In the last two decades, the private international law of the Member States of the European Union has become increasingly European. It is now dominated by European Regulations, which are interpreted authoritatively by the Court of Justice of the European Union. Private international law has become a truly European discipline. As such, it needs a European forum where all interested scholars and practitioners can meet to exchange views and reflect on the development of the field. The European Association of Private International Law was primarily established to offer such a forum.

The feasibility of a European Private International Law Act / Thomas Kadner Graziano

Interests in European private international law / Caroline Kleiner

The law applicable to the validity of choice of court agreements / Laurence Usunier and Eva Lein

Liberalizing the cross-border taking of evidence within the EU / Gilles Cuniberti

A future Regulation on international property law / Eva-Maria Kieninger

The Young Private International Law Research Network / Martina Melcher and Tamás Szabados

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Meet the EAPIL Members: Krivine & Viaud

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postponed for obvious reasons and will be held in Aarhus in May 2021. EAPIL has also established one working group on the feasibility of a private international law act, and the establishment of four other working groups have been proposed (see p. 8-9). Finally, a Research Network of young scholars and practitioners was established (see p. 10). The development of the future activities of the Association, however, should not be dictated by the interests of its current officers. EAPIL will be what its members make of it, and we are therefore inviting all members to submit proposals for developing new activities. In particular, we invite members to identify topics deserving in depth analysis and propose to constitute working groups to reflect on them.

EAPIL events

The EAPIL Aarhus conference: 27-29 May 2021

Morten Midtgaard Fogt
Head of the organisation committee, Vice-President of EAPIL

The first EAPIL conference will take place in Aarhus (Denmark) from 27 to 29 May 2021, and focus on current and future challenges of European private international law broadly understood. The event will bring together academics and practitioners from all over Europe and provide a unique opportunity to talk and think about private international law in a pan-European fashion.

The conference topics include the effects of digitalisation and the challenges posed by the phenomenon of fragmentation in European private international law. A keynote speech by Peter Arnt Nielsen (Copenhagen Business School) will open the conference. Two Reports from Brussels and Luxembourg will follow: Andreas Stein (Head of Unit, European Commission) and Maciej Szpunar (Advocate General, Court of Justice of the European Union) will put the topics of the conference into perspective and provide insights into current developments at the legislative and the judicial level.

The following days will see presentations delivered by Marie-Élodie Ancel (University Paris II Panthéon-Assas), Matthias Lehmann (University of Vienna), Burcu Yüksel Ripley (University of Aberdeen), Burkhard Hess (Max Planck Institute Luxembourg), Francisco Garciámartín Alférez (Autonomous University of Madrid), Thalia Kruger (University of Antwerp), Gian Paolo Romano (University of Geneva), Ralf Michaels (Max Planck Institute Hamburg), Marta Pertegás Sender (University of Antwerp and Maastricht University), and Haris Pamboukis (University of Athens).

For further information, please visit the conference website (https://law.au.dk/en/research/conferences/eapil2020) or the EAPIL website (http://eapil.org). A preliminary registration (without payment of fee) is now possible through the conference website: https://events.au.dk/eapil2021-pre-registration/sign. Those pre-registering for the conference will be notified of the opening of the ordinary registration in due course. We look forward to seeing you in Aarhus in 2021!
Guest editorial

Fraternal greetings from a fellow association of European private international law

Patrick Kinsch
Secretary-General of GEDIP - Groupe européen de droit international privé

EAPIL’s founding conference, which was to be held in Aarhus in May 2020, has been rescheduled to 2021. The same pandemic-related fate also befell GEDIP (Groupe européen de droit international privé, or EGPI, the European Group for Private International Law), whose 30th meeting, in Prague, was similarly rescheduled. However, since GEDIP is a much smaller group of some thirty active members – plus a few rather active emeriti – the GEDIP meeting has gone ahead in September of this year, by video conference. Otherwise, GEDIP works slowly. It does have a web site (http://www.gedip-egpil.eu, soon to be renovated), but it publishes the result of its deliberations, and their travaux préparatoires, “with all deliberate speed”. That is not due to lack of interest in current developments; on the contrary, most GEDIP members will read the PIL blog of EAPIL (as well as a rival blog, whose name shall go unmentioned) with relish and gratitude. But they believe in their own methods. These methods include a bilingual regime (every GEDIP member masters, at least passively, both English and French), with the eventual publication in both languages of every text finally adopted.

GEDIP was founded in 1991, as an association for the study of the interaction of European Community law and of private international law, at a moment where there was very little actual interaction. The Brussels and the Rome Conventions had entered into force, but they were hybrids between EC law and classic PIL treaties. There was almost no case law of the Court of Justice relating to the incidence of the general principles of (primary) EC law on private international law. GEDIP was founded as a small forum for discussion of possible interactions, and – from the beginning – of possible future developments. Including legislative developments: an important part of GEDIP’s works has always been the preparation of future conventions, later of future regulations on private international law. This does not mean that GEDIP members would have believed in the perfection of their proposed texts, or in their immediate political acceptability. The members have always been much too realistic for such a belief. But some of the texts produced during two, or four, annual GEDIP meetings do possess their qualities; it is with some regret that one compares the GEDIP draft for a comprehensive EU judgments regulation (including uniform rules on jurisdiction towards defendants domiciled in third States, and on the recognition of third State judgments) of 2010 with the actual text of the Brussels I bis regulation.

The last finished work of GEDIP is a draft comprehensive divorce regulation published in 2019 (jurisdiction, applicable law and recognition of divorces obtained abroad, including third State judgments and private divorces). Work is in progress on the law applicable to rights in rem and on the general principles of European private international law. Otherwise, the usual discussions go on.

GEDIP looks with confidence at the future of European private international law. There is so much of it that it can be studied by one, two or indeed three associations.

Welcome to EAPIL.
One of the goals of EAPIL is to connect scholars and practitioners across language and national borders. Both the steadily growing membership numbers and the composition of membership gives us hope that the Association is on a very good way to reach this aim.

**Geographic affiliation**

Launched in November 2019, the Association has now 216 members, coming from 40 different countries. Unsurprisingly, a majority, namely 165 members, are based in EU countries (76%). An additional 36 members are based in other European countries (17%) while 15 members reside outside Europe (7%).

**EU countries** — The 157 members who are based in the EU represent 22 of the 27 EU Member States. The Member State with — by far — the most members is Italy (45 members) followed by Germany (25), France (15), Poland (14), Spain (12), the Netherlands (9), Portugal (8), Luxembourg (6), Belgium (5), Greece (4), Denmark (3); Austria, Bulgaria, Czech Republic, Cyprus, Finland, Hungary, Lithuania and Romania (each 2 members), Ireland, Latvia, Slovenia (each 1 member).

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The Member States that are currently not represented in the Association are Croatia, Estonia, Malta, Slovakia and Sweden.

Other European countries — Of the 63 members based in other European countries most are working in the United Kingdom (17 members) followed by Switzerland (8), Ukraine and Turkey (each 4 members), Norway (2) and Russia (1).

Non-European countries — Of the 14 members who come from non-European countries, 8 are based in Asia and the Middle East (Azerbaijan, Bangladesh, China, Dubai, Iraq, India, Israel), 4 in America (Argentina, United States, Mexico, Venezuela), 1 in Africa (Malawi) and 2 in Australia.

Main activity
Most EAPIL members are in academia (75%). Practitioners account for 19% of membership. The remaining 6% consists of members who are active both in academia and in practice.

Membership type
The Association offers various types of membership. There are currently 192 ordinary members, 23 associate members and one institutional member.

Note: Numbers are current as of 28 August 2020. “Country” refers to the country of first professional affiliation.

Want to join the Association?
Membership in EAPIL is opened to anybody – academic or practitioner – with an expertise, or an interest, in private international law, regardless of their nationality or residence. Entities, such as research institutions and law firms, may be admitted as institutional members.

There are four kinds of members: ordinary members, associate members, institutional members and honorary members. Further information on the various types of membership and the respective admission requirements may be found in the Association’s website (http://eapil.org).

Those wishing to apply for membership are encouraged to fill in the application form available on the website. Applications are examined by the Board of Administration. Applicants will be informed by the Secretary General as soon as the process is complete.

Membership in the Association is understood to last for an indefinite period. Members wishing to leave the Association may do so by filling in the form available in the website above.

Already a member? Have you paid your fees?

Members are asked to pay an annual fee. The amount varies according to the type of membership: (a) ordinary members: 50 Euros; (b) associate members: 30 Euros; (c) institutional members: 200 Euros. The fees are due on 31 January every year. For newly admitted members, the payment is due by the end of the calendar month of admission. Those who applied in 2019 were only required to pay the fee for 2019 (their fees for 2020 have been waived). Please refer to the EAPIL website for information on the available means of payment (bank transfer and PayPal) and on invoicing. For any queries relating to the payment of fees, please write an email to Apostolos Anthimos, the Treasurer of the Association, at treasurer@eapil.org.
Discover the Association

Current and proposed activities

GIESELA RÜHL
Secretary General of EAPIL

EAPIL is a forum to further the study and development of (European) private international law. It aims to connect scholars and practitioners, work towards a pan-European discourse across languages and national borders, and build bridges to the private international law communities of non-EU Member States as well as non-European countries. To pursue these aims the Associations undertakes a number of activities which are not conclusively defined in terms of content or format. In fact, any activity which furthers the aims of the Association is welcome and encouraged! Only the sky is the limit.

Current activities

EAPIL currently pursues its aims through the EAPIL Conferences, the EAPIL Working Groups, the EAPIL Blog and the EAPIL Young EU Private International Law Research Network.

The EAPIL Conferences are intended to bring the Association’s members together at least every two years to provide an opportunity for exchange, discussion and networking. The first EAPIL Conference will take place from 27 to 29 May 2021 at the University of Aarhus in Denmark and will deal with current challenges and problems of private international law (see p. 2).

The EAPIL Working Groups meet independently of the EAPIL Conferences and deal with selected questions and problems of (European) private international law over a period of time. They are intended to provide impulses for the further development of the relevant regulations and in particular to support the work of the European lawmakers. The reflections carried out by Working Groups translate into some kind of document (such as reports, position papers, draft legislation, principles, recommendations, etc.), which has to be approved by the General Assembly.

The EAPIL Blog provides information about the Association’s activities and reports on current developments in (European) private international law, namely court decisions, publications and scholarly events (see p. 11). It also provides a permanent – virtual – forum for the exchange of information on issues of (European) private international law.

The Young Private International Law Research Network offers young academics, especially doctoral and post-doctoral candidates the opportunity for exchange and networking (see p. 10). It organizes biannual conferences.

Future activities

If you are considering to launch an activity, notably a Working Group, please submit a proposal to secretary.general@eapil.org. The proposal should be brief (maximum 2 pages) and describe the subject matter of the activity, its aim, form, methodology and timeline. The proposal should also contain information about the members who will lead the activity and the members who will be involved. It is then for the Scientific Committee to approve the new activity.

For more detailed information on how to launch new activities, please check the EAPIL website (http://eapil.org).

If you have any questions regarding the EAPIL activities, do not hesitate to get in touch with the Secretary General at secretary.general@eapil.org. We are looking forward to receiving your proposals!

The Scientific Council

The Scientific Council is responsible for organizing all the academic activities of the Association. In particular, it is the Scientific Council which authorizes the launching of new activities under the auspices of the Association and supervises their development. Since the creation of the Association, the Council has approved the Working Group on the Feasibility of European PIL Act, the EAPIL Blog and the Young EU PIL Research Network, and it will decide on the establishment of new Working Groups and activities in the future. The Scientific Council is also responsible for endorsing the documents issued by working groups and allow that they be submitted to the General Assembly.

The Board

The Board of Administration is in charge of the day-to-day business of the Association. It currently consists of five members: Gilles Cuniberti (President), Morten Fogt (Vice-President), Giesela Rühl (Secretary General), Pietro Franzina (Deputy Secretary General) and Apostolos Anthimos (Treasurer).
A multitude of European Regulations
Over the last two decades, the number of European private international law Regulations has increased with breath-taking speed. These Regulations have remedied many uncertainties that resulted from the fact that the EU Member States applied diverging private international law rules. Yet, it has become increasingly difficult to find one’s way through the large number of specific regulations, at times with overlapping scopes of application. Even specialists in this field risk losing their bearings.

Against this background, the question arises whether the time has come 1) to consolidate the private international law rules of the EU in a single instrument and 2) to fill the gaps in the current regulatory framework? The first EAPIL Working Group, established in early 2020, will deal with these questions and undertake to prepare a first draft for a (comprehensive) European Private International Law Act (EuPIL Act).

Challenges and aims
In 2012, the European Parliament published a Study on A European Framework for private international law: current gaps and future perspectives. The authors of the Study concluded that it would be too complex to codify and close the gaps at the same time and, therefore, suggested that the gaps should be closed first, while leaving a comprehensive codification for a later day.

The members of the EAPIL Working Group agree with this view. However, they believe that in light of the high complexity of the current European framework for private international law, we are well advised to commence preparatory work for a comprehensive EuPIL Act rather sooner than later. This is because such an Act will make European private international law more transparent, and infinitely more accessible and user-friendly for citizens and practitioners. It is, therefore, the aim of the EAPIL Working Group to provide academic input for further legislative steps, both with regard to consolidating the present acquis and with regard to closing gaps.

Having said that, there is no doubt that the preparation of a draft EuPIL Act will take some time and that the Working Group will have to answer a number of difficult questions along the way. Here are some of them.

1. Should a comprehensive EuPIL Act have a general part? If so which of the rules and principles that are currently being used in existing Regulations could be integrated into that part (hereby avoiding the parallelism, repetition, and occasional contradiction of rules in the current regulations)?
2. Where are the gaps regarding provisions on general issues (e.g. a general definition of habitual residence of natural persons, characterization, evasion of law, incidental questions, the application of foreign law, the name of natural persons, etc.), and how should they be filled?
3. Should the project be limited to issues currently covered by the Brussels I as well as the Rome I and II Regulations? Or should the project also cover family law and the law of successions (i.e. to issues currently covered by the Rome III and IV Regulations)?
4. Which structure should be used to make a comprehensive PIL Act as transparent and user-friendly as possible? As of now, the most comprehensive codification of PIL in the world is the one to be found in Switzerland, with a PIL Act containing 225 articles. Some 30 years after its entry into force, after some major reforms, and despite some current need for reform in detail, the Swiss PIL Act is still coherent, user-friendly and works perfectly well in practice. Could the legislation of countries already having comprehensive PIL acts, and in particular Switzerland, serve as a source of inspiration for a EuPIL Act?
5. How shall the EuPIL be coordinated with international conventions that are in force in some Member States but not in others and national PIL rules?
6. Do the current Regulations need to be improved, amended, or reformed?

Scope and approach
The work of the Group will build primarily on the existing EU Regulations. Proposals for reform will be limited to issues that have proven to be particularly problematic in practice and in the case law of the CJEU in particular. Where proposals for gap filling are made, the Group will primarily attempt to discover, wherever possible, common principles for the issue under examination. Politically sensitive or controversial issues will be left to more specialized working groups (such as whether the rules on jurisdiction shall be further extended to defendants not domiciled in the EU; whether common rules on the recognition and enforcement of judgments issued in third States should be adopted; or whether common rules on arbitration shall be created).

The Working Group will include members, involve experts, and take inspiration, from as many countries as possible, including EU and non-EU countries. The clos-

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ing of some of the gaps may in parallel be addressed by other, more specific EAPIL Working Groups (e.g., working groups on private international law rules on property law; agency; corporations; trusts; marriage; the relations between spouses; paternity; and possibly arbitration), with all Groups ideally being in close consultation with each other. Together with these groups the EAPIL Working Group on the Feasibility of a European Private International Law Act will hopefully pave the way for a comprehensive EuPIL Act in the medium and long run.

EAPIL activities / Proposed Working Groups

Interests in European private international law

Caroline Kleiner
Proponent of the Working Group

The issue of interests is a topic of the highest practical importance, which is raised by the award of any sums of money. Whatever mechanism is used to settle international disputes, the question of interest arises at two different times: at the adjudicatory stage and at the enforcement stage. The issues to be addressed concern the allocation of interest itself, the starting point, the interest rate, the currency, whether anatocism is possible... Yet, European Regulations in the area of private international law are largely silent on the topic. Moreover, the laws of the Member States on interest diverge widely, even those of the Eurozone States, although they share the same currency.

The Working Group will aim at identifying the most critical issues and at proposing either amendments to existing legislation or interpretations addressing these issues, based on thorough comparative studies.

Interested EAPIL members may get in touch with Caroline Kleiner at caroline.kleiner@parisdescartes.fr.

EAPIL activities / Proposed Working Groups

The law applicable to the validity of choice of court agreements

Laurence Usunier and Eva Lein
Proponents of the Working Group

European private international law has long provided for uniform rules regarding the formal validity of choice of court agreements. However, only the Brussels I bis Regulation has addressed the issue of substantive validity of such agreements. Article 25(1) of the latter Regulation provides that the court(s) chosen by the parties have jurisdiction “unless the agreement is null and void as to its substantive validity under the law of [the] Member State [of the chosen court(s)]”.

Recital 20 of the Regulation states that the substantive validity of a choice of court agreement should be assessed in accordance with the law of the Member State of the court designated in the agreement itself, “including the conflict-of-laws rules of that Member State”. Article 25(1) therefore requires that the court seised in breach of a jurisdiction agreement applies the conflict-of-laws rules of the Member State of the designated court, and the law specified thereunder, when the substantive validity of the agreement is challenged.

Courts may face practical difficulties when following this path. Actually, various Member States have no clear rules on the law applicable to the substantive validity of choice of court agreements.

The proposed Working Group has three goals. First, the Group intends to carry out a comparative study on the choice of law rules applied across EU Member States regarding the validity of choice of court agreements. The situation in third countries would also be covered, especially in the contracting States of the Lugano Convention and of the 2005 Hague Convention on Choice of Court Agreements (which follows the same approach). Second, the Working Group aims to explore the possibility of drafting uniform conflict-of-laws rule(s) on the validity of choice of court agreements, either to supersede or to complement existing domestic rules.

Third, subject to further assessment, the Group intends to propose uniform substantive rules on the substantive validity of choice of court agreements. These would deal, inter alia, with the validity of “asymmetric” agreements and the enforceability of agreements evading the application of an overriding mandatory provision of the forum State.

Interested EAPIL members are encouraged to contact Laurence Usunier at laurence.usunier@cyu.fr or Eva Lein at eva.lein@unil.ch.
EAPIL activities / Proposed Working Groups

Liberalizing the cross-border taking of evidence within the EU

Gilles Cuniberti
Proponent of the Working Group

A Working Group on the Evidence Regulation should explore how the cross-border taking of evidence within the European Union could be liberalized. The major flaw of the existing regulation is that it requires that the authorities of the requested State authorize or are involved in the taking of evidence on their territory which slows down considerably the process, and sometimes makes it meaningless. The Court of Justice of the European Union has indirectly acknowledged the issue by allowing Member states to bypass the Regulation and take evidence abroad on the basis of their internal procedures.

The Working Group will cover the various forms of evidence (witness testimony, document, collecting samples) and the various subject matters (family, civil and commercial) and will aim at distinguishing between cases where full liberalization might be possible, cases where the authorization of the requested state should be sought, and all cases requiring intermediate solutions.

Members interested in joining the Working Group or following its work in the Members Consultative Committee are invited to contact Gilles Cuniberti at gilles.cuniberti@uni.lu.

A future European Regulation on international property law

Eva-Maria Kieninger
Proponent of the Working Group

The proposed Working Group, which presently consists of Janeen Carruthers (University of Glasgow), Gilles Cuniberti (University of Luxembourg), Teemu Juutilainen (University of Turku), Eva-Maria Kieninger (University of Würzburg) and Teun Struycken (University of Utrecht), aims to lay down a proposal for a Regulation on International Property Law complementing existing instruments such as the Regulation on Matrimonial Property and the Succession Regulation but also the proposed Assignment Regulation. The project focuses on tangible movable and immovable property, leaving out rights in intangibles (claims, intellectual property rights) and securities whether incorporated or unincorporated. The Group hopes to draw on the national codifications of private international law but also on the existing acquis communautaire which frequently refers to the lex rei sitae principle. One major issue will be whether and to what extent party autonomy can play a role in international property law. Another practically important question will be the connecting factor for real rights in vehicles. Most court cases turn around cars and it is obvious, that the lex rei sitae is not an ideal rule for highly mobile assets.

The Group seeks new members, in particular from either Italy, Spain or Portugal and from an Eastern European Country. Interested EAPIL members may contact Eva-Maria Kieninger at kieninger@jura.uni-wuerzburg.de.

Group’s webinar on 20 October 2020

A webinar will take place on 20 October 2020, at 12.30, to present the goals and agenda of the Working Group on a future Regulation on international property law and launch the discussion on the Group’s activity. Teun Struycken will highlight the present need for a legislative measure of the Union in this area. Janeen Carruthers will talk about the global measures for the unification of PIL rules pertaining to property. Teemu Juutilainen will speak of the impact of free movement of goods and services on international property law. Gilles Cuniberti will outline the impact of the acquis communautaire on international property law. Finally, Eva-Maria Kieninger will illustrate the focal points and possible methods of the Group’s work.

Further information will be provided via the EAPIL website (http://eapil.org).
The Young Private International Law Research Network

Martina Melcher and Tamás Szabados
Co-Chairs of the Network

Background and objective
Despite common rules and mutual interests, a pan-European discussion of private international law issues among the 'junior faculty' is still missing. The Young EU Private International Law Research Network aims at filling this gap by providing a forum for young scholars wishing to exchange ideas on EU PIL without the constraints of academic hierarchy. Of course, this does not exclude the possibility of common projects between senior and junior faculty, which, on the contrary, would be highly desirable. Rather, the Network intends to provide young scholars with the opportunity to develop independent projects and seek pan-European synergies.

The Young EU Private International Law Research Network was established in April 2019 in Würzburg and integrated into the European Association of Private International Law in 2020.

Previous and ongoing projects
The first project of the Network dealt with the implementation of the ECJ/ECtHR case law related to the “recognition of status” in 16 EU Member States. It resulted in a conference and a workshop at the University of Würzburg in April 2019, and also led to the establishment of the Network. Participants from more than 20 jurisdictions enthusiastically embraced the opportunity of such an enhanced exchange at the junior faculty level. A second project focuses on “overriding mandatory provisions in autonomous private international law of the EU Member States”. The research outcomes are going to be presented at a webinar on 16 November 2020. This online event will also include contributions by young scholars which address the topic from a more general perspective.

Structure
The Network does not have a rigid, predetermined structure. In general, a meeting is planned each year or at least biennially for the members of the Network.

For the first two projects, a general research question was agreed upon and participants drafted country reports dealing with this research question from the perspective of their home jurisdiction(s). Based on these reports, a comparative report was drafted to be discussed in a workshop and to draw first conclusions. Both projects were also accompanied by a conference, in which the research questions were addressed from a more global perspective (as opposed to the national perspectives in the workshops). Other forms of collaborations among young researchers are envisaged for the future.

The outcomes of the projects, such as the comparative general reports, are intended to be published to make them available to a broader public. The form of publication depends on the outcomes of the project and is determined by the respective head of the particular project in cooperation with the participants.

An EAPIL member? Aged 45 or less?
Join the Network!

The Network is open to PhD students, postgraduate researchers and other academics other than full professors or equivalent, as well as to practitioners, under the age of 45. Members are encouraged to actively participate in one or more projects (e.g. by drafting a country report or delivering a lecture or presentation). For each project, a ‘head of project’ is appointed, to foster the exchange among members, oversee the organisation of the project’s events and the dissemination of their outcome. Network members are regularly informed of the current and envisaged activities of the Network and may submit proposals for new projects. Possible future projects will be discussed at the forthcoming webinar on 16 November 2020 (see the article above). To join the Network, please write an e-mail to youngeupil@gmail.com. The Network’s Co-Chairs, Martina Melcher (martina.melcher@uni-graz.at) and Tamás Szabados (szabados@ajk.elte.hu), are available to provide further information.
The EAPIL Blog is recruiting

PIETRO FRANZINA
Managing Editor of the EAPIL Blog, Deputy Secretary General of EAPIL

Less than one year has passed since the launch of the EAPIL Blog (http://eapil.org/blog). Several posts have been published since, covering a broad range of developments in the practice and scholarship of private international law. Thanks to the work of editors Apostolos Anthimos, Gilles Cuniberti, Marion Ho-Dac, Matthias Lehmann, Marta Requejo and Anna Wysocka-Bar, and with the help of a number of guest contributors, the Blog has, among other things: announced the publication of some 50 books and the release of 12 new issues of periodicals; advertised more than 15 academic events (and the postponement of some of them, due to the coronavirus crisis...); provided reports and commentaries on some 15 cases decided by the Court of Justice and by domestic courts of European States; launched an on-line symposium on the impact of the coronavirus crisis on private international law, which involved 7 contributors and attracted several comments. The editors are willing to do more. The current coverage of case law, for example, could be improved in various ways. So far, the Blog has managed to inform its readers about rulings given in just a handful of European States. Of course, the practice of other States, too, deserves to be reported. For this, the editorial team should grow further, in size and diversity. For this, EAPIL members wishing to join the team and contribute to the Blog on a permanent basis (normally, by producing three or four posts per month) are invited to contact the Blog's managing editor at pietro.franzina@unicatt.it. Applications from scholars or practitioners based in States other than the States currently represented in the editorial team are especially welcome.

Experts from any country wishing to occasionally submit a guest post are also warmly invited to contact the managing editor. Finally, the Blog is seeking to appoint a social media manager, to improve and consolidate the Blog’s presence on LinkedIn, Twitter etc. The help of one EAPIL member with a knowledge of social media and WordPress, the platform used to run the Blog, would be very much appreciated.
Meet the EAPIL members: Krivine & Viaud

Krivine & Viaud, an institutional member of the EAPIL, is a French law firm founded in 2017 by partners Jérôme Krivine and Sébastien Viaud, avocats au Conseil d’État et à la Cour de cassation.

The Conseil d’État (Council of State) is both a legal adviser to the Government and the highest court for public law matters. The Cour de cassation is the highest court of the judiciary for civil, commercial, social and criminal cases. A specific body of lawyers/barristers, who are also public officers, called avocats au Conseil d’État et à la Cour de cassation, in short avocats aux Conseils (“lawyers to the Councils”), have a legal monopoly to represent litigants before the two Supreme Courts. They are highly qualified lawyers (currently 127) specializing in the peculiar proceedings before these courts, which in general only control the correct application of the law by lower courts.

Jérôme Krivine and Sébastien Viaud are personally interested in private international law issues and frequently appear in cases involving conflicts of laws or jurisdiction, especially concerning tort law, contractual claims, family law, commercial law, labour law and international arbitration.

In September 2020 Krivine & Viaud won an interesting case before the Cour de cassation (appeal S 19-15.580). The firm represented an important French company manufacturing children clothes which had filed in France a suit against several Russian banks for the performance of first demand guarantees that had been set aside by Russian courts and therefore could not be enforced. The claims were based on contract, and alternatively on tort, but they were not heard on the merits as the respondents challenged the jurisdiction of French courts. The Paris Court of appeal ruled that the claims could not be entertained for lack of jurisdiction. The peculiarity was that the jurisdictional rules in the Brussels I Regulation did not apply in the circumstances, since the defendants were not domiciled in the EU. No other uniform rules on jurisdiction were applicable. Thus, the case had to be decided in accordance with the French rules on jurisdiction, which normally result from the extension of the rules governing domestic jurisdiction. As far as contractual claims are concerned, Article 46 of the French code of civil procedure stipulates that the claimant may seize the court for the place where the services were provided or had to be provided.

The Court of appeal considered that the issuance of a first demand guarantee by a bank could not be characterized as a provision of services for the purposes of Article 46, but failed to give any explanation for such a finding. The Cour de cassation set aside the for this reason.

The most interesting issue, though, was to know whether the jurisdiction of French courts could be asserted on the basis of Article 14 of the French civil code, which provides that a French claimant may sue a foreign respondent in France, regardless of the latter’s residence: (“privilege of nationality”).

The view is generally accepted that when the contract under discussion includes a clause conferring jurisdiction on the courts of a foreign state, the French party is presumed to have waived his right to invoke the said privilege. In this case, the demand guarantees contained a choice of court clause designating Russian courts, and the Russian respondents argued that the French claimant was bound by the clause and therefore could not rely on Article 14 of the civil code.

The difficulty lied in the fact that the guarantees, as well as the contract between the French party and the Russian bank under which the guarantees had been issued, also contained a choice of law clause referring to Russian law, and the claimant asserted that this law should be applied to determine whether he was bound by the choice of court clause in the first place.

The dispute fell outside the scope of both the Rome I Regulation and the 2005 Hague Convention on Choice of Court Agreements. Therefore the Cour de cassation had to determine the French conflict of laws rule governing the scope of jurisdiction clauses: was Russian law applicable, as the law chosen by the parties in the contract, or was the clause governed by the lex fori?

The Cour de cassation set aside the decision of the Court of appeal on the ground that it had considered that the choice of court clause would bind the French party without checking the content of Russian law on this peculiar question. Therefore, implicitly but necessarily, the Court decided that the chosen law should also govern the choice of court clause in the contract.

It is worth noting that the rule laid down by the Court differs from the rule typically found in international instruments (Brussels I bis Regulation, 2005 Hague Convention), which provides for the application of the law of the chosen court, but that both rules would have led to the same outcome in this case.