EUFam's Project: Case-Law Database Available!

The EUFam's Project's Consortium is glad to announce that the first version of the EUFam's case-law database, filled in the past months by all partners of the project, is now available for public consultation.

Currently, the database contains data concerning over 400 decisions applying the European Union Regulations on cross-border litigation in family matters, issued by the courts of Bulgaria, Croatia, Czech Republic, France, Germany, Greece, Italy, Slovakia, and Spain.

The consortium will keep the database up to date and publish new versions of the file in the upcoming months in the section 'Public Database' of the EUFam's website, in order to keep it up-to-date with the new cases that all partners will classify until December 2017, date of the end of the project.

Website: www.eufams.unimi.it

Facebook page: www.facebook.com/eufams

On the project:

The Project 'Planning the future of cross-border families: a path through coordination' (EUFam's – JUST/2014/JCOO/AG/CIVI/7729) aims at analysing is the practice of several Member States concerning the application of EU Regulations No 2201/2003, No 1259/2010, No 4/2009, and No 650/2012, as well as the 2007 Hague Maintenance Protocol, and the 2007 Hague Recovery Convention.

The purpose of the research activity is to identify the difficulties met by courts and practitioners in applying the rules laid down in the regulations, and to collect and share the solutions and best practices adopted by them in order to overcome such issues.

Partners of the Project are: the University of Milan (coordinator), the University of Heidelberg, the University of Osijek, the University of Valencia, the University of Verona, the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, the Italian Family Lawyers Association (AIAF), the Spanish Family Lawyers Association (AEAFA), the Italian Judicial Academy (SSM), and the Croatian Judicial Academy.

The EUFam's Project is co-funded by the Directorate-General for Justice and Consumers of the European Commission, within the programme 'Projects to support judicial cooperation in civil or criminal matters' (Justice Programme).

The e-mail contact for further information is: eufams@unimi.it

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Report: BREXIT Issue Launch

On 29 September 2016, Wilmer Cutler Pickering Hale and Dorr LLP and Wolters Kluwer co-hosted a seminar in London to mark the launch of the special BREXIT issue of the Kluwer *Journal of International Arbitration*. The speakers comprised of the authors of the articles within the BREXIT issue, who discussed varied topics relating to Brexit and private international law. Leading the seminar were Professor Dr Maxi Scherer, special counsel at Wilmer Cutler Pickering Hale and Dorr LLP and the journal's general editor, and Dr Johannes Koepp, partner at Baker Botts LLP and the special issue editor.

The speakers, who were of both academic and professional acclaim, provided interesting insights and lively debate on the multifaceted impacts that Brexit could have on the UK's legal landscape. Topics included Brexit's effect on: London as a seat for international dispute resolution; recognition and enforcement of foreign judgments; UK competition litigation and arbitration; and intellectual property disputes.

This post, which has been kindly sent to me by **Reyna** Ge (BCL Candidate, University of Oxford) serves to provide an overview of the presentations and issues raised. A full recording of the seminar is available **here**, with a shortened

version including the highlights of the event **here**.

London as a Seat of International Dispute Resolution in Europe

Michael McIlwrath, Global Chief Litigation Counsel of GE Oil & Gas, presented via videoconference "An Unamicable Separation: Brexit Consequences for London as a Premier Seat of International Dispute Resolution in Europe". In determining the impact that Brexit might have on London as a seat for international commercial arbitration, he suggested that London would lose cases in the short- to medium- term, while long-term growth would be subject to other assumptions. However, he also noted that Brexit would most likely not impact the trend of increased growth in the appointment of UK arbitrators.

EU Law and Constitutional Law Questions

Dr Holger Hestermeyer, Shell Reader in International Dispute Resolution, King's College London, presented "How Brexit Will Happen: A Brief Primer on EU Law and Constitutional Law Questions Raised by Brexit". Dr Hestermeyer explained that Article 50 of the Treaty of the European Union required a Member State to make a decision to withdraw from the EU in accordance with that State's constitutional law, with the conclusion that the referendum itself was not legally binding. It is controversial whether a binding decision ought to be made by the Government on the basis of royal prerogative (as argued by the UK Government) or on the basis of a Parliamentary decision. Dr Hestermeyer also explored the process of leaving the EU, which would comprise negotiations for a "divorce agreement" and "future agreement". This raised questions concerning the conduct of negotiations, the need for ratification of such agreements by the EU Member States and the UK, and the potential involvement of the European Free Trade Association States ("EFTA States").

Brexit and the Brussels Regime

Sara Masters QC and Belinda McRae, barristers practising at 20 Essex Street Chambers in London, presented "What Does Brexit Mean for the Brussels Regime?" They examined what would be the effect of Brexit on the two main instruments on the allocation of jurisdiction and on the recognition and enforcement of foreign judgments, the Brussels I Regulation (Recast) ("Recast Regulation") and the Lugano II Convention.

McRae explained the three academic possibilities that could arise if no agreement or decisions be made in this area, and concluded that a lack of action by the government concerning this framework would be very concerning for commercial parties.

Masters QC stated that the best outcome would be to negotiate a regime that is as close to the Recast Regulation as possible. The next best alternative would be to accede to the Lugano II Convention, even though this would mean that the innovations introduced by the Recast Regulation would not be present. Otherwise, the UK could accede to the Hague Choice of Court Convention, which could be a good short-term solution as it has the advantage of not being dependent on the reciprocity of the EU.

UK Competition Litigation and Arbitration

Paul Gilbert, Counsel at Cleary Gottlieb Steen & Hamilton LLP, presented "Impact of Brexit on UK Competition Litigation and Arbitration". Gilbert commented that there were signs that the UK government was moving toward a "hard Brexit" in relation to competition law. This would mean that more cases would be looked at within the UK, instead of providing Brussels with the sole jurisdiction over cases such as cartels.

Gilbert noted that the effect on competition litigation, in the form of follow-on actions, would be more difficult to predict. Following Brexit, EU cases would no longer be binding. Even if the UK decides to apply UK competition law consistently with EU law, future EU Commission decisions may not make further reference to the position in the UK on competition matters and thus make alignment difficult. Additionally, it was unclear what information would be released to claimants, and a finding of infringement pursuant to EU law may not necessarily be a basis for bringing a damages claim in a UK court. The implementation of the Damages Directive in the EU would also impact competition law.

Intellectual Property Litigation and Arbitration

Annet van Hooft, Partner at Bird & Bird LLP, presented "Brexit and the Future of Intellectual Property Litigation and Arbitration". She noted that Brexit has impacted the creation of the Unitary Patent Court ("UPC"). Whether the UK would ratify the UPC regime and the future of the subdivision of the UPC that was

to be located in London are two examples of issues arising from Brexit. The UPC, therefore, would experience delays in implementation.

Regarding trademarks and designs, while UK trademarks and designs would be unaffected, there would be uncertainty concerning the future treatment of community trademarks and designs in the UK. Van Hooft noted further uncertainty concerning database rights, the enforcement of pan-EU relief for unitary rights, exhaustion and licenses.

Intra- and Extra-EU Bilateral Investment Treaties

Markus Burgstaller, Partner at Hogan Lovells International LLP, presented "Possible Ramifications of the UK's EU Referendum on Intra- and Extra-EU BITs". With regard to intra-EU BITs, Burgstaller argued that such BITs would likely be found to be incompatible with EU law, and noted that the European Commission had called for the termination of the intra-EU BITs as early as in 2006. However, many States had not terminated these BITs, as was the case with the UK. Currently, the ECJ is set to rule upon the compatibility of intra-EU BITs in the case of the Netherlands-Slovakia BIT. Upon UK withdrawing from the EU, the intra-EU BITs would lose their intra-EU character.

Comments and discussion

Following presentation by the speakers, lively debate was entertained concerning the topics. The speakers and participants highlighted the importance of seeking agreement on matters such as BITs and the replacement for the Brussels Regime with the EU, for the purpose of promoting legal certainty. The potential for growth in the use of international arbitration, for the purposes of capitalising on the recognition and enforcement framework provided by the New York Convention, was also raised.

The European Commission establishes the forms to be used in connection with a European Account Preservation Order

By Implementing Regulation (EU) 2016/1823 of 10 October 2016, the European Commission has established the forms referred to in Regulation (EU) No 655/2014 of 15 May 2014 on the European Account Preservation Order (EAPO) procedure, an *ex parte* procedure that applies in cross-border cases and is intended to allow creditors to preserve funds in bank accounts under uniform conditions in all EU Member States (with the exception of the UK and Denmark). The procedure will become available on 18 January 2017.

The forms established by the Commission include, *inter alia*, the form to be used by the creditor to apply for a EAPO, the forms to be used by the court for the issue and the revocation of a EAPO, and the form to be used by the debtor to apply for a remedy against a EAPO. Each form comes with an explanatory text providing practical guidelines.

The Commission is now expected to make publicly available the information that the Member States, pursuant to Article 50 of Regulation No 655/2014, were required to provide before 18 July 2016 as regards the organisation of the EAPO procedure in their legal systems (such as the courts designated as competent to issue a EAPO and the authorities charged with the enforcement of EAPOs).

Young Scholars' PIL Conference:

“Politics and Private International Law (?)” – Program

The following invitation regarding the upcoming young scholars’ PIL conference in Bonn 2017 (see our previous post here) has been kindly provided by Dr. Susanne Gössl, LLM (Tulane), University of Bonn.

We cordially invite all young scholars interested in questions of Private International Law (PIL) to the first young scholars’ PIL conference which will be held on April 6th and 7th 2017 at the University of Bonn.

The conference will be held in German.

The general topic will be

Politics and Private International Law (?)

As our call for papers elicited a large number of highly qualified and interesting responses, selecting the presentations for the conference programme was not easy. In a double-blind peer review procedure, we finally identified nine contributions leading to the following program:

Thursday, 6 April, 2017

2:00 pm: welcome

2:15 pm: opening address
Prof. em. Dr. Dagmar Coester-Waltjen, LL.M. (Mich.), University of Göttingen

3:00 pm: Panel I – Arbitration

3:00 pm: Politics Behind the “ordre public transnational” (Focus ICC Arbitral Tribunal)
Iina Tornberg, Helsinki

3:30 pm: Between Unleashed Arbitral Tribunals and European Harmonisation: The Rome I Regulation and Arbitration
Masud Ulfat, Marburg

4:00 pm: The Applicable Law in Arbitration Proceedings – A *responsio*
Dr. Reinmar Wolff, Marburg

4:10 pm: discussion

4:40 pm: coffee break

5:00 pm: Panel II – Procedural Law and Conflict of Laws/Substantial Law

5:00 pm: How Does the ECJ Constitutionalize the European PIL and International Civil Procedure? Tendencies and Consequences
Dominik Düsterhaus, Luxemburg

5:30 pm: Proceedings in a Foreign forum derogatum, Damages in a Domestic forum prorogatum – Fair Balancing of Interests or Unjustified Intrusion into Foreign Sovereignty?
Dr. Jennifer Lee Antomo, Mainz

6 pm: discussion (until ca. 6:30 pm)

8:00 pm: dinner

Friday, 7 April, 2017

9:30 am: opening

9:45 am: Panel III – Protection of Individual Rights and Conflict of Laws

9:45 am: Private International Law and Human Rights – Questions of Conflict of Laws Regarding the Liability for "Infringements of Human Rights"
Friederike Pförtner, Konstanz

10:15 am: Cross-Border Immissions in the Context of the Revised Hungarian Regulation for Private International Law
Reka Fuglinszky, Budapest

10:45 am: discussion

11:15 am: coffee break

11:45 am: Panel IV – Public Law and Conflict of Laws

11:45 am: Long Live the Principle of Territoriality? The Significance of Private International Law for the Guarantee of Effective Data Protection
Dr. Martina Melcher, Graz

12:15 pm: Economic Sanctions in Private International Law
Dr. Tamás Szabados, Budapest

12:45 pm: discussion

1:15 pm: final discussion and conclusion of the conference

ca. 2:00 pm: closing

Participation is free, but a registration is required.

In order to register for the conference, please use this link: https://nachwuchstagungipr.typeform.com/to/qy1Obh. The registration deadline is February 28th 2017. Please be aware that the number of participants is limited and registrations will be processed in the order in which they are received. For reserving a hotel from our hotel contingent, please use the following link (http://www.bonn-region.de/events/nachwuchs-ipr.html).

For more information, please visit https://www.jura.uni-bonn.de/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/ipr-tagung/.

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

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

Yours faithfully,
Susanne Gössl, Rafael Harnos, Leonhard Hübner, Malte Kramme, Tobias Lutzi, Michael Müller, Caroline Rupp, Johannes Ungerer

Conference Announcement

Conference “International Conflict of Laws and the Third Restatement” at Duke Law School

Writing in 2000, Mathias Reimann criticized the Second Restatement of Conflict of Laws for being “largely blind to international concerns.” He argued that since international conflict-of-laws issues have become routine, the next Restatement of Conflict of Laws must be attentive to such issues and that, ideally, it would “come with an implied (or better yet express) warranty that all its principles and rules are fit for international use as well [as for domestic use].” With work on the Third Restatement of Conflict of Laws now underway—and with one of its goals being “to pay greater attention to the international context than the Second Restatement did”—it is time to give careful thought to Professor Reimann’s call for a genuinely international restatement.

With this in mind, the Duke Journal of Comparative and International Law will be hosting a symposium entitled: International Conflict of Laws and the Third Restatement. The symposium will be held at the Duke University School of Law in Durham, North Carolina, and will take place November 4–5, 2016.

The symposium will feature all three reporters of the 3rd Restatement of the Conflict of Laws: Laura Little, Kermit Roosevelt III and Christopher Whytock. Speakers will include Patrick Borchers, Hannah Buxbaum, Donald Earl Childress III, Ann Laquer Estin, Richard Fentiman, Ralf Michaels, Horatia Muir Watt, Mathias Reimann, Linda Silberman, Symeon Symeonides, Louise Ellen Teitz, and Christopher Whytock..

For further information please see http://djcil.law.duke.edu/symposium/

Utrecht Journal of International and European Law: Call for Papers

Utrecht Journal of International and European Law is issuing a Call for Papers to

be published in its 85th edition in the summer of 2017 on ‘General Issues’ within international and European law.

The Board of Editors invites submissions addressing any aspect of international and European law; topics may include, but are not limited to, the field of Private International Law. More specifically, papers dealing with *e.g.* the following issues are welcomed: jurisdictional disputes (*e.g.* forum selection, renvoi, *etc*), choice of law, recognition of foreign judgments, UNCITRAL model law(s), online dispute resolution, international arbitration, electronic commerce, or any other relevant topic.

Authors are invited to address questions and issues arising from the specific area of law relating to their topic. All types of manuscripts, from socio-legal to legal technical to comparative, will be considered for publication. However, please note that any analysis solely limited to a national legal system will fall outside the scope of the Journal. *An international or European legal dimension is imperative*.

The Board of Editors will select articles based on quality of research and writing, diversity, and relevance of topic. The novelty of the academic contribution is also an essential requirement. Prospective articles should be submitted online and should conform to the journal style guide on our website. Utrecht Journal has a word limit of 15,000 words including footnotes. For further information, or for consultation on a potential submission, you can contact the Editor-in-Chief at utrechtjournal@urios.org.

DEADLINE FOR SUBMISSIONS:

18 April 2017

Utrecht Journal is the student-led, peer-reviewed biannual law journal of Urios, the Utrecht Association for International and European Law. The Journal was founded in 1981 as Merkourios. In the years since, the Journal has expanded its readership and is now distributed all over the world through databases such as HeinOnline and the Directory of Open Access Journals.

A study of the European Parliament on the protection of vulnerable adults in cross-border situations

The European Parliamentary Research Service has published a study, authored by *Christian Salm*, to support a legislative initiative report on the protection of vulnerable adults to be prepared by the French MEP *Joëlle Bergeron*.
The purpose of the study is to provide an objective evaluation of the potential added value of taking legislative action at EU level in this field, in particular where a cross-border element is present.

The study builds on expert research carried out for the purpose by *Ian Curry-Sumner* of the Voorts Juridische Diensten (Dordrecht), on the one hand, and by *Pietro Franzina* of the University of Ferrara and *Joëlle Long* of the University of Turin, on the other. The research papers are annexed to the study.

The study argues that, together with the ratification of the Hague Convention of 13 January 2000 on the international protection of adults by all EU Member States, the adoption of certain EU legal measures would create a more reliable legal framework for the protection of vulnerable adults in cross-border situations than is currently the case. This would constitute an added value in itself, and would also contribute to reducing legal and emotional costs for vulnerable adults when facing issues in a cross-border situation.

The proposed measures, which could be adopted on the basis of Article 81 of the Treaty on the Functioning of the European Union, include: (i) enhancing cooperation and communication among authorities of EU Member States in this area; (ii) abolishing the requirement of exequatur for measures of protection taken in EU Member States; (iii) creating a European certificate of powers granted for the protection of an adult; (iv) enabling the adult, under appropriate safeguards, to choose in advance the EU Member States whose courts should be deemed to possess jurisdiction to take measures concerning his or her protection;

(v) providing for the continuing jurisdiction of the courts of the EU Member State of the former habitual residence.

Property Law in a Global Era – Workshop at Tilburg University

On 27–28 October 2016, Professor *Amnon Lehavi* (Atara Kaufman Professor of Real Estate at Radzyner School of Law, Israel, and currently Global Chair at Tilburg University, Netherlands) and *Anna Berlee* (Tilburg Law School) will host an international expert meeting of speakers representing all areas of property law, from the Netherlands and abroad. The workshop will study the various challenges that processes of globalisation pose to the different fields of property law, from land law to tangible and intangible goods, intellectual property, property aspects of family law and new outer-world cyberspace and outer space property. Further details will be available here shortly. Those interested in participating should contact *Anna Berlee* at a.berlee@tilburguniversity.edu.

EBS Law Term Lecture on "Extraterritoriality in Transnational Regulation: The Special Problem of Private

Enforcement” on 18 October 2016 at EBS Law School in Wiesbaden

The Research Center for Transnational Commercial Dispute Resolution at EBS Law School will host a lecture on extraterritoriality in transnational regulation. Professor Dr. Hannah L. Buxbaum, John E. Schiller Chair in Legal Ethics, Maurer School of Law, Indiana University Bloomington, USA, will talk about the special problem of private enforcement in this context.

Background: In 2000, the European Community filed a lawsuit against RJR Nabisco (RJR) in U.S. federal court, alleging violations of the U.S. Racketeer Influenced and Corrupt Organizations Act (RICO). In 2016, the litigation came to a close. The Supreme Court held that RICO does apply to certain forms of foreign conduct – however, it concluded that RICO’s private cause of action does not extend to claims based on injuries suffered outside the United States, and therefore denied the European Community any recovery. The effect of this decision, which builds on other recent decisions of the Court, is to constrain quite significantly the application of U.S. regulatory law in cross-border cases.

The talk will explore the extraterritorial application of domestic regulatory law as a tool of transnational regulation. In particular, it will address the special challenges created when it is private plaintiffs, rather than state agencies, that seek to apply that law.

The Lecture will be held on 18 October 2016 at 6.30 p.m. in Lecture Room “Sydney” at EBS Law School in Wiesbaden. For further information see here.

We are looking forward to seeing you.

Conference on International Banking Transactions

The Interdisciplinary Association for Comparative and Private International Law (IACPIL) with support of the Faculty of Law at the University of Vienna is hosting a conference organized by Professor Dr Bea Verschraegen and Dr Florian Heindler on international banking transactions involving consumers.

The conference (in German language) will take place on 24 October 2016 in Vienna at the Vienna University, Faculty of Law.

Speakers are:

Professor Dr Peter Mankowski, University of Hamburg
Professor Dr Dietmar Czernich, Innsbruck
Professor Dr Georg Kodek, Vienna University of Economics and Business and Austrian Supreme Court
Private-Docent Dr Judith Schacherreiter, Vienna
Professor Dr Gerald Spindler, University of Göttingen
Dr Florian Heindler, Bregenz
Welcome address by Prof Dr Paul Oberhammer, University of Vienna
Moderation and conclusive remarks by Prof. Dr. Bea Verschraegen, University of Vienna, Prof Dr Verica Trstenjak, University of Vienna, Dr Konrad Koloseus, Vienna, Dr Heinz Löber, Vienna
The programme can be downloaded here.
For additional questions and registration, please contact Ms Sandra Muckenhuber.