three sources in Spanish provide ample material, including some for non-Spanish speakers.



The first, most comprehensive and academic one, comes from the Proyecto DeCine, a network of Spanish law professors interested in teaching law through film. The result is a fabulous book full with detailed didactic materials on different films, which is also available for free online. Several of the films discussed are in English or exist in translation.

The second source, a series of blog posts by Angel Espiniella Menéndez, professor for private international law at the University Oviedo, provides valuable recommendations, organized by subject matter, in monthly instalments. So far, he has provided five: person and capacity, protection of minors, parentage, marriage, and breakdown of marriage. Hopefully, more are coming

Finally, MillenniumDiPR.com provides a rather eccentric list of ten private international law related movies with some unexpected themes: Titanic for international family law, The Martian for conflicts with Martian law, etc. Only for the daring.

But all of this is in Spanish. Who has recommendations in other languages? Or who writes the guide in English?

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**HCCH Note on the concept of  
“purposeful and substantial**

# connection” of the February 2017 draft Convention of the Judgments Project

The Permanent Bureau of the Hague Conference on Private International Law (HCCH) has just issued a Note on the concept of “purposeful and substantial connection” in Article 5(1)(g) and 5(1)(n)(ii) of the February 2017 draft Convention of the Judgments Project for the attention of the *Special Commission meeting of November 2017 on the Recognition and Enforcement of Foreign Judgments*. The February 2017 draft Convention is available [here](#).

This Note was prepared by **Professor Ronald A. Brand** and **Dr Cristina M. Mariottini**. Professor Geneviève Saumier provided comments.

Article 5(1)(g) and 5(1)(n)(ii) reads as follows:

Article 5(1)

“A judgment is eligible for recognition and enforcement if one of the following requirements is met” - [...]

(g)

“[T]he judgment ruled on a contractual obligation and it was given in the State in which performance of that obligation took place, or should have taken place, in accordance with

(i) the parties’ agreement, or

(ii) the law applicable to the contract, in the absence of an agreed place of performance

unless the defendant’s activities in relation to the transaction clearly did not constitute a **purposeful and substantial connection to that State;**” (our emphasis)

(n)(ii)



“[T]he judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and - [...]

(ii) the law of the State of origin is expressly or impliedly designated in the trust instrument as the law governing the aspect of the trust that is the subject of the litigation that gave rise to the judgment[, unless the defendant’s activities in relation to the trust clearly did not constitute a **purposeful and substantial connection to that State**];” [...] (our emphasis)

Other information relating to the meeting is available at <https://www.hcch.net/en/projects/legislative-projects/judgments/special-commission>.

*Please note that the meeting above-mentioned is open only to delegates or experts designated by the Members of the Hague Conference, invited non-Member States and International Organisations that have been granted observer status.*

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## 5th Petar Sarcevic Conference on Information and Data



The good tradition of the biannual Petar Sarcevic conferences is being continued this year with the 5th conference titled **Information and Data: The Road Ahead**. It will take place in a beautiful Croatian coastal tourist and conference resort Opatija, on 6 and 7 October.

This two-day event will provide ample opportunities for the professionals and scholars to discuss current issues of protection of confidential information, business secrets and personal data in the context of technological advancement and resulting economic and social developments. The conference is divided into

three sessions:

- Protection of confidential information v access/disclosure
- Managing data protection: A tall order for controllers and subjects
- Litigation in the midst of economic and technological changes.

The vast range of speakers includes members of the judiciary (EU and national), representatives of the executive branch, leading lawyers and prominent academics.

For additional information about the conference, programme, speakers, venue and special early-bird rates expiring on 10 September please consult the conference webpage.

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## **Job Vacancy: Ph.D. Position/Teaching Fellow at Leuphana Law School, Lüneburg (Germany)**

Leuphana Law School is looking for a highly skilled and motivated Ph.D. candidate and fellow (wissenschaftliche/r Mitarbeiter/in) on a part-time basis (50%) as of 1 December 2017.

The successful candidate holds a first law degree (ideally the First State Exam (Germany) or LL.M. (UK)/J.D. (USA)/similar degree) and is interested in private international law, international economic law, and intellectual property law—all from a comparative and interdisciplinary perspective. A very good command of German and English is expected; good IT skills are required.

The fellow will be given the opportunity to conduct his/her own Ph.D. project (under the faculty's regulations). The position is paid according to the salary scale E-13 TV-L, 50%. The initial contract period is three years, with an option to be extended. The research fellow will conduct research as part of the unit led by

Professor Dr. Tim W. Dornis (Chair in Private Law, International Private and Economic Law, and Comparative Law) and will have an independent teaching obligation (2 hours/week).

If you are interested in this position, please send your application (cover letter, CV, and relevant documents) by 4 October 2017 to

Leuphana Universität Lüneburg

Personalservice, Corinna Schmidt

Kennwort: **WiMi Rechtswissenschaften**

Universitätsallee 1

21335 Lüneburg

bewerbung@leuphana.de

Leuphana University is an equal opportunity employer.

The job advert in full detail is accessible [here](#)