2nd Liechtenstein Conference on Private International Law on 30 June 2016

Despite the fact that thousands of legal persons and personal relations are subject to Liechtenstein Private International Law, Liechtenstein law has retained some unique features. Whether the unique features should be maintained, or provide the reasoning for a reform agenda, will be discussed at the 2nd Liechtenstein Conference on 30 June 2016 organised by the Propter Homines Chair for Banking and Securities Law at the University of Liechtenstein.

The presentations will deal with Liechtenstein international company, foundation and trust law, conflicts of law relating to banks, prospectus liability and collectus investment schemes, as well as matters of succession and the potential of Liechtenstein as an arbitration venue. All presentations will be held in German.

Please find further information here.

In case of interests please contact: nadja.dobler@uni.li

Out now: Furrer/Markus/Pretelli (eds.), The Challenges of European Civil Procedural Law for Lugano and Third States (2016)

The new 2007 Lugano Convention, establishing parallelism with the Brussels I Regulation (Reg. 44/2001), had just entered into force in Switzerland in 2010 when it faced a new challenge in the form of the Recast Regulation (Reg.

1215/2012). Therefore, in 2014, CIVPRO (University of Bern), CCR (University of Luzern) and the Swiss Institute for Comparative Law (Lausanne) invited professors, researchers, civil officers and practitioners from all over Europe to discuss the future of European civil procedure with a special focus on Lugano and third states. Alexander Markus (Bern), Andreas Furrer (Luzern) and Ilaria Pretelli (Lausanne) have now published the (English/German) volume containing the keynote speeches and the subsequent contributions to this conference as well as the reports on the discussion in the various panels. This book presents and analyzes the past, the present and the alternative conceivable futures of the Lugano model of a "parallel" convention. For further information, click here.

Reminder – Call for Papers – Young PIL Scholars' Conference

This post has kindly been provided by Dr. Susanne Gössl, LL.M.

"This post is meant to remind that the deadline for applications for the Young PIL Scholars' Conference in Bonn, Germany, in April 2017 is approaching.

We accept applications of junior researchers to present a paper until 30 June 2016. The topic is "Politics and Private International Law (?)". We envisage presentations of half an hour each in German language with subsequent discussion on the respective subject. The presented papers will be published in a conference transcript by Mohr Siebeck.

Please send an exposé of maximum 1,000 words to nachwuchs-ipr(at)institut-familienrecht.de. The exposé shall be in German language and composed anonymously that is without any reference to the authorship. The author including his/her position or other affiliation shall be identifiable from a separate file.

Additional information can be found at https://www.jura.uni-bonn.de/en/institut-fuer-deutsches-europaeisches-und-intern

ationales-familienrecht/pil-conference/call-for-papers/

If you have any further questions, please contact Dr. Susanne Gössl, LL.M. (sgoessl(at)uni-bonn.de).”

Geo-blocking and the conflict of laws: ships that pass in the night?

On 25 May 2016, the European Commission presented its long-awaited proposal for a regulation on addressing geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market (COM[2016] 289 final).

In the Commission’s words, “[t]he general objective of this proposal is to give customers better access to goods and services in the Single Market by preventing direct and indirect discrimination by traders artificially segmenting the market based on customers’ residence. Customers experience such differences in treatment when purchasing online, but also when travelling to other Member States to buy goods or services. Despite the implementation of the non-discrimination principle in Article 20(2) of Directive 2006/123/EC 3 (“Services Directive”), customers still face refusals to sell and different conditions, when buying goods or services across borders. This is mainly due to uncertainty over what constitutes objective criteria that justify differences in the way traders treat customers. In order to remedy this problem, traders and customers should have more clarity about the situations in which differences in treatment based on residence are not justifiable. This proposal prohibits the blocking of access to websites and other online interfaces and the rerouting of customers from one country version to another. It furthermore prohibits discrimination against customers in four specific cases of the sale of goods and services and does not allow the circumventing of such a ban on discrimination in passive sales agreements. Both consumers and businesses as end users of goods or services are affected by such practices and should therefore benefit from the rules set out in

this proposal. Transactions where goods or services are purchased by a business for resale should, however, be excluded in order to allow traders to set up their distribution systems in compliance with European competition law."

From a conflicts perspective, the question that is most interesting is how the prevention of geo-blocking and similar techniques will relate to the "directed-activity"-criterion that the European legislature has used both in the Rome I Regulation (Article 6(1)(b)) and in the Brussels I (recast) Regulation (Article 17(1)(c)). In a series of cases starting with the *Alpenhof* decision of 2011 (ECLI:EU:C:2010:740) the CJEU has developed a formula for determining the direction of a trader's activity by focusing on its subjective intention to deliver goods or services to consumers in a certain country, i.e. that it "should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them." If standard techniques of geo-blocking or the use of different sets of general conditions of access to their goods or services are now banned as discriminatory, how will this affect the test developed by the CJEU; in other word, is it reasonable to infer that a trader has actually been "minded to conclude a contract" and consented to being sued in the state of the consumer's domicile if the trader has no legal option *not* to offer goods or services to the customer? The drafters have noticed this obvious problem and inserted a pertinent clause into Article 1 no. 5 of the proposal, which reads:

"This Regulation shall not affect acts of Union law concerning judicial cooperation in civil matters. Compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the habitual residence or domicile within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008 and point (c) of Article 17(1) of Regulation (EU) 1215/2012."

In light of the highly controversial experience with similar reservations – it suffices to think of Article 1(4) of the E-Commerce Directive (2000/31/EC) or Recital 10 of the recently withdrawn CESL proposal (COM[2011]635 final) –, I have doubts whether the separation between the two areas of law will work as smoothly as the Commission seems to imagine: if a trader is legally *coerced* to

serve consumers in a certain state, any test aimed at determining his or her "state of mind" to do so necessarily becomes moot – which, on the other hand, may be a good opportunity for the CJEU to rethink its frequently criticized approach. Considering the (non-)treatment of Recitals 24 and 25 of the Rome I Regulation in *Emrek* (ECLI:EU:C:2013:666), however, I am inclined not too expect much deference from the Court to interpretative guidance provided by the European legislators…

General Principles of European Private International Law (book)

Many thanks to Dr Eva Lein, Herbert Smith Freehills Senior Research Fellow in Private International Law, British Institute of International and Comparative Law, who has shared this information and provided the link below.

Are there general principles of European conflict of laws? Looking at the myriad of EU regulations in the area, one may well doubt it. And this explains why a new book edited by Stefan Leible is so topical. It addresses themes and concepts that reoccur across different conflicts regulations, but so far have not yet come under detailed scrutiny as to whether they follow a coherent approach. Among them are the usual suspects such as preliminary questions, characterisation, *renvoi*, party autonomy, the determination of habitual residence and the application of overriding mandatory rules, to name but a few. They are complemented by broader topics such as the role of recognition as a substitute for conflict of laws and economic efficiency in European private international law. The idea of treating those themes in one volume chimes with Leible's idea of a ‚Rome 0' Regulation, which he has expounded earlier together with Michael Müller (14 (2012/13) Yearbook of Private International Law 137). The book is a logical follow-up on this proposal. It analyses issue by issue whether there is indeed enough material that deserves to be treated in a 'General Part' of European private international law. The authors of the book are well-known experts in the field, such as Peter Mankowski, Heinz-Peter Mansel and Jan von Hein. The only

criticism one may level is that they are almost exclusively from Germany. It would be interesting to see how lawyers from other countries react to the – quite Germanic – idea of an '*Allgemeiner Teil*' for the European conflict of laws.

Find the table of contents here.

The Proposed Revision of the Posting Directive (paper)

Veerle Van Den Eeckhout has written a working paper version of an article on the Proposed Revision of the Posting Directive. The working paper, in Dutch, is entitled "Toepasselijk arbeidsrecht bij langdurige detachering volgens het voorstel tot wijziging van de Detacheringsrichtlijn. Enkele beschouwingen vanuit Ipr-perspectief bij het voorstel tot wijziging van de Detacheringsrichtlijn" (in English: "The Law Applicable to Long-Term Postings According to the Proposal for a Directive Amending the Posting Directive. Some Reflections from a Private International Law Perspective on the Proposal for a Directive Amending the Posting Directive").

In this contribution, the author formulates some reflections from the perspective of Private International Law on the proposal for a revision of the Posting Directive, focusing on the issue of the law applicable to long-term postings.

You can download Prof. Van Den Eeckhout's paper here.

Out now: Matthias Weller (ed.),

Europäisches Kollisionsrecht (2016)

Professor Dr. Matthias Weller, European Business Law School-University of Wiesbaden (Germany), has edited and co-authored a new volume on European Conflict of Laws (in German): Europäisches Kollisionsrecht (Nomos; Baden-Baden, 2016). The volume contains contributions by Weller himself (on the general principles of European private international law), by Dr. Carl Friedrich Nordmeier (on Rome I, marital property and succession) and by Dr. David Bittmann (on Rome II and III as well as on the Maintenance Regulation and the Hague Protocol). The Book provides the reader with a survey on the current state of the art in European choice of law that is both up-to-date and analytical. Weller's introduction in particular offers a fascinating treatment of the emerging general part of European PIL. Highly recommended!

For further information, click here.

Thöne on the abolition of Exequatur in the European Union

Meik Thöne has authored a book on the abolition of exequatur proceedings under the new Brussels I-Regulation ("Die Abschaffung des Exequaturverfahrens und die EuGVVO", Mohr Siebeck, 2016, IX + 289 pages). The volume is forthcoming in German. A German abstract is available on the publisher's website.

EUPILLAR conference on Cross-Border Litigation Conference, London, 16-17 June

The “Cross-Border Litigation in Europe” conference is organised by the Centre for Business Law and Practice, University of Leeds, and the Centre for Private International Law, the University of Aberdeen. The conference is being held within the framework of a research project which is funded by the European Commission Civil Justice Programme.

The event will take place in the London School of Economics (New Academic Building, Lincoln’s Inn Field) on Thursday 16th June and Friday 17th June 2016.

The research study aims to consider whether the Member States’ courts and the CJEU can appropriately deal with the cross-border issues arising under the current EU Civil Justice framework. The project, which is coordinated by Professor Paul Beaumont from the University of Aberdeen, involves Dr Katarina Trimmings and Dr Burcu Yuksel from the University of Aberdeen, Dr Mihail Danov from the University of Leeds (UK), Prof. Dr. Stefania Bariatti from the University of Milan (Italy), Prof. Dr. Jan von Hein from the University of Freiburg (Germany), Prof. Dr. Carmen Otero from Complutense University of Madrid (Spain), Prof. Dr. Thalia Kruger from the University of Antwerp (Belgium), Dr Agnieszka Frackowiak-Adamska from the University of Wroclaw (Poland).

This conference is free to attend, but prior registration is required.

Programme

16th June 2016
9:00 am – 9:30 am
Paul Beaumont (Aberdeen), Mihail Danov (Leeds), Katarina Trimmings (Aberdeen)

and Burcu Yuksel (Aberdeen) Evaluating the Effectiveness of the EU Civil Justice Framework: Research Objectives and Preliminary Research Findings from Great Britain

9:30 am – 11:00 am – **Cross-Border Civil and Commercial Disputes: Legislative Framework**
Chair: Paul Beaumont (Aberdeen)
1) Sophia Tang (Newcastle), Cross-Border Contractual Disputes: The Legislative Framework and Court Practice
2) Michael Wilderspin (European Commission, Legal Services), Cross-Border Non-Contractual Disputes: The Legislative Framework and Court Practice
3) Jon Fitchen (Aberdeen), The Unharmonised Procedural Rules: Is there a case for further harmonisation at EU level?
4) Stephen Dnes (Dundee), Economic considerations of the cross-border litigation pattern

15-minute break

11.15 am – 12.30 pm – **Cross-Border Civil and Commercial Disputes: Practical Aspects**
Chair: Mihail Danov (Leeds)
1) Peter Hurst (39 Essex Chambers), Litigation Costs: Cross-Border Disputes in England and Wales
2) Susan Dunn (Harbour), Litigation Funders and Cross-Border Disputes
3) Craig Pollack (King & Wood Mallesons), Cross-Border Contractual Disputes: Litigants' Strategies and Settlement Dynamics
4) Jon Lawrence (Freshfields), Cross-Border Competition Law Damages Actions: Litigants' Strategies and Settlement Dynamics

Lunch (12.30 pm – 1.30 pm)

1.30 pm – 3.00 pm – **Cross-Border Family Disputes**
Chair: Thalia Kruger (Antwerp)
1) Paul Beaumont (Aberdeen), Brussels IIa recast – a comment on the Commission's Proposal from a member of the Commission's Expert Group
2) Elizabeth Hicks (Irwin Mitchell), Litigants' strategies and settlement dynamics in cross-border matrimonial disputes
3) Marcus Scott-Manderson QC (4 Paper Buildings), Cross-Border Disputes

Involving Children: A View from the English Bar
4) Lara Walker (Sussex), Maintenance and child support: PIL Aspects
5) Rachael Kelsey (SKO), Arbitration and ADR: Cross-Border Family Law Disputes

15-minute break

3.15 pm – 4.45 pm – **National Reports: Cross-Border Litigation in Europe**
Chair: Stefania Bariatti (Milan)
1) Professor Bea Verschraegen (Universität Wien) and Florian Heindler, Preliminary Research Findings from Austria
2) Dr Teodora Tsenova and Dr Anton Petrov, Preliminary Research Findings from Bulgaria
3) Doc. Dr. Ivana Kunda, Preliminary Research Findings from Croatia
4) Professor JUDr Monika Pauknerová, Jiri Grygar and Marta Zavadilová, Preliminary Research Findings from Czech Republic
5) Professor Nikitas Hatzimihail (University of Cyprus), Preliminary Research Findings from Cyprus
6) Professor Peter Arnt Nielsen (Copenhagen Business School), Preliminary Research Findings from Denmark

15-minute break

5.00 pm – 6.15 pm – **National Reports: Cross-Border Litigation in Europe**
Chair: Jan von Hein (Freiburg)
1) Maarja Torga (University of Tartu), Preliminary Research Findings from Estonia
2) Gustaf Möller (Krogerus) Preliminary Research Findings from Finland
3) Professor Horatia Muir Watt (Science Po), Professor Jeremy Heymann (Lyon) and Professor Laurence Usunier (Cergy-Pontoise), Preliminary Research Findings from France
4) Aspasia Archontaki and Paata Simsive, Preliminary Research Findings from Greece
5) Dr Csongor Nagy (University of Szeged), Preliminary Research Findings from Hungary

7.00 pm – 10.30 pm *Dinner (by invite only)* – Old Court Room, Lincoln's Inn
Speech by Lord Justice Vos (Court of Appeal and President of the European Network of Councils for the Judiciary), The Effect of the European Networks of

Councils for the Judiciary (ENCJ) on Cross-Border Dispute Resolution

17th June 2016

8.30 am – 10:00 am – **National Reports: Cross-Border Litigation in Europe**
Chair: Carmen Otero (Madrid)
1) Maebh Harding (Warwick), Preliminary Research Findings from Ireland
2) Dr Irena Kucina (Ministry of Justice, Latvia), Preliminary Research Findings from Latvia
3) Kristina Praneviciene, Preliminary Research Findings from Lithuania
4) Céline Camara (Max Planck Istitute), Preliminary Research Findings from Luxembourg
5) Clement Mifsud-Bonnici, Preliminary Research Findings from Malta
6) Professor Aukje van Hoek (Universiteit van Amsterdam), Preliminary Research Findings from the Netherlands

15-minute break

10.15 am – 11.30 am – **National Reports: Cross-Border Litigation in Europe**
Chair: Agnieszka Frackowiak-Adamska (Wroclaw)
1) Professor Elsa Oliveira (Universidade de Lisboa), Preliminary Research Findings from Portugal
2) Dr Ileana Smeureanu (Jones Day, Paris), Lucian Ilie (Lazareff Le Bars) and Ema Dobre (CJEU) Preliminary Research Findings from Romania
3) Doc JUDr M. Duris, JUDr M Vozaryova, Dr M Burdova, Preliminary Research Findings from Slovakia
4) Professor Suzana Kraljic, Preliminary Research Findings from Slovenia
5) Professor Michael Bogdan and Ulf Maunsbach, Preliminary Research Findings from Sweden

15-minute break

11.45 am – 1.00 pm – **National Reports: Cross-Border Litigation in Europe**
Chair: Alex Layton QC
1) Thalia Kruger (Antwerp) and Eline Ulrix (Antwerp), Preliminary Research Findings from Belgium
2) Jan Von Hein (Freiburg), Preliminary Research Findings from Germany
3) Stefania Bariatti (Milan), Preliminary Research Findings from Italy

4) Agnieszka Frackowiak-Adamska, Agnieszka Guzewicz and ?ukasz Petelski (Wroclaw), Preliminary Research Findings from Poland
5) Carmen Otero (Madrid), Preliminary Research Findings from Spain

Lunch (1.00 pm – 2.00 pm)

2.00 pm – 3.30 pm – **Shaping the development of the EU PIL Framework**
Chair: Paul Beaumont (Aberdeen)
1) Jacek Garstka (EU Commission, DG Justice), Drafting Legislative Instruments in a Diverse Union 2) Pascale Hecker (Référendaire, CJEU), Cross-Border Litigation: Challenges for EU Judiciary
3) Lady Justice Black (Head of International Family Justice), International Family Justice: Challenges in an EU context
4) Paul Torremans (Nottingham), Cross-Border IP Disputes: Specific Issues and Solutions

15-minute break

3.45 pm – 4:30 pm – **The way the EU PIL framework is shaping the litigants' strategies in a cross-border context**
Chair: Mihail Danov (Leeds)
1) Alex Layton QC (20 Essex Chambers), Cross-Border Civil and Commercial Disputes: PIL issues – a view from the English Bar
2) Christopher Wagstaffe QC (29 Bedford Row), Cross-Border Matrimonial Disputes: PIL issues – a view from the English Bar
3) Sophie Eyre (Bird & Bird), Remedies and Recoveries in a Cross-Border Context

4:30 – 5:30 pm – **The Way Forward: The research partners' views**
1) Thalia Kruger (Antwerp) and Eline Ulrix (Antwerp), Preliminary Views from Belgium
2) Jan Von Hein (Freiburg), Preliminary Views from Germany
3) Stefania Bariatti (Milan), Preliminary Views from Italy
4) Agnieszka Frackowiak-Adamska, Agnieszka Guzewicz and ?ukasz Petelski (Wroclaw), Preliminary Views from Poland
5) Carmen Otero (Madrid), Preliminary Views from Spain
6) Paul Beaumont (Aberdeen), Mihail Danov (Leeds), Katarina Trimmings (Aberdeen) and Burcu Yuksel, Addressing the Challenges: Is there a case for Reform?

Avotinš v. Latvia: Presumption of Equivalent Protection not Rebutted

The much awaited decision Avotinš v. Latvia of the Grand Chamber of the ECtHR was finally delivered yesterday. The decision can be found here. A video of the delivery is also available.

The European Court of Human Rights held by a majority that there had been no violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights. The Court reiterated that, when applying European Union law, the Contracting States remained bound by the obligations they had entered into on acceding to the European Convention on Human Rights. Those obligations were to be assessed in the light of the presumption of equivalent protection established by the Court in the *Bosphorus* judgment and developed in the *Michaud* judgment. The Court did not consider that the protection of fundamental rights had been manifestly deficient such that the presumption of equivalent protection was rebutted in the case at hand.

While at first sight the decision comes as a relief for all those who have been holding breath, fearing the worst after the CJEU Opinion 2/13, a careful reading (immediately undertaken by the academia: the exchange of emails has already started here in Luxembourg) reveals some potential points of friction. Following the advice of both Patrick Kinsch and Christian Kohler I would like to draw your attention in particular to para. 113-116.

Judge Lemmens and Judge Briede expressed a joint concurring opinion and Judge Sajó expressed a dissenting opinion, all three annexed to the judgment.