First and Second Issues of 2017's Rivista di diritto internazionale privato e processuale

(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issues of the RDIPP)

The first and second issues of 2017 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) were just released.

The first issue features three articles, one comment, and two reports.

- *Franco Mosconi*, Professor Emeritus at the University of Pavia, and *Cristina Campiglio*, Professor at the University of Pavia, **'Richiami interni alla legge di diritto internazionale privato e regolamenti comunitari: il caso dei divorzi esteri'** ('Effects of EU Regulations on Domestic Private International Law Provisions: The Case of Foreign Divorces'; in Italian).

This paper inquires whether Article 65 (Recognition of foreign rulings) and the underlying private international law reference are still applicable to foreign divorces after Regulations No 2201/2003 and No 1259/2010 replaced Article 31 of Law No 218/1995 and after the recent provision submitting the dissolution of same-sex partnerships to Regulation No 1259/2010.

- *Peter Kindler*, Professor at the University of Munich, **'La legge applicabile ai patti successori nel regolamento (UE) n. 650/2012'** ('The Law Applicable to Agreements as to Successions According to Regulation (EU) No 650/2012'; in Italian).

Under Italian substantive law agreements as to succession are not admitted. The same is true, inter alia, for French and Spanish law. The idea behind this rule is deeply rooted in the dignity of the de cuius. The freedom to dispose of property upon death is protected until the last breath and any speculation on the death of the disponent should be avoided. Other jurisdictions such as German or Austrian law allow agreements as to succession in order to facilitate estate planning in

complex family situations. This is why the Succession Regulation (650/2012/EU) could not ignore agreements as to succession. Article 25 of the Regulation deals with the law applicable to their admissibility, their substantive validity and their binding effects between the parties. The Regulation facilitates estate planning by introducing the freedom of the parties to such an agreement to choose the applicable law (Article 25(3)). The Author favours a wider concept of freedom of choice including (1) the law of the State whose nationality the person whose estate is involved possesses at the time of making the choice or at the time of death and (2) the law of the habitual residence of that person at the time of making the choice or at the time of death. As to the revocability of the choice of the lex successionis made in an agreement as to succession, the German legislator has enacted a national norm which allows the parties to an agreement as to succession to establish the irrevocability of the choice of law. This is, according to the Author, covered by Recital No 40 of the Succession Regulation. The Regulation has adopted a wide notion of agreements as to succession, including, inter alia, mutual wills and the Italian patto di famiglia. The Author welcomes that, by consequence, the advantages of Article 25, such as the application of the hypothetical lex successionis and the freedom of choice, are widely applicable.

The Regulation did not (and could not) introduce the agreement as to succession at a substantive law level. It does not interfere with the legislative competence of the Member States. According to the author this is why member states such as Italy are free to consider their restrictive rules on agreements as to succession as part of their public policy within the meaning of Articles 35 e 40 litt. a of the Regulation.

- *Cristina Campiglio*, Professor at the University of Pavia, **'La disciplina delle unioni civili transnazionali e dei matrimoni esteri tra persone dello stesso sesso'** ('The Regulation of Cross-Border Registered Partnerships and Foreign Same-Sex Marriages'; in Italian).

With Law No 76/2016 two new types of pair bonds were regulated: civil unions between same-sex persons and cohabitation. As for transnational civil unions, the Law merely introduced two provisions delegating to the Government the amendment of Law No 218/1995 on Private International Law. The change is laid down in Legislative Decree 19 January 2017 No 7 which, however, has not solved all the problems. The discipline of civil unions established abroad is partial, being

limited to unions between Italian citizens who reside in Italy. Some doubt remains moreover in regulating the access of foreigners to civil union in Italy as well as in identifying the law applicable to the constitution of the union, its effects and its dissolution; finally, totally unresolved – due to the limitations of the delegation – remains the question of the effect in Italy of civil unions established abroad between persons of opposite sex. With regard to same-sex marriages celebrated abroad the fate of Italian couples is eventually clarified but that of mixed couples remains uncertain; in addition, no information is provided as to the effects of marriages between foreigners.

In addition to the foregoing, the following comment is featured:

- *Domenico Damascelli*, Associate Professor at the University of Salento, **'Brevi note sull'efficacia probatoria del certificato successorio europeo riguardante la successione di un soggetto coniugato o legato da unione non matrimoniale'** ('Brief Remarks on the Evidentiary Effects of the European Certificate of Succession in the Succession of a Spouse or a Partner in a Relationship Deemed to Have Comparable Effects to Marriage'; in Italian).

This article refutes the doctrinal view according to which the European Certificate of Succession (ECS) would not produce its effects with regard to the elements referred to therein that relate to questions excluded from the material scope of Regulation EU No 650/2012, such as questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage. This view is rejected not only on the basis of its paradoxical practical results (namely to substantially depriving the ECS of any usefulness), but mainly because it ends up reserving the ECS a pejorative treatment compared to that afforded to the analogous certificates issued in accordance with the substantive law of the Member States (the effects of which, vice versa, have to be recognized without exceptions under Chapter IV of the Regulation). The rebuttal is strengthened considering the provisions contained in Chapter VI of the Regulation, from which it emerges that, apart from exceptional cases (related, for example, to the falsity or the manifest inaccuracy of the ECS), individuals to whom is presented cannot dispute the effects of ECS.

Finally, the first issue of 2017 of the *Rivista di diritto internazionale privato e*

processuale features the following reports:

- *Katharina Raffelsieper*, Attorney at Thewes & Reuter Avocats à la Cour, '**Report on Recent German Case-Law Relating to Private International Law in Civil and Commercial Matters'** (in English).
- *Stefanie Spancken*, Associate at Freshfields Bruckhaus Deringer LLP, Düsseldorf, **'Report on Recent German Case-Law Relating to Private International Law in Family Law Matters'** (in English).

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The second issue of 2017 of the *Rivista di diritto internazionale privato e processuale* features three articles and one report.

- *Costanza Honorati*, Professor at the University of Milan-Bicocca, **'La proposta di revisione del regolamento Bruxelles II-*bis*: più tutela per i minori e più efficacia nell'esecuzione delle decisioni'** ('The Proposal for a Recast of the Brussels IIa Regulation: More Protection for Children and More Effectiveness in the Enforcement of Decisions'; in Italian).

The present essay is a first assessment of the Proposal for a recast of the Brussels IIa Regulation (COM(2016)211). After a short explanation of the reasons for not touching on the highly controversial grounds for divorce, the essay develops on the proposed amendments in the field of parental responsibility and international abduction of children. It further analyses the amendments proposed to the general criterion of the child's habitual residence and to prorogation of jurisdiction (par. 3) and the new provision on the hearing of the child (par. 4). Major attention is given to the new chapter on abduction of children, that is assessed into depth, also in regard of the confirmation of the much-discussed overriding mechanism (par. 5-7). Finally, the amendment aiming to the abolition of exequatur, counterbalanced by a new set of grounds for opposition, is assessed against the cornerstone of free circulation of decision's principle. Indeed, new Article 40 will allow to refuse enforcement when the court of the state of enforcement considers this to be prejudicial to the best interest of the child, thus overriding basic EU principles (par. 8-9).

- *Lidia Sandrini*, Researcher at the University of Milan, **'Nuove prospettive per una più efficace cooperazione giudiziaria in**

materia civile: il regolamento (UE) n. 655/2014' ('New Perspectives for a More Effective Judicial Cooperation in Civil Matters: Regulation (EU) No 655/2014'; in Italian).

Regulation (EU) No 655/2014 – applicable from 18 January 2017 – established a European Account Preservation Order procedure (EAPO) to facilitate cross-border debt recovery in civil and commercial matters. In order to give a first assessment of the new instrument, the present contribution aims at identifying the peculiarity that could make the EAPO preferable to the creditor vis-à-vis equivalent measures under national law. It then scrutinizes the enactment of this new piece of European civil procedure law in light of the principles governing the exercise of the EU competence in the judicial cooperation in civil and commercial matters as well as its compliance with the standard of protection of the creditor's and debtor's rights resulting from both the EU Charter of Fundamental Rights and the ECHR. Finally, it analyses the rules on jurisdiction as well as on the applicable law, provided for by the Regulation, in order to identify hermeneutical solutions to some critical issues raised by the text and clarify its relationship with other EU instruments.

- *Fabrizio Vismara*, Associate Professor at the University of Insubria, **'Legge applicabile in mancanza di scelta e clausola di eccezione nel regolamento (UE) n. 2016/1103 in materia di regimi patrimoniali tra i coniugi'** ('Applicable Law in the Absence of a Choice and Exception Clause Pursuant?to Regulation (EU) No 2016/1103 in Matters of Matrimonial Property Regimes'; in Italian).

This article analyzes the rules on the applicable law in the absence of an express choice pursuant to EU Regulation No 2016/1103 in matters of matrimonial property regimes. In his article, the Author first examines the connecting factors set forth under Article 26 of the Regulation, with particular regard to the spouses' first common habitual residence or common nationality at the time of the conclusion of the marriage and the closest connection criteria, then he proceeds to identify the connecting factors that may come into play in order to establish such connection. The Author then focuses on the exception clause under Article 26(3) of the Regulation by highlighting the specific features of such clause as opposed to other exception clauses as applied in other sectors of private international law and by examining its functioning aspects. In his conclusions, the Author underlines some critical aspects of such exception clause as well as some

limits to its application.

Finally, the second issue of 2017 of the *Rivista di diritto internazionale privato e processuale* features the following report:

- *Federica Favuzza*, Research fellow at the University of Milan, **'La risoluzione n. 2347 (2017) del Consiglio di Sicurezza e la protezione dei beni culturali nei conflitti armati e dall'azione di gruppi terroristici'** ('Resolution No 2347 (2017) of the Security Council on the Destruction, Smuggling of Cultural Heritage by Terrorist Groups'; in Italian).

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale.

Le Brexit, Enjeux régionaux, nationaux et internationaux (2017) by Charles Bahurel, Elsa Bernard and Marion Ho-Dac (ed.)

The book *Le Brexit, Enjeux régionaux, nationaux et internationaux* (Bruylant, 2017), edited by Pr. Charles Bahurel, Pr. Elsa Bernard and Associate Pr. Marion Ho-Dac, has just been published. It includes a foreword, an introduction and papers from a three-days symposium on legal aspects of Brexit which took place in February and March 2017 in different universities.
The book is divided in three parts. The first is dedicated to the policy and institutional issues of Brexit and deals with Brexit preparation and post-Brexit relationships. The second part concerns EU citizenship and economic issues and deals with internal market and judicial cooperation in civil and commercial matters (see, *inter alia*, the contribution of Gilles Cuniberti on international economic aspects with a discussion paper by Emmanuel Guinchard and the

contribution of Jean Sagot-Duvauroux on international family law aspects). It also focuses on some major actors of Brexit: EU citizens, students, patients, bankers and lawyers. The third part is devoted to criminal and immigration issues.

The abstract reads as follows:
Moins d'un an après le referendum britannique sur le retrait du Royaume-Uni de l'Union européenne, de nombreuses questions d'ordre économique, politique, juridique et social se posent quant à cet événement sans précédent dans l'histoire de la construction européenne.
Compte tenu des conséquences régionales, nationales et internationales du Brexit, il était nécessaire que des spécialistes viennent éclairer les multiples zones d'ombre qui subsistent sur des sujets aussi divers que l'engagement du retrait, les modèles de coopération possibles entre le Royaume-Uni et l'Union européenne, l'avenir politique, juridique et économique de cette Union, les enjeux migratoires du Brexit mais aussi ses enjeux pour les citoyens européens et pour les opérateurs économiques que sont, par exemple, les banques ou les entreprises.
Cet ouvrage s'adresse aux praticiens spécialisés en droit européen (avocats, notaires, fiscalistes, banquiers) ainsi qu'aux universitaires et aux membres des collectivités territoriales.

Foreword of the editors: here

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Postdoctoral Position at the University of Milan

The University of Milan will recruit a postdoctoral researcher in Private International Law, starting in January 2018, for a duration of 24 months (renewable once).

The researcher will work on the project 'Private International Law and New

Technologies’.

Eligible candidates must hold a doctorate in law or have comparable research experience. They must have a good/excellent command of Italian. Good command of English is an additional asset. Additional accommodation funding for candidates relocating from abroad is available.

Deadline for applications: 16 October 2017.

More details can be found here

Arbitrability of Company Law Disputes in Central and Eastern Europe: International Conference in Cluj-Napoca (Romania)

The Central and Eastern European Company Law Research Network is organising an international conference on the Arbitrability of Company Law Disputes in Central and Eastern Europe that will take place at the Department of Law of the Sapientia University in Cluj-Napoca (Romania). The event will be on 20 October 2017. Speakers include distinguished academics from various Central and Eastern European countries. The conference is open to the public. For the programme, registration and further details, please click here.

2018 ILA Biennial Conference, Sydney, Australia: Developing International Law in Challenging Times – Call for Papers

The International Law Association has launched the following Call for Papers:

„In 2018, the Australian Branch of the International Law Association will be hosting the biennial ILA conference. The conference, which is being held in Sydney, Australia, from 19-24 August 2018, is a major international event that will bring together hundreds of judges, academics, practitioners and officials of governments and international organisations from all around the globe. The Australian Branch of the ILA is calling for paper and panel proposals as part of the program for the conference.

The objectives of the International Law Association include 'the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law'. Yet how are we to anticipate the development of international law, and particularly understanding and respect for international law, in an ever-changing world? There are a myriad of international challenges facing global society—sharpening economic divides, nationalist assertions of boundaries, climate change, cycles of war and poverty, new uses of technology. The 2018 ILA conference will address diverse cutting-edge issues in international law as part of its ongoing study of international law, as well as through dialogue on pressing questions of public and private international law.

The ILA biennial conferences provide an opportunity for members of the ILA Committees to meet and advance their work on discrete areas of international law. The current work of the ILA Committees may be found here. Open sessions will be held on these topics to provide all attendees with the opportunity to learn of the Committees' work and to contribute to the development of the program of work.

In addition, a program will run for all attendees on the core theme of the conference: Developing International Law in Challenging Times. To this end, proposals are sought either for individual paper presentations or for panel

presentations on specific themes. Higher degree research (PhD) students are also encouraged to submit poster presentation proposals. A networking and social program is also being organised to run during the conference for international and inter-state visitors.
For paper and poster proposals, speakers are to submit a title and 150-200 word abstract, along with a 150 word biography for potential inclusion in the program. A one-page CV should also be submitted. For panel proposals, the title of the panel and the titles of each paper are to be submitted with a 200 word abstract of the discussions of the panel and a statement on the proposed format for the panel. A biography and one-page CV should also be sent for each proposed speaker on the panel.
Submissions are to be emailed to **info@ila2018.org.au** by **1 November 2017**.
We look forward to welcoming you to Sydney in 2018!“

I thought we were exclusive? Some issues with the Hague Convention on Choice of Court, Brussels Ia and Brexit

This blog post is by Dr Mukarrum Ahmed (Lancaster University) and Professor Paul Beaumont (University of Aberdeen). It presents a condensed version of their article in the August 2017 issue of the Journal of Private International Law. The blog post includes specific references to the actual journal article to enable the reader to branch off into the detailed discussion where relevant. It also takes account of recent developments in the Brexit negotiation that took place after the journal article was completed.

On 1 October 2015, the Hague Convention on Choice of Court Agreements 2005 (‘Hague Convention’) entered into force in 28 Contracting States, including Mexico and all the Member States of the European Union, except Denmark. The

Convention has applied between Singapore and the other Contracting States since 1 October 2016. China, Ukraine and the USA have signed the Convention indicating that they hope to ratify it in the future (see the official status table for the Convention on the Hague Conference on Private International Law's website). The Brussels Ia Regulation, which is the European Union's device for jurisdictional and enforcement matters, applies as of 10 January 2015 to legal proceedings instituted and to judgments rendered on or after that date. In addition to legal issues that may arise independently under the Hague Convention, some issues may manifest themselves at the interface between the Hague Convention and the Brussels Ia Regulation. Both sets of issues are likely to garner the attention of cross-border commercial litigators, transactional lawyers and private international law academics. The article examines anti-suit injunctions, concurrent proceedings and the implications of Brexit in the context of the Hague Convention and its relationship with the Brussels Ia Regulation. (See pages 387-389 of the article)

It is argued that the Hague Convention's system of 'qualified' or 'partial' mutual trust may permit anti-suit injunctions, actions for damages for breach of exclusive jurisdiction agreements and anti-enforcement injunctions where such remedies further the objective of the Convention. (See pages 394-402 of the article) The text of the Hague Convention and the Explanatory Report by Professors Trevor Hartley and Masato Dogauchi are not explicit on this issue. However, the *procès-verbal* of the Diplomatic Session of the Hague Convention reveal widespread support for the proposition that the formal 'process' should be differentiated from the desired 'outcome' when considering whether anti-suit injunctions are permitted under the Convention. Where anti-suit injunctions uphold choice of court agreements and thus help achieve the intended 'outcome' of the Convention, there was a consensus among the official delegates at the Diplomatic Session that the Convention did not limit or constrain national courts of Contracting States from granting the remedy. (See Minutes No 9 of the Second Commission Meeting of Monday 20 June 2005 (morning) in *Proceedings of the Twentieth Session of the Hague Conference on Private International Law* (Permanent Bureau of the Conference, Intersentia 2010) 622, 623–24) Conversely, where the remedy impedes the sound operation of the Convention by effectively derailing proceedings in the chosen court, there was also a consensus of the official delegates at the meeting that the Convention will not permit national courts of the Contracting States to grant anti-suit injunctions.

However, intra-EU Hague Convention cases may arguably not permit remedies for breach of exclusive choice of court agreements as they may be deemed to be an infringement of the principle of mutual trust and the principle of effectiveness of EU law (*effet utile*) which animate the multilateral jurisdiction and judgments order of the Brussels Ia Regulation (see pages 403-405 of the article; C-159/02 *Turner v Grovit* [2004] ECR I-3565). If an aggrieved party does not commence proceedings in the chosen forum or commences such proceedings after the non-chosen court has rendered a decision on the validity of the choice of court agreement, the recognition and enforcement of that ruling highlights an interesting contrast between the Brussels Ia Regulation and the Hague Convention. It appears that the non-chosen court's decision on the validity of the choice of court agreement is entitled to recognition and enforcement under the Brussels Ia Regulation. (See C-456/11 *Gothaer Allgemeine Versicherung AG v Samskip GmbH* EU:C:2012:719, [2013] QB 548) The Hague Convention does not similarly protect the ruling of a non-chosen court. In fact, only a judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States. (See Article 8(1) of the Hague Convention) Therefore, the ruling of a non-chosen court is not entitled to recognition and enforcement under the Hague Convention's system of 'qualified' or 'partial' mutual trust. This provides a ready explanation for the compatibility of anti-suit injunctions with the Hague Convention but does not proceed any further to transpose the same conclusion into the very different context of the Brussels Ia Regulation which prioritizes the principle of mutual trust.

The dynamics of the relationship between Article 31(2) of the Brussels Ia Regulation and Articles 5 and 6 of the Hague Convention is mapped in the article (at pages 405-408). In a case where the Hague Convention should apply rather than the Brussels Ia Regulation because one of the parties is resident in a non-EU Contracting State to the Convention even though the chosen court is in a Member State of the EU (See Article 26(6)(a) of the Hague Convention) one would expect Article 6 of the Convention to be applied by any non-chosen court in the EU. However, the fundamental nature of the Article 31(2) *lis pendens* mechanism under the Brussels Ia Regulation may warrant the pursuance of a different line of analysis. (See Case C-452/12 *Nipponkoa Insurance Co (Europe) Ltd v Interzuid Transport BV* EU:C:2013:858, [2014] I.L.Pr. 10, [36]; See also to similar effect, Case C-533/08 *TNT Express Nederland BV v AXA Versicherung AG*

EU:C:2010:243, [2010] I.L.Pr. 35, [49]) It is argued that the Hartley–Dogauchi Report's interpretative approach has much to commend it as it follows the path of least resistance by narrowly construing the right to sue in a non-chosen forum as an exception rather than the norm. The exceptional nature of the right to sue in the non-chosen forum under the Hague Convention can be effectively reconciled with Article 31(2) of the Brussels Ia Regulation. This will usually result in the stay of the proceedings in the non-chosen court as soon as the chosen court is seised. As a consequence, the incidence of parallel proceedings and irreconcilable judgments are curbed, which are significant objectives in their own right under the Brussels Ia Regulation. It is hoped that the yet to develop jurisprudence of the CJEU on the emergent Hague Convention and the Brussels Ia Regulation will offer definitive and authoritative answers to the issues discussed in the article.

The implications of Brexit on this topic are not yet fully clear. (See pages 409-410 of the article) The UK is a party to the Hague Choice of Court Agreements Convention as a Member State of the EU, the latter having approved the Convention for all its Member States apart from Denmark. The UK will do what is necessary to remain a party to the Convention after Brexit. In its recently published negotiating paper – only available after the article in the Journal of Private International Law was completed – the UK Government has explicitly stated that:

"It is our intention to continue to be a leading member in the Hague Conference and to participate in those Hague Conventions to which we are already a party and those which we currently participate in by virtue of our membership of the EU." (see *Providing a cross-border civil judicial cooperation framework* (PDF) at para 22).

The UK will no doubt avoid any break in the Convention's application. Brexit will almost certainly see the end of the application of the Brussels Ia Regulation in the UK. The reason being that its uniform interpretation is secured by the CJEU through the preliminary ruling system under the Treaty on the Functioning of the European Union (TFEU). The UK is not willing to accept that jurisdiction post-Brexit ("Leaving the EU will therefore bring an end to the direct jurisdiction of the CJEU in the UK, because the CJEU derives its jurisdiction and authority from the EU Treaties." see *Providing a cross-border civil judicial cooperation framework* at para 20). So although the UK negotiators are asking for a bespoke deal with the EU to continue something like Brussels Ia ("The UK will therefore

seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework" see *Providing a cross-border civil judicial cooperation framework* at para 19) it seems improbable that the EU will agree to such a bespoke deal just with the UK when the UK does not accept the CJEU preliminary ruling system. The EU may well say that the option for close partners of the EU in this field is the Lugano Convention. The UK Government has indicated that it would like to remain part of the Lugano Convention (see *Providing a cross-border civil judicial cooperation framework* at para 22). In doing so it would continue to mandate the UK courts to take account of the jurisprudence of the CJEU -when that court is interpreting Brussels Ia or the Lugano Convention – when UK courts are interpreting the Lugano Convention (see the opaque statement by the UK Government that "the UK and the EU will need to ensure future civil judicial cooperation takes into account regional legal arrangements, including the fact that the CJEU will remain the ultimate arbiter of EU law within the EU." see *Providing a cross-border civil judicial cooperation framework* at para 20). However, unless the Lugano Convention is renegotiated it does not contain a good solution in relation to conflicts of jurisdiction for exclusive choice of court agreements because it has not been amended to reflect Article 31(2) of Brussels Ia and therefore still gives priority to the non-chosen court when it is seised first and the exclusively chosen court is seised second in accordance with the *Gasser* decision of the CJEU (see Case C-116/02 [2003] ECR I-14693). Renegotiation of the Lugano Convention is not even on the agenda at the moment although the *Gasser* problem may be discussed at the Experts' Meeting pursuant to Article 5 Protocol 2 of the Lugano Convention on 16 and 17 October 2017 in Basel, Switzerland (Professor Beaumont is attending that meeting as an invited expert). Revision of the Lugano Convention would be a good thing, as would Norway and Switzerland becoming parties to the Hague Convention. It seems that at least until the Lugano Convention is revised and a means is found for the UK to be a party to it (difficult if the UK does not stay in EFTA), the likely outcome post-Brexit is that the regime applicable between the UK and the EU (apart from Denmark) in relation to exclusive choice of court agreements within the scope of the Hague Convention will be the Hague Convention. The UK will be able to grant anti-suit injunctions to uphold exclusive choice of court agreements in favour of the courts in the UK even when one of the parties has brought an action contrary to that agreement in an EU Member State. The EU Member States will apply Article 6 of the Hague Convention rather than

Article 31(2) of the Brussels Ia Regulation when deciding whether to decline jurisdiction in favour of the chosen court(s) in the UK.

Whilst the Hague Convention only offers a comprehensive jurisdictional regime for cases involving exclusive choice of court agreements, it does give substantial protection to the jurisdiction of UK courts designated in such an agreement which will be respected in the rest of the EU regardless of the outcome of the Brexit negotiations. Post-Brexit the recognition and enforcement regime for judgments not falling within the scope of the Hague Choice of Court Agreements Convention could be the new Hague Judgments Convention currently being negotiated in The Hague (see Working Paper No. 2016/3- Respecting Reverse Subsidiarity as an excellent strategy for the European Union at The Hague Conference on Private International Law – reflections in the context of the Judgments Project? by Paul Beaumont). Professor Beaumont will continue to be a part of the EU Negotiating team for that Convention at the Special Commission in the Hague from 13-17 November 2017. It is greatly to be welcomed that the UK Government has affirmed its commitment to an internationalist and not just a regional approach to civil judicial co-operation:

"The UK is committed to increasing international civil judicial cooperation with third parties through our active participation in the Hague Conference on Private International Law and the United Nations Commission on International Trade Law… We will continue to be an active and supportive member of these bodies, as we are clear on the value of international and intergovernmental cooperation in this area." See *Providing a cross-border civil judicial cooperation framework* at para 21.

One good thing that could come from Brexit is the powerful combination of the EU and the UK both adopting a truly internationalist perspective in the Hague Conference on Private International Law in order to genuinely enhance civil judicial co-operation throughout the world. The UK can be one of the leaders of the common law world while using its decades of experience of European co-operation to help build bridges to the civil law countries in Europe, Africa, Asia and Latin America.

International Congress, Call for Papers

The Private International Law Group from the School of Law of Carlos III University of Madrid (Universidad Carlos III de Madrid, www.uc3m.es) is delighted to announce its *International Congress on matters of matrimonial property regimes and property consequences of registered partnerships* (from 16-17 November 2017).

Young researchers are invited to submit their papers about the subject of the Congress. Abstracts, either in Spanish or English (*Word* format) must be sent to mjcastel@der-pr.uc3m.es (deadline: **30th September 2017),** including:

-Name and surname

-Affiliation of the submitting researcher

-Short biographical note (no more than 500 words)

-Title and Summary of the proposed paper (no more than 800 words)

The abstracts will be reviewed by the following Committee:

Alfonso L. Calvo Caravaca, Professor of Private International Law (Carlos III University of Madrid).

Esperanza Castellanos Ruiz, Associate Professor of Private International Law (Carlos III University of Madrid).

Juliana Rodríguez Rodrigo, Associate Professor of Private International Law (Carlos III University of Madrid).

The decision will be notified to the author by 15th October 2017

Successful applicants will present their papers into the *Young Researchers Round*

Table (17th November 2017) and their papers may be published in the Journal *Cuadernos de Derecho Transnacional.CDT* (www.uc3m.es/cdt).

The organization will not be responsible for the expenses of young researchers' participation in the Congress.

Child & Family Law Quarterly: Special Brexit Issue

Back in March the Child & Family Law Quarterly together with Cambridge Family Law hosted a conference on the impact of Brexit on international family law (see our previous post). Some of the academic papers that were presented at this occasion have now been published in a special Brexit issue of the Child & Family Law Quarterly.

Here is the table of content:

- Brexit and international family law from a continental perspective, *Anatol Dutta*
- Private international law concerning children in the UK after Brexit: comparing Hague Treaty law with EU Regulations, *Paul Beaumont*
- Divorcing Europe: reflections from a Scottish perspective on the implications of Brexit for cross-border divorce proceedings, *Janeen M Carruthers and Elizabeth B Crawford*
- What are the implications of the Brexit vote for the law on international child abduction?, *Nigel Lowe*
- Not a European family: implications of 'Brexit' for international family law, *Ruth Lamont*

Call for Papers: “60 Years of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Key Issues and Future Challenges”

On 5/6 April 2018 Dr. Ana Mercedes López Rodríguez, Ph.D. and Dr. Katia Fach Gómez, LL.M will convene a conference to commemorate the 60th anniversary of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The conference will take place at University Loyola Andalucia (Seville/Spain) and is expected to comprise 3-4 Keynote Lectures and round tables with approximately 36 speakers.

Academics, practitioners and policymakers are invited to submit extended abstracts or unpublished full papers on the referred topic to the conference directors (amlopez@uloyola.es; katiafachgomez@gmail.com) by **30 November 2017**. Practitioners at all stages of their careers and senior and junior scholars (including Ph.D. students) are encouraged to participate.

The Conference directors expect to publish an edited volume in English by a relevant legal publishing house containing the most relevant papers presented in the Conference.

Further information about the submission and publication process can be found here and at the Conference website.

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.