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Nomos

Manjiao Chi, A Long March towards Compatibility, Coherence and Consistency: the Future of China's Investment Agreements, ZEuS 2015, 373-389.

China has concluded a large number of IIAs over the past decades. China's IIA-making history shows that there exists a close correlation between the change of its IIA-making strategy and the shift of its national economic development policy. To some extent, while the "host state centered" strategy aims at facilitating the implementation of the "Opening up" policy, the "home state centered" strategy is supplementary to the implementation of the "Going abroad" policy. Due to the change of its political, economic and social situations in the recent years, China now faces unprecedented challenges in IIA-making. Neither of the existing strategies can truly meet its current need. It is suggested that China should make its future IIAs more compatible with public interest goals, develop a coherent IIA-making strategy and enhance consistency of IIAs, national laws and soft law rules.

Robin van der Hout, Von Flughäfen, Freizeitbädern und Fußballstadien – Europäische Beihilfenkontrolle als Ersatzstrukturpolitik, ZEuS 2015, 391-405.

Das Europäische Beihilfenrecht hat in den vergangenen Jahren zunehmend an praktischer Bedeutung gewonnen. In den Mitgliedstaaten der Europäischen Union kann heute so gut wie kein Infrastrukturprojekt nicht nur marginaler Größe mehr durchgeführt werden, ohne dass zuvor die beihilfenrechtliche Zulässigkeit geprüft würde. Der vorliegende Beitrag untersucht ausgehend von der Genese des Beihilfenverbots, die Auswirkungen der Ausdehnungen des Beihilfentatbestandes, wie er sich heute aus der Praxis der Europäischen Kommission und der Rechtsprechung der Europäischen Gerichte ergibt. Insbesondere die nach wie vor erfolgende Ausweitung des Beihilfentatbestandes, unter anderem auf staatliche Infrastrukturen, stellt die Kompetenzfrage und die Frage nach der rechtspolitischen Berechtigung. Weitere Aspekte sind die Rechtsfolgen des Beihilfenverbots, als auch sich vergrößernde Rechtsschutzlücken, insbesondere nach der letzten Reform des Europäischen Beihilferechts (*State Aid Modernisation*, SAM).

Anca D. Chirita, The Judicial Review of the European Union Industrial Cartels, ZEuS 2015, 407-440.

This article explores the judicial review of the European Union industrial cartels under Article 101 TFEU by examining the relevant principles underpinning both the substantive and the procedural review of cartels. Arguments advancing a perceived "criminalization" of the EU fines on cartels in light of Article 6 of the ECHR coupled with the success rate of appeals, as well as the overall length of cartel proceedings, raise pertinent issues regarding the need for institutional reform, in particular, a specialised EU Competition Tribunal. This article highlights several hurdles in appeals as reflected by the interpretation of Article 41 of the EU Charter of Fundamental Rights, in particular, the right to good administration of justice before an independent and impartial tribunal, the right to a fair presentation of evidence through the sending of a Statement of Objections, the right to have access to the file, the right to a reasoned decision and within a reasonable time, and the proportionality of the administrative fine.

Erin H. DuBose, The Implementation of the 2005 Hague Convention on Choice of Court Agreements in the European Union: An Analysis of its Relationship with the Brussels I-bis Regulation, ZEuS 2015, 441-474.

On 1 October 2015, ten years after its adoption by the Hague Conference on Private International Law, the 2005 Hague Convention on Choice of Court Agreements entered into force. Accordingly, the Convention's contracting states, Mexico and all member states of the European Union (except Denmark), are now bound by its rules. The Convention establishes a set of uniform rules applicable to exclusive choice of court agreements in international civil and commercial matters and to the recognition and enforcement of judgments rendered by chosen courts. Aimed at

strengthening party autonomy in international commercial transactions and increasing legal certainty and predictability in the event of a dispute, the benefits of the Convention's rules to international contracting parties is significant. Now, with its entry into force, the Convention's rules are a concrete part of the legal landscape in the European Union. However, in order to realize the benefits and protections afforded by the Convention, contracting parties not only must understand the Convention's purpose, scope, and fundamental rules, but also how it interacts with EU law on choice of court agreements contained in the Brussels I-bis Regulation. Intended to assist parties in navigating the relevant law applicable in the European Union concerning choice of court agreements, first, this paper analyzes the fundamental rules of the Convention, second, the pertinent rules of the Brussels I-bis Regulation, and, finally, the relationship between these rules. In addition, in order to highlight potential obstacles to the Convention's expansion, this paper briefly discusses the relevant law and ongoing struggle towards ratification of the Convention in the United States.

Julia Villotti, National Constitutional Identities and the Legitimacy of the European Union – Two Sides of the European Coin, ZEuS 2015, 475-505.

Constitutional diversity is at the heart of the EU legal construct. Based on the assumption that the identification of citizens with a political community is prerequisite for their democratic participation, the argument advanced here is one of political legitimacy. Since neither proper identification nor participation does (yet) exist at EU level, identification and participation is all the more essential at the national level and typically actuated by national specificities such as a particular interpretation of a fundamental right in a certain historical and societal context. The actual version of the identity clause has the potential to operate in a way that establishes identification with the EU and with the member states not as mutually precluding concepts; it is seen as a trigger to safeguard constitutional pluralism by judicial means, while at the same time strengthening the cooperation among the national and the EU level. This does neither entail a general departure from the principle of primacy of EU law, nor strict adherence to the latter principle; what is proposed is a EU wide decision making process involving the national as well as the EU level concerning the question, whether or not national constitutional identity is unduly encroached upon. This understanding of the provision could strengthen the identity of the EU by clarifying its pluralist legal foundation and that of the member states by protecting their individual constitutional specificities; finally, it could contribute to unwinding the ever-lasting discussions on the democratic deficit in the EU.

Ulrich Widmaier und Siegbert Alber, Das Streikverbot der deutschen Beamten im Spannungsfeld zwischen Grundgesetz und Europäischer Menschenrechtskonvention – Handlungsbedarf nach dem Streikrechtsurteil des Bundesverwaltungsgerichts vom 24. Februar 2014, ZEuS 2015, 507-542.

Die Entscheidungen des Europäischen Gerichtshofs für Menschenrechte in den Fällen *Demir und Baykara/Türkei* sowie *Enerji Yapi-Yol Sen/Türkei* aus den Jahren 2008 und 2009 und mehrere Entscheidungen deutscher Verwaltungsgerichte aus den Jahren 2010, 2011 und 2012 haben in Deutschland eine lebhafte Diskussion ausgelöst, ob auch deutsche Beamte streiken dürfen. Durch das Urteil des Bundesverwaltungsgerichts vom 24. Februar 2014 erhält das Thema erneut Aktualität. Das Streikverbot für Beamte stützt die deutsche Gerichtsbarkeit auf die „hergebrachten Grundsätze des Berufsbeamtentums", wie sie in Art. 33 Abs. 5 GG erwähnt sind. Im Mittelpunkt steht die Frage, wie die Kollision der sich gegenwärtig ausschließenden Rechtspositionen aus Art. 33 Abs. 5 GG und Art. 11 EMRK für die Beamten außerhalb der hoheitlichen Verwaltung aufzulösen und die neuere EGMR-Rechtsprechung in das deutsche Recht umzusetzen ist. Die Autoren stellen das Urteil des Bundesverwaltungsgerichts auf den Prüfstand, erörtern mehrere Lösungsmöglichkeiten und gelangen zu dem Ergebnis, dass gesetzgeberischer Handlungsbedarf besteht. Dies ist aber nicht Aufgabe des einfachen Bundesgesetzgebers, wie das Bundesverwaltungsgericht meint, sondern des verfassungsändernden Gesetzgebers, um das deutsche Recht als eine völkerrechtliche Verpflichtung an Art. 11 EMRK anzupassen.