House of Lords EU Committee on Judicial Cooperation post-Brexit

On 20 March 2017 the European Union Committee of the House of Lords has published its Report on Judicial cooperation post-Brexit ("Brexit: Justice for families, individuals and Businesses?"). The full Report is available here. The summary reads as follows (emphasis added):

"The Brussels I Regulation (recast)

1. We acknowledge and welcome the UK's influence over the content of these three EU Regulations which are crucial to judicial cooperation in civil matters and reflect the UK's influence and British legal culture. We urge the Government to keep as close to these rules as possible when negotiating their post-Brexit application. (Paragraph 23)

2. The predictability and certainty of the BIR's reciprocal rules are important to UK citizens who travel and do business within the EU. We endorse the outcome of the Government's consultations, that an effective system of cross-border judicial cooperation with common rules is essential post-Brexit. (Paragraph 37)

3. We also note the Minister's confirmation, in evidence to us, that the important principles contained in the Brussels I Regulation (recast) will form part of the forthcoming negotiations with the remaining EU Member States. (Paragraph 38)

4. While academic and legal witnesses differed on the post-Brexit enforceability of UK judgments, it is clear that **significant problems will arise for UK citizens and businesses if the UK leaves the EU without agreement on the post-Brexit application of the BIR.** (Paragraph 52)

5. The evidence provided to us suggests that the **loss of certainty and predictability resulting from the loss of the BIR and the reciprocal rules it engenders** will lead to an inevitable increase in cross-border litigation for UK based citizens and businesses as they continue to trade and interact with the remaining 27 EU Member States**.** (Paragraph 53)

6. We are concerned by the Law Society of England and Wales' evidence that the

current uncertainty surrounding Brexit is already having an **impact on the UK's market for legal services and commercial litigation, and on the choices businesses are making as to whether or not to select English contract law as the law governing their commercial relationships.** (Paragraph 54)

7. The Government urgently needs to address this uncertainty and take steps to mitigate it. We therefore urge the Government to consider whether any interim measures could be adopted to address this problem, while the new UK-EU relationship is being negotiated in the two year period under Article 50. (Paragraph 55)

8. The evidence we received is clear and conclusive: **there is no means by which the reciprocal rules that are central to the functioning of the BIR can be replicated in the Great Repeal Bill, or any other national legislation. It is therefore apparent that an agreement between the EU and the UK on the post-Brexit application of this legislation will be required, whether as part of a withdrawal agreement or under transitional arrangements.** (Paragraph 60)

9. The Minister suggested that the Great Repeal Bill will address the need for certainty in the transitional period, but evidence we received called this into question. **We are in no doubt that legal uncertainty, with its inherent costs to litigants, will follow Brexit unless there are provisions in a withdrawal or transitional agreement specifically addressing the BIR.** (Paragraph 61)

10. The evidence suggests that jurisdictions in other EU Member States, and arbitrators in the UK, stand to gain from the current uncertainty over the post-Brexit application of the BIR, as may other areas of dispute resolution. (Paragraph 69)

11. With regard to arbitration, we acknowledge that the evidence points to a gain for London. But, we are also conscious of the evidence we heard on the importance of the principles of justice, in particular openness and fairness, underpinned by the publication of judgments and authorities, which are fundamental to open law. It is our view that greater recourse to arbitration does not offer a viable solution to the potential loss of the BIR. (Paragraph 70)

The Brussels IIa Regulation and the Maintenance Regulation

12. In dealing with the personal lives of adults and children, both the Brussels IIa Regulation and the Maintenance Regulation operate in a very different context from the more commercially focused Brussels I Regulation (recast). (Paragraph 81)

13. These Regulations may appear technical and complex, but the practitioners we heard from were clear that in the era of modern, mobile populations they bring much-needed clarity and certainty to the intricacies of cross-border family relations (Paragraph 82)

14. We were pleased to hear the Minister recognise the important role fulfilled by the Brussels IIa Regulation and confirm that the content of both these Regulations will form part of the forthcoming Brexit negotiations. (Paragraph 83)

15. We have significant concerns over the impact of the loss of the Brussels IIa and Maintenance Regulations post-Brexit, if no alternative arrangements are put in place. We are particularly concerned by David Williams QC's evidence on the loss of the provisions dealing with international child abduction. (Paragraph 92)

16. **To walk away from these Regulations without putting alternatives in place would seriously undermine the family law rights of UK citizens and would, ultimately, be an act of self-harm.** (Paragraph 93)

17. **It is clear that the Government's promised Great Repeal Bill will be insufficient to ensure the continuing application of the Brussels II and Maintenance Regulations in the UK post-Brexit:** we are unaware of any domestic legal mechanism that can replicate the reciprocal effect of the rules in these two Regulations. We are concerned that, when this point was put to him, the Minister did not acknowledge the fact that the Great Repeal Bill would not provide for the reciprocal nature of the rules contained in these Regulations. (Paragraph 97)

18. We are not convinced that the Government has, as yet, a coherent or workable plan to address the significant problems that will arise in the UK's family law legal system post-Brexit, if alternative arrangements are not put in place. **It is therefore imperative that the Government secures adequate alternative arrangements, whether as part of a withdrawal agreement or under transitional arrangements** (Paragraph 98)

Options for the future

19. The balance of the evidence was overwhelmingly against returning to the common law rules, which have not been applied in the European context for over 30 years, as a means of addressing the loss of the Brussels I Regulation (recast). We note that a return to the common law would also not be the Government's choice. (Paragraph 114)

20. A return to the common law rules would, according to most witnesses, be a recipe for confusion, expense and uncertainty. In our view, therefore, the common law is not a viable alternative to an agreement between the EU and the UK on the post-Brexit application of the Brussels I Regulation (recast). (Paragraph 115)

21. Nonetheless, in contrast to key aspects of the two Regulations dealing with family law, Professor Fentiman was of the opinion that in the event that the Government is unable to secure a post-Brexit agreement on the operation of the Brussels I Regulation (recast), a return to the common law rules would at least provide a minimum 'safety net'. (Paragraph 116)

22. **The combination of UK membership of the Lugano Convention, implementation of the Rome I and II Regulations through the Great Repeal Bill, and ratification of the Hague Convention on choice-of-court agreements, appears to offer at least a workable solution to the post-Brexit loss of the BIR.** (Paragraph 126)

23. The inclusion in the Lugano Convention of a requirement for national courts to "pay due account" to each other's decisions on the content of the Brussels I Regulation, without accepting the direct jurisdiction of the CJEU, could be compatible with the Government's stance on the CJEU's status post-Brexit, as long as the Government does not take too rigid a position. (Paragraph 127)

24. This approach will come at a cost. In particular, it will involve a return to the Brussels I Regulation, with all its inherent faults, which the UK as an EU Member State succeeded, after much time and effort, in reforming. (Paragraph 128)

25. In contrast to the civil and commercial field, we are particularly concerned that, save for the provisions of the Lugano Convention on cases involving maintenance, there is no satisfactory fall-back position in respect of family law. (Paragraph 135)

26. Our witnesses were unanimous that a return to common law rules for UK- EU cases would be particularly detrimental for those engaged in family law litigation. The Bar Council also suggested that an already stretched family court system would not be able to cope with the expected increase in litigation. (Paragraph 136)

27. The Bar Council specifically called for the EU framework in this field to be sustained post-Brexit. But while this may be the optimal solution in legal terms we cannot see how such an outcome can be achieved without the CJEU's oversight. (Paragraph 137)

28. Other witnesses suggested the UK rely on the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. But the evidence suggests that this Convention offers substantially less clarity and protection for those individual engaged in family law based litigation. (Paragraph 138)

29. The Minister held fast to the Government's policy that the Court of Justice of the European Union will have no jurisdiction in the UK post-Brexit. We remain concerned, however, that if the Government adheres rigidly to this policy it will severely constrain its choice of adequate alternative arrangements. (Paragraph 142)

30. Clearly, if the Government wishes to maintain these Regulations post-Brexit, it will have to negotiate alternative arrangements with the remaining 27 Member States to provide appropriate judicial oversight. But the Minister was unable to offer us any clear detail on the Government's plans. When pressed on alternatives, he mentioned the Lugano Convention and "other arrangements". We were left unable to discern a clear policy. (Paragraph 143)

31. The other examples the Minister drew on, Free Trade Agreements with Canada and South Korea, do not deal with the intricate reciprocal regime encompassed by these three Regulations. We do not see them as offering a viable alternative. (Paragraph 144)

32. We believe that the Government has not taken account of the full implications of the impact of Brexit on the areas of EU law covered by the three civil justice Regulations dealt with in this report. In the area of family law, we are very

concerned that leaving the EU without an alternative system in place will have a profound and damaging impact on the UK's family justice system and those individuals seeking redress within it. (Paragraph 145)

33. In the civil and commercial field there is the unsatisfactory safety net of the common law. But, at this time, it is unclear whether membership of the Lugano Convention, which is in itself imperfect, will be sought, offered or available. (Paragraph 146)

34. **We call on the Government to publish a coherent plan for addressing the post-Brexit application of these three Regulations, and to do so as a matter of urgency. Without alternative adequate replacements, we are in no doubt that there will be great uncertainty affecting many UK and EU citizens.** (Paragraph 147)"

Conference Report: Scientific Association of International Procedural Law, University of Vienna, 16 to 17 March 2017

On 16 and 17 March 2017 the *Wissenschaftliche Vereinigung für Internationales Verfahrensrecht* (Scientific Association of International Procedural Law) held its biennial conference, this time hosted by the Law Faculty of the University of Vienna at the Ceremony Hall of the Austrian Supreme Court of Justice (*Oberster Gerichtshof*).

After opening and welcoming remarks by the Chairman of the Association, Prof. Burkhard Hess, Luxemburg, the Vice President of the Supreme Court Dr. Elisabeth Lovrek, and Prof. Paul Oberhammer, speaking both as Dean of the Law Faculty of the University of Vienna and chair of the first day, the first session of the conference dealt with international insolvency law:

Prof. Reinhard Bork, Hamburg, compared the European Insolvency Recast Regulation 2015/848 and the 1997 UNCITRAL Model Law on Cross-Border Insolvency Law in respect to key issues such as the scope of application, international jurisdiction and the coordination of main and secondary proceedings. Bork made clear that both instruments, albeit one is binding, one soft law, have far-reaching commonalities on the level of guiding principles (e.g. universality, mutual trust, cooperation, efficiency, transparency, legal certainty etc.) as well as many similar rules whereas in certain other points differences occur, such as e.g. the lack of rules on international jurisdiction and applicable law as well as on groups of companies and data protection in the Model Law. In particular in respect to the rules on the concept of COMI Bork suggested updating the Model Law given a widespread reception of this concept and its interpretation by the European Court of Justice far beyond the territorial reach of the European Insolvency Regulation.

Prof. Christian Koller, Vienna, then focused on communication and protocols between insolvency representatives and courts in group insolvencies. Koller explained the difficulties in regulating these forms of cooperation that mainly depend of course on the good-will of those involved but nevertheless should be and indeed are put under obligation to cooperate. In this context, Koller, inter alia, posed the question if choice of court-agreements or arbitration agreements in protocols are possible but remained skeptical with a view to Article 6 of the Regulation and objective arbitrability. In principle, however, Koller suggested using and, as the case may be, broadening the exercise of party autonomy in cross-border group insolvencies.

In contrast to the harmonizing efforts of the EU and UNCITRAL Prof. Franco Lorandi, St. Gallen, described the Swiss legal system as a rather isolationist "island" in cross-border insolvency matters, yet an island "in motion" since certain steps for reform of Chapter 11 on cross-border insolvency within the Federal Law on Private International Law of 1987 (*Bundesgesetz über das Internationale Privatrecht, IPRG)* are being currently undertaken (see the Federal Governments Proposal; see the Explanatory Report).

In the following Pál Szirányi, DG Justice and Consumers, Unit A1 – Civil Justice, reported on accompanying implementation steps under e.g. Article 87 (establishment of the interconnection of registers) and Article 88 (establishment and subsequent amendment of standard forms) of the European Insolvency

Recast Regulation to be undertaken by the European Commission as well as on the envisaged harmonization of certain aspects of national insolvency laws within the EU (see Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU, see also post by Lukas Schmidt on conflictoflaws.net) and finally on the EU's participation in the UNCITRAL Working Group V on cross-border insolvency. Szirány further explained that it is of interest to the EU to align and coordinate the insolvency exception in the future Hague Judgments Convention with EU legislation, see Article 2 No. 1 lit. e covering "insolvency, composition and analogous matters" of the 2016 Preliminary Draft Convention.

Prof. Christiane Wendehorst, Vienna, reported on the latest works of the European Law Institute, in particular on the ELI Unidroit Project on Transnational Principles of Civil Procedure, but also on the project on "Rescue of Business in Insolvency Law", that is drawing to its close, potentially by the ELI conference in Vienna on 27 and 28 April 2017 as well as on the project on "The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution".

Finally, Dr Thomas Laut, German Federal Ministry of Justice (*Bundesministerium der Justiz*) reported on current legislative developments in Germany including works in connection with the Brussels IIbis Recast Regulation, human rights litigation in Germany and the Government Proposal for legislative amendments in the area of conflict of laws and international procedural law (*Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz, Entwurf eines Gesetzes zur Änderung von Vorschriften im Bereich des Internationalen Privat- und Zivilverfahrensrechts*). This Proposal aims at, inter alia, codifying choice of law rules on agency by inserting a new Article 8 into the Introductory Law of the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB)* and enhancing judicial cooperation with non-EU states, in particular in respect to service of process.

On the second day, Prof. Hess, Luxemburg, introduced the audience to the second session's focus on methodology in comparative procedural law and drew attention to the growing demand and relevance – reminding the audience, inter alia, of the influence of the Austrian law of appeal on the civil procedure reforms in Germany

– but also to certain unique factors of the comparison of procedural law.

Prof. Stefan Huber, Hannover, took up the ball and presented on current developments of comparative legal research and methodology in general as well as possible particularities of comparing procedural law such as e.g. a strong lex fori-principle, the supplementing character of procedural law supporting the realization of private rights, a typically compact character of a procedural legal system, areas of discretion for the judge and the central role of the state – features which might make necessary a more "contextual" approach and a stronger focus on "legal concepts" as a layer between macro and micro perspectives. Huber also argued for a more substantive approach in regard to the latest efforts of the EU to compare the quality of justice systems of the Member States by its annual Justice Scoreboards since 2013. Indeed, the mere collection of economic and financial figures and other "juridical" data leaves unanswered questions of legal backgrounds and concepts in the various legal orders that might very well explain certain particularities in the data. Yet, it must be welcomed that the EU has started to embark on the delicate and methodically demanding but inevitable task of comparing the justice systems linked together under a principle of mutual trust.

Prof. Fernando Gascón Inchausti, Complutense de Madrid, continued the deep reflections on comparative procedural law with a view to the EU and illustrated the relevance in case law both of the European Court of Justice as well as the European Court of Human Rights and in the EU's law-making and evaluations of existing instruments, see recently e.g. Max-Planck-Institute Luxemburg, "An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumer law, JUST/2014/RCON/PR/CIVI/0082, to be published soon.

Prof. Margaret Woo, Northeastern University Boston, closed the session with a global perspective on comparative procedural law from a US and Chinese perspective and particularly drew attention to portectionist tendencies in the US such as e.g. the recent (not entirely new) "foreign law bans" (for a general report from 2013 see here) to be observed in more and more state legislations that put the application of foreign law under the condition that the foreign law in its entirety, i.e. its "system", does not conflict in any point of law with US guarantees and state fundamental rights. Obviously, this overly broad type of public policy

clause is directed against Sharia laws and the like but goes far beyond in that it compares the entire legal system rather than the result of the point of law relevant to the case at hand. In the EU, Article 10 Rome III Regulation might have introduced a "mini" foreign law ban in case of abstract discrimination: "Where the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the forum shall apply". It remains of course to be seen whether the ECJ interprets this provision in the sense of an ordinary public policy clause requiring a concrete discrimination with effect on the result in the particular case at hand.

In the closing discussion, the audience strongly confirmed the need and benefits of comparative research and studies in particular in times of doubts and counter-tendencies against further cooperation and integration amongst states, their economies and judicial systems. The event ended with warm words of thanks and respect to the organizers and speakers for another splendid conference. If everything goes well, interested readers will be able to study the contributions in the forthcoming conference publication before the international procedural community will meet again in two year's time – the last conference's volume has just been published, see Burkhard Hess (ed.), Band 22: Der europäische Gerichtsverbund – Gegenwartsfragen der internationalen Schiedsgerichtsbarkeit – Die internationale Dimension des europäischen Zivilverfahrensrechts, € 68,00, ISBN: 978-3-7694-1172-0, 2017/03, pp. 236.

Revista Española de Derecho Internacional 2017-1

The new issue of the Revista Española de Derecho Internacional, *RED*I, has just been released both in digital and printed form. It includes the following PIL articles:

Santiago Álvarez González, *What Conflict Rule Should Be Adopted To Determine The Law Applicable To Preliminary Questions On Which The Succession May Depend?*

Abstract: This paper deals with the classic topic of «incidental or preliminary question» in the conflicts of laws. The start point is the question nº 13 of the Green Paper Succession and wills. There is no consensus on the answer to the incidental question- which is understandable, as this is indeed the begin of every theoretical problem. However, there is no consensus either around the concept of incidental question. And this is something that precludes any proper discussion. As a way out the author proposes to reject the theory (rectius: the theories) of the preliminary question and to adopt a case by case approach. This *ad hoc* approach is based, among other, upon the multiple rules and exceptions (many of them very reasonable) proposed by authors, especially in German doctrine. In some cases «recognition» (and not conflicts of laws) can be the most appropriate approach; in others any one of the classic proposals (…) will provide with the better answer, depending on the circumstances and the most preponderant interest involved; it is also possible to avoid the problem through a proper «characterization» of the situation. The main shortcoming of this proposal – the fact that it puts legal certainty at a risk- is a fully manageable one; and in any case it is a proposal not weaker than the current heterogeneous scenario.

Rafael Arenas García, *The European Legislator And The Private International Law Of Companies In The EU*

Abstract: Luxembourg Court's case law has shown that the freedom of establishment granted by the EU law affects not only the substantive company law of the Member States, but also the conflict of laws rules in matters relating to companies. In the absence of secondary legislation relating to the law governing companies in the EU, and in order to improve legal certainty it would be desirable that the European legislator draw up rules aimed to determine which will be the lex societatis governing companies incorporated in EU countries. This regulation should also concretize the matters ruled by this lex societatis and the change of the lex societatis as a result of the transfer of the registered office of the company. Among the subjects covered by this regulation it should necessarily be included the company's legal capacity and the directors' liability. It would be also necessary to delimitate

the scope of the specific corporate regulation and that relating with insolvency proceedings.

Pedro de Miguel Asensio, *Jurisdiction And Applicable Law In The New Eu General Data Protection Regulation*

Abstract: The new EU General Data Protection Regulation brings about a deep transformation of the previous legal framework based on the mere approximation of laws. As regards the cross-border dimension, it amends the territorial scope of application of EU data protection law to clarify that it covers the processing of data of subjects who are in the Union by a controller or a processor not established in the Union where the processing activities are related to offering goods or services to such data subjects. This article discusses the rationale that supports the new approach and the relevant criteria for its interpretation. Unlike the previous regime, the provisions of the Regulation on its territorial scope do not determine the competent national supervisory authority. The Regulation includes specific provisions on the distribution of competences between the supervisory authorities of the Member States with regard to cross-border situations. Such rules play also an important role concerning the right to a judicial remedy against a supervisory authority. Additionally, new special jurisdiction rules are established concerning private claims by data subjects against a controller or processor as a result of the infringement of the rights granted to them by the Regulation. Such rules are of special significance with respect to the right to compensation where a damage results from an infringement of the Data Protection Regulation. One of the main objectives of this article is to clarify the issues raised by the relationship of the new special rules on jurisdiction and related proceedings with other provisions, such as those of the Brussels I (Recast) Regulation. The shortcomings of EU conflict rules in the area of private enforcement of data protection law and the interplay between the new Regulation and the general EU framework on conflict of laws are also discussed.

Fernando Esteban de la Rosa, *Consumer Complaints' Regime In The New European Law On Alternative And Online Consumer Dispute Resolution*

Abstract: The global nature of online consumer trade has given rise to new strategies guaranteeing consumer rights, such as enabling online dispute

resolution. The new European law, namely Directive 2013/11/EU and Regulation 524/2013/EU, has boosted regional acceptance of this trend. The present study analyses the impact of the new European legislation on the system of private international law. The study reveals, on the one hand, the need to make systematic adjustments in order to achieve a spatial scope of application for the principle of liberty according with the EU legislator´s intention, to devoid the interpretation excluding the reference to foreign consumer arbitration or to integrate some regulatory gaps inherent to the newly established system. On the other hand, it focuses on the need to verify whether the current regime complies with the requirements derived from the recognition of the right proclaimed by art. 47 ECFR and art. 19 TEU. In this perspective the study contains de lege ferenda solutions intertwined with the peculiarities of the online management of cross-border claims via the European platform.

Elena Rodríguez Pineau, *Regulation Brussels IIbis Recast: Reflections On The Role Of European Private International Law*

Abstract: Ten years after the Regulation (EC) 2201/2003 entered into force, and bearing in mind the jurisprudence of the European Court of Justice on the Regulation, the Commission believes that the time is ripe for a Regulation recast. Thus, in 2016 the Commission has presented its proposal. The text identifies six basic problems that are deemed to be in need of a thorough revision: international child abduction, the disposal of exequatur, the enforcement of foreign decisions, cooperation between authorities, cross-border placement of children and the hearing of the child. As the proposal highlights, the recast would aim at better protecting the best interest of the child. However, many of the new rules included entail direct harmonisation of procedural rules of Member States, which will result in a deeper integration that will foster the principles of mutual recognition and mutual trust among Member States. This article deals with the novelties of the Brussels II recast (both as to the six items previously identified as well as other new elements of the Regulation) and tackles the tension between the protection of the best interest of the child and the reinforcement of the principle of mutual recognition in the European area of civil justice.

All papers are in Spanish. The whole summary (thus Public International Law papers, contributions to the *Foro* and a selection of recently published books with a critical comment) can be downloaded here.

SSRN: Recent articles on Private International Law/Conflict of Laws

I thought it might be worth to draw your attention to a couple of interesting papers that I came across on SSRN recently (without any claim of completeness):

On Brexit and Private International Law:

- *Matthias Lehmann & Nihal Dsouza* (University of Bonn), What Brexit Means for the Interpretation and Drafting of Financial Contracts
- *John Armour* (University of Oxford), *Holger Fleischer* (MPI Hamburg), *Vanessa Jane Knapp* (Queen Mary University of London) & *Martin Winner* (Vienna University of Economics and Business), Brexit and Corporate Citizenship
- *Mukarrum Ahmed* (Lancaster University) & *Paul R. Beaumont* (University of Aberdeen), Exclusive Choice of Court Agreements: Some Issues on the Hague Convention on Choice of Court Agreements and its Relationship with the Brussels I Recast Especially Anti-Suit Injunctions, Concurrent Proceedings and the Implications of Brexit
- *Mukarrum Ahmed* (Lancaster University), Brexit and English Jurisdiction Agreements: The Post-Referendum Legal Landscape

On EU Private International Law:

- *Jean-Sylvestre Bergé* (Université de Lyon), The Gap between Legal Disciplines, Blind Spot of the Research in Law: Remarks on the Operation of Private International Law in the EU Context
- *Evangelos Vassilakaki*s (Aristotle University of Thessaloniki), The Choice of the Law Applicable to the Succession under Regulation 650/2012 – An

Outline

- *Laura van Bochove* (Leiden University), Purely Economic Loss in Conflict of Laws: The Case of Tortious Interference with Contract
- *Ilaria Pretelli* (Swiss Institute of Comparative Law), Exclusive and Discretionary Heads of Jurisdiction for Third States and Lugano States: The Way Forward
- *Ugljesa Grusic* (Faculty of Laws, University College London), Long-Term Business Relationships and Implicit Contracts in European Private Law
- *Matthias Haentjens & Dorine Verheij* (Leiden University), Finding Nemo: Locating Financial Losses after Kolassa/Barclays Bank and Profit
- Remus Titiriga (INHA University), Revival of Rabel's Trans-National Characterization for Rules of Conflict? Some Answers in a European Convention
- *Berk Demirkol* (University of Galatasaray), Droit Applicable aux Contrats de Construction (Law Applicable to Construction Contracts)

On non-EU Private International Law:

- *Patrick Borchers* (Creighton University School of Law), Is the Supreme Court Really Going to Regulate Choice of Law Involving States?
- *Akawat Laowonsiri* (Thammasat University), Conflict of Genders in Conflict of Laws: Unresolved Problems in Thailand and Elsewhere
- *Ralf Michaels* (Duke University School of Law) The Conflicts Restatement and the World
- *Jinxin Dong* (China University of Petroleum), On the Internationally Mandatory Rules of the PRC
- *Hannah L. Buxbaum* (Indiana University Bloomington Maurer School of Law), Transnational Legal Ordering and Regulatory Conflict: Lessons from the Regulation of Cross-Border Derivatives
- *Patrick Borchers* (Creighton University School of Law), An Essay on Predictability in Choice-of-Law Doctrine and Implications for a Third Conflicts Restatement
- *John F. Coyle* (University of North Carolina School of Law), The Canons of Construction for Choice-of-Law Clauses

On International Arbitration

- *Csongor István Nagy* (University of Szeged), Central European Perspectives on Investor-State Arbitration: Practical Experiences and Theoretical Concerns
- *Evangelos Kyveris* (University College London), An In-Depth Analysis on the Conflicting Decisions in Dallah v. Pakistan: Same Law, Same Principles, Different Decisions

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Reminder: Registration deadline for young scholars‘ PIL conference in Bonn

The following reminder has been kindly provided by Dr. Susanne L. Gössl. LL.M. (Tulane), University of Bonn.

This is a short reminder that the registration deadline for the first German young scholars‘ PIL conference on April 6th and 7th 2017 at the University of Bonn (see our previous post here) is approaching.

The conference will be held in German. Its general topic is “Politics and Private International Law”.

Professor Dagmar Coester-Waltjen has kindly agreed to deliver our conference’s opening address. Consolidated in four panels with the topics “Arbitration”, “Procedural Law and Conflict of Laws/Substantial Law”, “Protection of Individual Rights and Conflict of Laws” and “Public Law and Conflict of Laws”, a total of eight presentations and one responsio will address current aspects of the relationship between politics and PIL and invite further discussion.

Participation is free, but a registration is required.

The registration deadline is **February 28th 2017**.

In order to register for the conference, please use this link. Please be aware that

the number of participants is limited.

Further information may be found here.

We are looking forward to welcoming many participants to a lively and thought-provoking conference!

Kotuby & Sobota on "General Principles of Law and International Due Process"

This is a shameless plug for my new book. It is available for pre-order on the Oxford University Press website and on Amazon.com. I was fortunate enough to co-author this work with my friend and colleague Luke Sobota from Three Crowns.

This book is intended to be a modern update of Bin Cheng's seminal book on general principles from 1953–identifying, summarizing and analyzing the core general principles of law and norms of international due process, with a particular focus on developments since Cheng's writing. The aim is to collect and distill these principles and norms in a single volume as a practical resource for international law jurists, advocates, and scholars. The book includes a Foreward by Judge Stephen M. Schwebel.

We've been fortunate to receive some wonderful praise thus far. Judge Schwebel has called it "a signal contribution to the progressive development of international law, . . . [done] with scholarship, insight, and panache." Pierre Marie Dupuy has deemed it a "most useful study on the place and role of general principles of law in contemporary international arbitration," while Judge James Crawford expects it to become a "work that will benefit both scholars and practitioners."

Droit des Contrats Internationaux, 1st edition

This book authored by M.E. Ancel, P. Deumier and M. Laazouzi, and published by Sirey, is the first manual written in French solely devoted to international contracts examined through the lens of judicial litigation and arbitration. It provides a rich and rigorous presentation in light of the legal instruments recently adopted or under discussion in France, as well as at the European and international levels.

After an introduction to the general principles of the matter, the reader will be able to take cognizance of the regimes of the most frequent contracts in the international order: business contracts (sale of goods and intermediary contracts), contracts relating to specific sectors (insurance, transport), contracts involving a weaker party (labor and consumer contracts) or a public person.

Advanced students, researchers as well as practitioners will find in this volume the tools enabling them to grasp the abundant world of international contracts, to identify the different issues and to master the many sources of the discipline.

The ensemble is backed up by a highly developed set of case law and doctrinal references, updated on August 15, 2016.

More information about the book in traditional format is available here, and here for the e-book format.

Marie-Elodie Ancel is a professor at the University Paris Est Créteil Val de Marne (UPEC), where she heads two programs in International Business Litigation and Arbitration.

Pascale Deumier is a professor at the Jean Moulin University (Lyon 3), where she is a member of the Private Law Team and coordinates the research focus on the Sources of Law.

Malik Laazouzi is a professor at the Jean Moulin University (Lyon 3), where he heads the Master 2 of Private International and Comparative Law.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 6/2016: Abstracts

The latest issue of the "Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)" features the following articles:

U. Magnus: **A Special Conflicts Rule for the Law Applicable to Choice of Court and Arbitration Agreements?**
The article examines whether the German legislator should enact a separate conflicts rule which determines the law that is applicable to the conclusion and validity of choice of court and arbitration agreements. With respect to choice of court agreements the national legislator's room for manoeuvre is anyway very limited due to the regulations in Art. 25 Brussels Ibis Regulation and Art. 5 Hague Convention on Choice of Court Agreements of 2005. There is no genuine need for an additional national conflicts rule, in particular since the interpretation and exact scope of the new conflicts rule in Art. 25 (1) Brussels Ibis Regulation still requires its final determination by the CJEU. After weighing all pros and cons the article recommends not to enact a separate conflicts provision. The same result is reached for arbitration agreements. Here, the international practice that in the absence of a choice the law at the place of arbitration applies should be fixed on the international or European level.

K. Bälz: **Failing states as parties in international commercial disputes: public international law and conflict of laws**
In the aftermath of the "Arab Spring" a number of states in the immediate vicinity of Europe have turned into failing states. Using the Libya cases of the English High Court as a starting point, this article examines the practical questions that

arise in commercial disputes involving failing states. The key question is how to implement the international law principles on regime change and state failure in international disputes.

U.P. Gruber: **The new international private law on the equalization of pension rights – a critical assessment**
German international private law contains an extremely complicated rule on the equalization of pension rights. Under this rule, the equalization of pension rights of husband and wife shall be subject to the law applicable to the divorce according to the Rome III Regulation; however, an equalization shall only be granted if accordingly German law is applicable and if such equalization is recognized by the law of one of the countries of which the spouses were nationals at the time when the divorce petition was served. If one of the spouses has acquired during the subsistence of the marriage a pension right with an inland pension fund and carrying out the equalization of pension rights would not be inconsistent with equity, the equalization of pension rights of husband and wife shall be carried out pursuant to German law on application of a spouse.
Lately, Art. 17 (3) *EGBGB* was amended. Whereas in former times, Art. 17 (3) *EGBGB* referred to the law applicable to divorce determined by an autonomous German rule, the provision now makes referral to the Rome III Regulation. In the legislative process, this amendment was neither discussed nor justified. At a closer look, however, the new rule has serious flaws and should be changed.

C. Heinze/B. Steinrötter: **When does a contract fall within the scope of the „directed activity" as provided for in Art. 15 (1) (c) Regulation (EC) No 44/2001 (= Art. 17(1) (c) Regulation [EU] No 1215/2012)?**
This contribution analyses the recent *Hobohm*-judgment of the European Court of Justice (ECJ), which concerns the requirement "contract falls within the scope of such activities" in Art. 15 (1) (c) Regulation (EC) No 44/2001 (= Art. 17 (1) (c) Regulation [EU] No 1215/2012). The CJEU decided that the rules on jurisdiction over consumer contracts are applicable even if the respective contract on its own does not fall within the scope of the professional activity which has been directed to the consumer's home state, provided that it is closely linked to an earlier contract falling under Art. 17 (1) (c). The *authors* analyse the elements of this test of close connection and place it into the more general context of the jurisdiction rules for consumer disputes.

T. Lutzi: **Qualification of the claim for a 'private copying levy' and the**

requirement of seeking to establish the liability of a defendant under Art. 5 No. 3 Brussels I (Art. 7 (2) Brussels I recast)
Seized with the question whether a claim for the "blank-cassette levy" under § 42b of the Austrian *Urheberrechtsgesetz* (which transposes Art. 5 (2) b of the European Copyright Directive) qualifies as delictual within the meaning of Art. 5 No. 3 of the Brussels I Regulation (Art. 7 (2) of the recast Regulation), the Court of Justice had an opportunity to refine its well-known *Kalfelis* formula, according to which an action falls under Art. 5 No. 3 if it "seeks to establish the liability of a defendant" and is "not related to a 'contract' within the meaning of Art. 5 No. 1". Holding that the claim in question sought to establish the liability of the defendant "since [it] is based on an infringement […] of the provisions of the UrhG", the Court seems to have moved away from the more restrictive interpretation of this criterion it has applied in the past. Yet, given the implications of such a broad understanding of Art. 5 No. 3, not least for claims in unjust enrichment, a restrictive reading of the decision is proposed.

L. Hübner: **Effects of cross-border mergers on bonds**
The article deals with the complex interplay of international contract law and international corporate law exemplified by the ECJ decision in the *KA Finanz* case. Three issues will be focused on: (i) the law applicable to a bond indenture after a cross-border merger of one of the contracting parties with a third party; (ii) the law applicable to the legal consequences of such a merger (legal and asset succession as well as creditor protection); and (iii) the application of Art. 15 of Directive 78/855 to securities to which special rights are attached.

C. Thomale: **Multinational Corporate Groups, Secondary insolvency proceedings and the extraterritorial reach of EU insolvency law**
In its preliminary ruling on the *Nortel Networks* insolvency dispute, the ECJ has made important assertions on procedural and substantive aspects of secondary insolvency proceedings and their coordination with the main proceedings as well as their reach to extraterritorial assets of the debtor. At the same time, the decision fuels the general regulatory debate on corporate group insolvencies. This comment analyses the decision and develops an alternative approach.

D.-C. Bittmann: **Requirements regarding a legal remedy in terms of art. 19 of Regulation (EC) No. 805/2004 and competence for carrying out the certification of a judgment as a European Enforcement Order**
The following article examines a judgment of the ECJ, which deals with several

problems regarding the interpretation of Regulation (EC) No. 805/2004 creating a European Enforcement Order (EEO) for uncontested claims. The first part of the decision regards the requirements established by Art. 19 of the regulation. The ECJ rules, that Art. 19 (1) of Regulation (EC) No. 805/2004 requires from the national legal remedy in question that it effectively and without exception allows for a full review, in law and in fact, of a judgment in both of the situations referred to in that provision. Furthermore the EJC rules, that this legal remedy must allow the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of force majeure, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question (Art. 19 (1) (b)). In the second part of the decision the ECJ rules, that the certification of a judgment as an EEO, which may be applied for at any time, can be carried out only by a judge and not by the registrar. The latter is only allowed to carry out the formal act of issuing the standard form according to Art. 9 of Regulation (EC) No. 805/2004 after the decision regarding certification as an EEO has been taken by the judge.

S. Arnold: **Contract, Choice of Law and the Protection of the Consumer abroad when lured into business premises**

Consumer protection is a cornerstone of European Law – just like party autonomy. Even in consumer contracts, parties can choose the applicable law. Yet the choice must not be to the detriment of the consumer. This is the core idea of Art. 6 (2) Rome I-Regulation. The *OLG Stuttgart* (Higher Regional Court of Stuttgart) addressed the range of that provision which is a central tool of consumer protection through conflict of laws. During a package holiday in Turkey, an 85 year old lady had bought a carpet. Turkish substantive Law did not allow for the lady to withdraw from the contract, German substantial Law, however, did. The *OLG Stuttgart* decided that the lady could withdraw from the contract on the basis of German substantial Law. The *OLG Stuttgart* found that the Turkish seller had worked together with the German travel agency in order to lure tourists from Germany into his business premises.

C. Wendelstein: **Cross-border set-off based on counterclaim governed by Italian law**

In the context of an international set-off the German Federal Court of Justice had to deal with various questions in the field of conflict of laws. For the first time the Court had to adjudicate upon the characterization of the notion of *liquidità* in

Italian law (Art. 1243 *Codice civile* = Cc). According to the Federal Court of Justice this question has to be answered by the law designated by Art. 17 Rome I Regulation. The author agrees with this finding.

G. Schulze: **The personal statute in case of ineffective dual nationalities (case note on a judgment given by the Federal Court of Justice of Germany on 24th June 2015 – XII ZB 273/13)**

The applicant had been living in Germany since his birth. As he had a double name (according to Spanish customs) registered in the civil registry in Spain he wanted to go by his Spanish family name in Germany as well. The case raises the question of how to determine the personal statute of a multinational person having both a Spanish and a Moroccan nationality if the person has no connections whatsoever to the countries in question. The Federal Court of Justice of Germany (*Bundesgerichtshof, BGH*) held: That in default of an "effective" citizenship the law of habitual residence shall be applicable, *in casu*: German law. That the "limping" name does not violate EU law. There are doubts about this solution: The effectiveness of nationality does not form a part of the elements of Art. 10 (1) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB*). Effectiveness serves only to clearly define the personal statute for given connecting factors, viz. in order to choose between several citizenships in Art. 5 (1) sentence 1 or to determine the (closer connected) habitual residence in Art. 5 (2) *EGBGB*. *De lege lata* there is no well-founded basis for a supported rejection of the application of law of nationality. However the general tendency to apply the law of habitual residence is not a reason to apply Art. 5 (2) *EGBGB* in analogy given multiple ineffective nationalities. It is not suitable to extend the escape clause in Art. 5 (2) *EGBGB*. In any case it is not a solution if the nationalities are EU nationalities. A former opportunity for choice of law which was unknown by the tenants does not eliminate an infringement of Art. 18 TEU (discrimination) and 21 TEU (freedom of movement).

M. Andrae: **The matrimonial property regime of the spouses with former Yugoslav nationality**

For the determination of the law applicable to matrimonial property referring to spouses who had at the time of marriage the Yugoslav nationality, two principles have a special significance: 1. The law of the former Yugoslavia shall not apply, including its interregional law and its conflict of laws principles. 2. An automatic change of the applicable law must be avoided, if possible and if it is not the

consequence of a choice of law. Priority is given to the first principle. The connecting factor of the common nationality pursuant to Art. 15 (1) and 14 (1) No. 1 *EGBGB* must be supplemented. For this it is suitable to use the principle of closest connection by analogy to Art. 4 (3) sentence 2 *EGBGB*. Reference is made to the right of a successor State, if the spouses have had at the time of entering the marriage the Yugoslav nationality and a common closest connection to an area of the former Yugoslavia, which is now the territory of successor state. If such a connection is absent, then the applicable law has to be determined in accordance with Art. 15 (1) and 14 (1) No. 2 of the *EGBGB*, if necessary by Art. 14 (1) No. 3 *EGBGB*.

A. Reinstadler/A. Reinalter: **The decision opening the debtor-in-possession proceeding pursuant to § 270a German Insolvency Act is not an insolvency proceeding pursuant to the European Insolvency Regulation (2002)**
The Court of Appeal of Trento, local section of Bolzano (Italy) had to rule on the question whether the debtor-in-possession proceeding/*Verfahren auf Eigenverwaltung* (§ 270a German Insolvency Act) can be qualified as decision opening an insolvency proceeding pursuant to art. 16 European Insolvency Regulation (2002) and has, therefore, to be recognized automatically by operation of law by the courts of other Member States. Judge-Rapporteur *Elisabeth Roilo* concluded (implicitly referring to the *Eurofood*-formula) that the decision issued by the German district court in which opened the debtor-in-possession proceeding pursuant to § 270a German Insolvency Act is neither listed in Annex A of the Regulation nor is the appointed provisional liquidator (*vorläufiger Sachwalter*) included in Annex C of the Regulation. Since the decision, furthermore, foresees neither the divestment of debtor’s assets nor the forfeiture of the powers of management which he has over his assets, the criteria set down in the *Eurofood*-judgment are not fulfilled. The result is that the decision may not be qualified as a decision opening an insolvency procedure under the terms of art. 16 European Insolvency Regulation (2002).

New Trends in Collective Redress Litigation: International Seminar in Valencia

Professor Dr. Carlos Esplugues Mota (University of Valencia) has organized an international seminar on new trends in collective redress litigation that will take place on 25 November 2016 at the University of Valencia (Spain). The seminar will be held in English and Spanish. Topics and speakers will include:

Collective actions in private international law and Spanish legal practice (Prof. Dr. Laura Carballo Piñeiro, Universidad de Vigo)

International Mass Litigation in Product Liability Cases (Prof. Dr. Jan von Hein, University of Freiburg)

Protection of mortgagors (consumers) in the EU (Prof. Dr. Blanca Vila Costa, Universitat Autònoma de Barcelona)

Class actions and arbitration (Prof. Dr. Ana Montesinos García, Universitat de València)

The New European Framework for ADR and ODR in the area of consumer protection (Prof. Dr. Fernando Esteban de la Rosa, Universidad de Granada)

An Approach to Consumer Law and Mass Redress from Civil Law (Prof. Dr. Mario Clemente Meoro, Universitat de València).

The panels will be chaired by Professor Dr. Esplugues Mota and Professor Dr. Carmen Azcárraga Monzonís. Participation is free of charge, but requires prior registration with Prof. Maria Jose Catalán Chamorro (Maria.Jose.Catalan@uv.es). The full programme with further details is available here.

Conference Report: “The Impact of Brexit on Commercial Dispute Resolution in London”

By Stephan Walter, Research Fellow at the Research Center for Transnational Commercial Dispute Resolution (TCDR), EBS Law School, Wiesbaden, Germany.

On 10 November 2016, the Academy of European Law (ERA), in co-operation with the European Circuit, the Bar Council and the Hamburgischer Anwaltverein, hosted a conference in London on “The Impact of Brexit on Commercial Dispute Litigation in London”. The event aimed to offer a platform for discussion on a number of controversial issues following the Brexit referendum of 23 June 2016 such as the future rules governing recognition and enforcement of foreign judgements in the UK, the impact of Brexit on the rules determining the applicable law and London’s role in the international legal world.

Angelika Fuchs (Head of Section – Private Law, ERA, Trier) and Hugh Mercer QC (Barrister, Essex Court Chambers, London) highlighted in their words of welcome the significant impact of Brexit on business and the practical necessity to find solutions for the issues discussed.

In the first presentation, Alexander Layton QC (Barrister, 20 Essex Street, London) scrutinised Brexit’s “Implications on jurisdiction and circulation of titles”. He noted that the Brussels I Regulation Recast will cease to apply to the UK after its withdrawal from the EU and examined possible ways to fill the resulting void. Because an agreement between the UK and the EU on retaining the Brussels I Regulation Recast seemed very unlikely, not least because of the ECJ’s jurisdiction over questions of interpretation of the Regulation, he favoured a special agreement between the UK and the EU in regard to the application of the Brussels I Regulation Recast based on the Danish model. The ECJ’s future role in interpreting the Regulation could be addressed by adopting a provision similar to Protocol 2 to the 2007 Lugano Convention. Yet it was disputed whether or not the participation of the UK in the Single Market would be a political prerequisite for such an arrangement. He argued that there would be no room for a revival of the 1988 Lugano Convention since the 2007 Lugano Convention terminated its

predecessor. Furthermore, neither a revival of the 1968 Brussels Convention nor the accession to the 2007 Lugano Convention would lead to a satisfactory outcome as this would result in the undesired application of outdated rules. In a second step Layton discussed from an English point of view the consequences on jurisdiction and on the recognition and enforcement of judgements if at the end of the two year period set out in Article 50 TEU no agreement would be reached. Concerning jurisdiction the rules of the English law applicable to defendants domiciled in third States would also apply to cases currently falling under the Brussels I Regulation Recast. In regard to the recognition and enforcement of judgements rendered in an EU Member State pre-Brussels bilateral treaties dealing with these questions would revive, since they were not terminated by the Brussels I Regulation and its successor. Absent a treaty between the UK and the EU Member State in question the recognition and enforcement would be governed by English common law. Likewise, the recognition and enforcement of English judgements in EU Member States would be governed by bilateral treaties or the respective national laws. In Layton's opinion, the application of these rules might lead to legal uncertainty. He concluded that both the 2005 Hague Choice of Court Convention and arbitration could cushion the blow of Brexit, but limited to certain circumstances.

Matthias Lehmann (Professor at the University of Bonn) analysed the "Consequences for commercial disputes" laying emphasis on the impact of Brexit on the rules determining the applicable law to contracts and contracts related matters, its repercussions on pre-referendum contracts and potential pitfalls in drafting new contracts post-referendum. Turning to the first issue, he summarised the current state of play, meaning the application of the Rome I Regulation and Rome II Regulation, and stated that these Regulations would cease to apply to the UK after its withdrawal from the EU. In regard to contractual obligations this void could be filled by the 1980 Rome Convention, since the Rome I Regulation had not replaced the Convention completely. Still, this would lead to the application of outdated rules. He therefore recommended to terminate the 1980 Rome Convention altogether. Regarding non-contractual obligations the Private International Law (Miscellaneous Provisions) Act 1995 would apply. Lehmann noted that – unlike the Rome II Regulation – this Act contained no clear-cut rules on issues such as competition law or product liability. Because of these flaws he scrutinised three alternative solutions and favoured a new treaty between the UK and the EU on Private International Law. Even though disagreements over who

should have jurisdiction over questions of interpretation could hinder the conclusion of such an arrangement the use of a provision similar to Protocol 2 to the 2007 Lugano Convention could be a way out. If this option failed, the next best alternative would be to copy the rules of the Rome I Regulation and the Rome II Regulation into the UK's domestic law and to apply them unilaterally. As a consequence, the UK courts would not be obliged to follow the ECJ's interpretations of the Regulations causing a potential threat to decisional harmony. Furthermore, the implementation could cause some difficulties because the Regulations' rules are based on autonomous EU law concepts. Finally, he rejected a complete return to the common law as this would lead to legal uncertainty and potential conflicts with EU Member States' courts. Lehmann subsequently discussed Brexit's repercussions on pre-referendum contracts governed by English law. He submitted that in principle Brexit would not lead to a frustration of a contract. By contrast, hardship, force majeure or material adverse change clauses could cover Brexit, depending on the precise wording and the specific circumstances. Concerning the drafting of new contracts he pointed out that it would be unreasonable not to take Brexit into account. Attention should be paid not only to drafting provisions dealing with legal consequences in the case of Brexit but also to Brexit's implications on the contract's territorial scope when referring to the "EU". If the contract contained a choice-of-law clause in favour of English law, Lehmann suggested using a stabilization clause because English law might change significantly due to Brexit.

The conference was rounded off by a round table discussion on "The future of London as a legal hub", moderated by Hugh Mercer QC and with the participation of Barbara Dohmann QC (Barrister, Blackstone Chambers, London), Diana Wallis (Senior Fellow at the University of Hull; President of the European Law Institute, Vienna and former Member of the European Parliament), Burkhard Hess (Professor and Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg), Alexander Layton QC, Matthias Lehmann, Ravi Mehta (Barrister, Blackstone Chambers, London) and Michael Patchett-Joyce (Barrister, Outer Temple Chambers, London). Regarding the desired outcome of the Brexit negotiations and London's future role in international dispute resolution the participants agreed on the fact that a distinction had to be made between the perspectives of the UK and the EU. Concerning the latter, the efforts of some EU Member States to attract international litigants to their courts were discussed and evaluated. Moreover,

Hess stressed London's role as an entry point for international disputes into the Single Market – an advantage London would likely lose after the UK's withdrawal from the EU. Patchett-Joyce argued that Brexit was not the only threat to London's future as a legal hub but that there were global risks that had to be tackled on a global level. In regard to the Brexit negotiations there was widespread consensus that the discussion on the future role of the ECJ would be decisive for whether or not an agreement between the UK and the EU could be achieved. Wallis argued that Brexit might have a very negative impact on access to justice, not least for consumers. To mend this situation, Lehmann expressed his hope to continue the judicial cooperation between the EU Member States and the UK even post-Brexit. An accession to the 2005 Hague Choice of Court Convention was also advocated, though the Convention's success was uncertain. Turning to arbitration, since, as Mehta noted, its use increased significantly in numerous areas of law, and on a more abstract level to the privatisation of legal decision-making, Wallis and Patchett-Joyce addressed the problem of confidentiality and its repercussions on the development of the law. Furthermore, Dohmann stated that it was the duty of the state to provide an accessible justice system to everybody. It would not be enough to refer parties to the possibility of arbitration. Finally, Layton argued that in contrast to the application of foreign law which would create significant problems in practise, the importance of judgement enforcement would be overstated because most judgements were satisfied voluntarily.

It comes as no surprise that these topics sparked lively and knowledgeable debates between the speakers and attendees. Though these discussions indicated possible answers to the questions raised by the Brexit referendum it became clear once more that at the moment one can only guess how the legal landscape will look like in a post-Brexit scenario. But events like this ensure that the guess is at least an educated one.