

# BUILDING EU CIVIL JUSTICE

## Team expansion and research in times of a global pandemic

Where the first year of this project set the foundations (first [Newsletter](#)), and the second year explored new pathways (second [Newsletter](#)), like for the rest of the world, 2020 has proven to be a challenge to our research endeavours. During the (partial) lockdowns since Spring, fieldwork plans were thwarted, research stays abroad discontinued, conferences cancelled and our team was forced to work from home. However, we did not let the Covid-19 pandemic discourage us and adapted to the challenges this new workflow posed. Our research meetings moved online, and regular lunches and gatherings were turned into 'Zoom coffees'. Jos presented his ongoing research on self-representation in European civil procedures and Erlis explained his plans for an experiment to explore the trade-offs between having a human judge or automated decision and litigation costs. Emma in her illustrative way presented her research on technologies employed within dispute resolution procedures and on the PayPal procedure, our new team member Betül gave a presentation that illustrated how the CJEU has gradually paved the way for the collective private enforcement of EU equality law, and Xandra presented ongoing research on developments in collective redress in the Netherlands and the EU. The plans for our [conference](#) on Frontiers in Civil Justice had to be adapted, but with 180 early registrations for this online program including eminent speakers from all over Europe and beyond, we are confident this will be a success.

In this newsletter we reflect on some of our achievements over the previous year, present research output, introduce new team members and hope to spark your interest as we continue into the final stages of the project.

## Building Further — Big grant for project costs and funding of civil litigation

The Netherlands Organisation for Scientific Research (NWO) has awarded Xandra Kramer a Vici grant of 1.5 million euros for the project 'Affordable access to justice: towards sustainable cost and funding mechanisms for civil litigation in Europe'. Vici is one of the largest scientific grants for individuals in the Netherlands and targets advanced researchers. The project will assess new pathways to civil justice funding and cost schemes, with a view to developing a balanced financing system, thereby securing access to justice in Europe. We will analyse the development of (private) financing and cost mechanisms in several European jurisdictions and build on a framework for financing and cost rules that contributes to a sustainable European civil justice system.

The Vici grant enables us to build on the present ERC funded Building EU Civil Justice project. The project will kick off in December 2020. For some more details and two other grants - including one for a PhD position - obtained by Jos Hoevenaars, Alexandre Biard, Erlis Themeli and Emma van Gelder read further on p. 14.



Left to right: Emma, Erlis, Xandra, Jos, Georgia, Alexandre (Betül not in picture)

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# RESEARCH

August 2019-November 2020

In 2019, one of our important research themes evolved around international business courts. Our PhD researcher Georgia Antonopoulou is preparing a very interesting dissertation on this topic, and has been active in publishing and presenting on the topic. Resulting from our seminar on international commercial courts in 2018, our research team collaborated on a special issue of *Erasmus Law Review* and an [open access book](#) on International Business Courts.

The report of the seminar has also been published: G. Antonopoulou & E. Themeli, Seminar Report - Innovating International Business Courts, Rotterdam, *European Review of Private Law* (2019) 27(5), p. 1207-1214

## International Business Courts in Europe and Beyond

*Xandra Kramer & John Sorabji (issue editors)*

Following our successful conference on international commercial courts on 10 July 2018, the speaker contributions as well as some other selected papers following a call for papers were included in a special issue of *Erasmus Law Review*. In the first paper Xandra Kramer and John Sorabji (one of the members of our Advisory Board) discuss the background of the creation of these courts, competition and innovation and private international law aspects. It also contains papers by our team members Georgia Antonopoulou, Erlis Themeli and Alexandre Biard.

**X.E. Kramer & J. Sorabji, International Business Courts in Europe and Beyond: A Global Competition for Justice?, *Erasmus Law Review* 2019, p. 1-9 ([full text](#))**

## Matchmaking International Commercial Courts and Lawyers' Preferences in Europe

*Erlis Themeli*

France, Germany, Belgium, and the Netherlands have taken concrete steps to design and develop international commercial courts. Most of the projects claim to be building courts that match the preferences of court users. They also try to challenge England and Wales, which evidence suggests is the most attractive jurisdiction in the EU. For the success of these projects, it is important that their proposed courts corresponds with the expectations of prospective users, but also manages to attract some of the litigants that go to London. This article argues that lawyers are the most important group of choice makers, and that their preferences are not sufficiently matched by the new courts. Lawyers have certain litigation service and court perception preferences. And while the new courts improve their litigation service, they do not sufficiently address these court perception preferences.

**E. Themeli, 'Matchmaking International Commercial Courts and Lawyers' Preferences in Europe', *Erasmus Law Review* 2019, p. 70-81 ([full text](#))**

## International commercial courts in France: Innovations without revolution?

*Alexandre Biard*

For the special issue of *Erasmus Law Review* dedicated to international business courts, Alexandre focuses on the establishment of the Paris International Commercial Court in the wake of Brexit. It can be considered part of the long-standing efforts aimed at boosting the French judicial marketplace and to adjust it to the requirements of globalization. While the new rules contain some innovative elements, including the possibility to litigate in English and took some inspiration from the Common Law system, they cannot be considered a full-blown revolution.

**A. Biard, 'International commercial courts in France: Innovations without revolution?', *Erasmus Law Review* 2019, p. 24-32 ([full text](#))**

## Choice of court for the NCC and German Chambers and Brussels Ibis

*Georgia Antonopoulou*

In recent years, the Netherlands and Germany have added themselves to the ever-growing number of countries opting for the creation of an international commercial court. The Netherlands Commercial Court (NCC) and the German Chambers for International Commercial Disputes (Kammern für internationale Handelssachen, KfiH) will conduct proceedings entirely in English and follow their own, diverging rules of civil procedure. Aspiring to become the future venues of choice in international commercial disputes, the NCC law and the legislative proposal for the establishment of the KfiH allow parties to agree on their jurisdiction and entail detailed provisions regulating such agreements. In particular, the NCC requires the parties' express and in writing agreement to litigate before it. In a similar vein, the KfiH legislative proposal requires in some instances an express and in writing agreement. Although such strict formal requirements are justified by the need to safeguard the procedural rights of weaker parties such as small enterprises and protect them from the peculiarities of the NCC and the KfiH, this article questions their compliance with the requirements upon choice-of-court agreements under Article 25 (1) Brussels Ibis Regulation. By qualifying agreements in favour of the NCC and the KfiH first as functional jurisdiction agreements and then as procedural or court-language agreements, this article concludes that the formal requirements set by the NCC law and the KfiH proposal undermine the effectiveness of the Brussels Ibis Regulation, complicate the establishment of these courts' jurisdiction and may thus threaten their attractiveness as future litigation destinations.

**G. Antonopoulou, 'Requirements upon agreements in favour of the NCC and the German Chambers - Crashing with the Brussels Ibis Regulation?', *Erasmus Law Review* 2019, p. 56-69 ([full text](#))**

## International Business Courts in Europe and Beyond

*Xandra Kramer & John Sorabji (eds.)*

This book is devoted to the significant growth in international business courts in Europe and across the world. It contains 14 chapters focusing on the important themes in major European and global centres. It assesses to what extent these courts, the competition between them and their inter-relationship with arbitration, contribute to justice innovation. It considers their impact on access to justice and the global litigation market, as well as their effect on the rule of law.

**X.E. Kramer & J. Sorabji (eds.), *International Business Courts: A European and Global Perspective*, Eleven International Publishing 2019 (296 pages) ([open access](#))**

## Internal Commercial Courts Competition in Europe: A Litigation Experience Approach

*Erlis Themeli*

Dispute resolution in general and court litigation in particular are considered as goods or services offered to conflicting parties in particular markets. Perhaps the recent surge in promoting international commercial courts in Europe serves best to exemplify this. Jurisdictions that invest in this type of court engage in promotion campaigns and try their best to win market shares over their direct competition. Research suggests that the supply side of international commercial litigation is composed of many institutions, which indicates that the supplied good is much more than simply court litigation. In my previous research, I argued that lawyers are the parties that create the demand output with regard to international commercial disputes. Lawyers make their choice of court based not only on the quality and functionality of the court but also on other factors often described as emotional and psychological. Despite this advancement, the question of how international commercial court competition unfolds remains open; at the same time, competing jurisdictions remain unsure about how to make their courts more attractive. This article contends that lawyers and companies – as the demand side – make their choice of court on the basis of their litigation experience. In fact, the demand side considers not only the quality of the service they purchase but also the services related to it, as well as their satisfaction with the purchase and with the emotional value they derive from the litigation. The customer experience framework can also be applied to explain the activities that competing jurisdictions undertake to attract litigants.

**E. Themeli, 'Internal Commercial Courts Competition in Europe: A Litigation Experience Approach', in X.E. Kramer & J. Sorabji (eds.), *International Business Courts: A European and Global Perspective*, Eleven International Publishing 2019, p. 273-296**

## European Civil Procedure and the Dialogue between National Courts and the European Court of Justice

*Xandra Kramer & Jos Hoevenaars*

Celebrating the 50th anniversary of what has become known as the 'Brussels Regime' it is no overstatement to say that civil justice in Europe has changed fundamentally. While civil procedures, rules, and judicial systems continue to be dominantly national and are firmly rooted in their respective national traditions, EU legislation increasingly Europeanizes our legal systems. The patchy regulatory framework of European civil procedure has, however, creates challenges for legal practice, increasing the need for clarity in implementation. This paper focuses on the dialogue between the European Court of Justice (CJEU) and the national courts in the application and development of European civil procedure. It questions the role of the preliminary reference procedure in the interaction between supranational legislation and the national legal systems and considers to what extent the reference procedure may fill the European legislative deficit and bridge the divergences of national civil justice systems and practice, and how the dialogue between the CJEU and the national courts can be improved..

**X.E. Kramer & J. Hoevenaars, 'European Civil Procedure and the Dialogue between National Courts and the European Court of Justice', in B. Hess and K. Lenaerts (eds.), *The Fiftieth Anniversary of the European Law of Civil Procedure*, Nomos 2020, p. 175-201**

### Advocaten in Europa: Vertegenwoordiging op het Hoogste Niveau?

*Jos Hoevenaars*

This article examines the practice of preliminary reference procedures before the European Court of Justice on the basis of empirical material, bringing together two areas of research: on the one hand, the question of the importance of representation of litigants in court and, on the other, the European preliminary reference procedure. The central question in this article is what challenges lawyers face when their case involving individual citizens is referred to the Court of Justice, how they deal with this and what we can conclude from this about the effectiveness of legal representation in preliminary ruling procedures. To find an answer to this question, insights from interviews with lawyers who have experience with one or more references to the Court in Luxembourg are used. The fact that such cases do not necessarily fall into the hands of the professionals best equipped to plead such disputes before the Court, as well as the inability for the less affluent parties in particular to hire further expertise, point in the direction of an disadvantaged party position for this group of litigants.

**J. Hoevenaars, 'Advocaten in Europa: Vertegenwoordiging op het Hoogste Niveau?', *Recht der Werkelijkheid* 2020/3, p. 7-29**

### Procederen voor de hoogste rechter: Empowerment of Vervreemding?

*Jos Hoevenaars*

This contribution to the seminar on the occasion of Tetty Havinga's retirement, brings theories on the role of lawyers in assisting litigants in court to bear on the practice of the preliminary reference procedures before the Court of Justice in Luxembourg. Using insights from a recent meta-analysis by Rebecca Sandefur on when and why the presence of lawyers matters in court and applying it to the reference procedure. The results, based on interviews with lawyers who have had a case referred to the Court of Justice confirm Sandefur's finding that the professional expertise relevant to legal practice involves more than just substantive knowledge. In addition to the substantive challenges of referring to Luxembourg, it is also clear that the change of context (from national to supranational) has repercussions for the relational expertise cited by Sandefur - familiarity with the practice of specific proceedings, the working methods of specific courts and even preferences of specific judges. In the case of references, lawyers have to plead before a court with a procedure that is unfamiliar to them, with judges they do not know and with a new course of action to which they usually have to respond on-the-spot. Precisely this expertise, which, according to Sandefur, represents the greatest added value of the presence of lawyers, is nullified by a reference to the Court.

**J. Hoevenaars, 'Procederen voor de hoogste rechter: Empowerment of Vervreemding?', in A. Böcker & P. Minderhoud (eds.), *Reguleren en Procederen. Bijdragen aan het seminar ter gelegenheid van de pensionering van Tetty Havinga*, Wolf Legal Publishing 2020, p. 49-59**

## Justice en ligne ou Far Www.est?

*Alexandre Biard*

Has the market for Online Dispute Resolution (ODR) become a new Far West, or should we say, in accordance with digital jargon, a new Far Www.est? In any case, it is an important question today, when faced with the multiplication of online platforms, of differing qualities, that offer services for resolving disputes out-of-court. ODR has become a new market in need of regulation in order to ensure the quality of the services provided and to foster trust. However, establishing a regulatory framework for these activities has been a difficult exercise and recent developments have been patchy so far. This is because ODR platforms remain heterogenous in forms and workings, and stand at the crossroads of several national and international legislations, including the emerging rules on the use of the Artificial Intelligence. This paper highlights the main issues and questions related to the regulation of online platforms and discusses, as a case study, the recent creation of a new voluntary certification scheme for ODR platforms in France. In doing so, it intends to contribute to the policy discussions that are currently ongoing in several jurisdictions and to encourage new exchanges on these important, topical, social questions.

**A. Biard 'Justice en ligne ou Far Www.est? La difficile régulation des plateformes en ligne de règlement extrajudiciaire des litiges', *Revue Internationale de Droit Économique* 2019/2, p. 165-191**

## Improving Access to Informaton in European Civil Justice: a Mission (Im)Possible?

*Jos Hoevenaars & Xandra Kramer*

This paper addresses the challenges for practitioners and, even more so, citizens on uniform European civil procedures and the implementation rules in the Member States. It discusses how access to information is secured and can be improved at the European and national level. It questions whether at present the access to information – as one of the practical obstacles to access to justice – is sufficient. It views the need for information against the background of multilevel and multifaceted regulation of civil procedure and for the different actors involved. Special attention is paid to the difficulties faced by unrepresented parties, for instance in the European Small Claims Procedure, for who obtaining the relevant information is particularly difficult, despite the progress that has been made in the establishment of the e-Justice portal. Finally, the adequacy of the level of information for the purpose of access to justice and ways to improve access to information is assessed.

**J. Hoevenaars & X.E. Kramer, 'Improving Access to Informaton in European Civil Justice: a Mission (Im)Possible?', in: J. von Hein & T. Kruger (eds.), *Informed Choices in Cross-Border Enforcement*, Intersentia 2020, p. 503-525.**

## The European approach to Consumer ODR

*Emma van Gelder*

The EU internal market has undergone several developments in the past decades. One of the main developments is the inclusion of a digital dimension. One of the fields in which these developments are very evident is the consumer market. A further development of e-commerce is however hindered because there are no suitable redress mechanisms for consumers involved in low-value, high volume claims typically arising from e-commerce transactions. In response to the ills of existing redress mechanisms, an emerging trend of consumer alternative dispute resolution (ADR) and consumer online dispute resolution (ODR) schemes has been identified throughout the Member States (MS) aimed to offer consumers a swift, cheap and simple procedure through which they can enforce their rights This paper outlines the EU approach to Consumer ADR/ODR, gives some observations of the functioning of the legislation in practice and concludes with some thoughts for the future.

**E.M. van Gelder, 'The European approach to Consumer ODR', *International Journal of Online Dispute Resolution* 2019/2, p. 219-226**

**J. Hoevenaars & J. Krommendijk, Black box in Luxembourg: The bewildering experience of national court judges and lawyers in the context of the preliminary ruling procedure' (*European Law Review*, forthcoming early 2021)**

The interaction between national courts and the ECJ in the context of the preliminary ruling procedure is often presented as a dialogue. Despite this being the dominant discourse, we know very little of how the ECJ's main interlocutors actually experience their interaction with it. This article reflects critically on the discourse of dialogue on the basis of interviews with two of the most important ECJ interlocutors: referring national judges and the parties and their lawyers. By juxtaposing the different roles assigned to these actors during the procedure, the article shows that referring judges may feel that they are not equal discussion partners in a dialogue and the parties and their lawyers are assigned a role that they feel unequipped to fulfil.

**J. Hoevenaars, 'EU Law Mobilization: Lessons from a Bottom-Up Approach', In: M.R. Madsen, F.G. Nicola & A. Vauchez, *Researching EU Law: New Approaches and Methodologies* (forthcoming) Cambridge: Cambridge University Press.**

This paper is a contribution to the 'methodological turn' in scholarship of the European legal field, and reflects on the usefulness of a bottom-up methodology in studying the dynamics behind litigation before the ECJ. By following cases, and the actors involved in them, from generation-to-conclusion, past litigation is analyzed within its proper social and political context. Going beyond the surface-level legal analysis, and combining in-depth semi-structured interviews with analysis of other available sources like legal documents, newspapers articles and personal documentation of parties involved, this approach is able to unearth the motives behind litigation as well as the extent to which litigating parties and their choices play a role in the litigation dynamics. Triangulating the insights from different sources this methodology is able to reconstruct the social processes that ultimately led to ECJ judgements, thereby uncovering the micro-foundations of EU law mobilisation. This paper discusses this bottom-up methodology and reflects on its analytical effectiveness, the sorts of empirical material that can (or cannot) be gathered, the practical and analytical difficulties involved in the practice of such research efforts, the limits of the approach as well as how it may combined with other, more quantitative approaches to litigation before the ECJ.

**J. Hoevenaars, 'Lawyering Eurolaw: An Empirical Exploration into the Practice of Preliminary References' (*European Papers*, forthcoming early 2021)**

With an academic trend towards characterising the supranational judicial dialogue between courts as an opportunity for parties seeking to use European law to their benefit, the question remains: How is this "legal opportunity structure" negotiated in practice? Without an exclusive focus on highly transformative, salient, or "landmark" cases, and opting instead for a bottom-up approach, this article looks at the everyday practice of references to the European Court of Justice from the perspective of the legal practitioners that litigate these cases. As such, this article presents an empirical exploration into the everyday context in which legal practitioners work on preliminary reference cases, the kinds of issues that arise from peculiarities of the procedure, the options lawyers have for dealing with these matters, and the considerations that play a role in this respect. It focuses on practical matters, such as the allocation of resources, the question of whether or not to request and/or attend a hearing at the Court, the significance of such a hearing and the particular 'language' of EU law and the Court, as well as the coping strategies lawyers employ to deal with their lack of experience with the procedure and the court. It concludes with an analysis of the macro effects of the allocation of Eurolaw expertise on the functioning the preliminary reference procedure, and by extension of the European legal system as a whole.

**Conference Report: Challenges Accepted! Exploring Pathways to Civil Justice in Europe, 19&20 November, Erasmus University Rotterdam**

*Emma van Gelder & Jos Hoevenaars*

On 19 & 20 November 2018, the ERC team organised the conference 'Challenges Accepted! Exploring Pathways to Civil Justice in Europe'. This report provides an overview of the conference, the main take-aways and a summary of the key note speeches.

**E.M. van Gelder & J. Hoevenaars, 'Conference Report: Challenges Accepted! Exploring Pathways to Civil Justice in Europe, 19&20 November, Erasmus University Rotterdam', *European Review of Private Law* (2020) 3, p. 771-782.**

**Georgia Antonopoulou, 'Procedure Before International Commercial and Ordinary Courts: A Comparative Perspective', in: *Stavros Brekoulakis and Georgios Dimitropoulos (eds.), International Commercial Courts and the Future of Transnational Adjudication (Cambridge University Press, forthcoming 2021)***

Despite divergencies, international commercial courts have in common the claim to be different from the ordinary courts. This Chapter examines the differences in procedure between international commercial and ordinary courts by focusing on three distinctive features: namely, the cross-border character of the disputes they handle, the voluntary establishment of their jurisdiction, and their arbitration features. It starts by exploring the notion of an international dispute across various international commercial courts and identifies broad internationality criteria. Then, this Chapter turns to the voluntary jurisdiction of international commercial courts. It illustrates that in order to attract disputes, international commercial courts had to ease the establishment of their jurisdiction and loosen their jurisdictional requirements. Lastly, it is demonstrated how international commercial courts and their arbitration features attempt to beat the allegedly 'unbeatable' virtues of arbitration. In conclusion, this Chapter assesses the procedural differences between international commercial and ordinary courts and their potential to enhance the attractiveness of the former over the latter.

**X.E. Kramer, A. Biard, J. Hoevenaars & E. Themeli, *Pathways to Civil Justice in Europe*, Springer 2020 (forthcoming)**

**A. Biard & S. Voet., 'Collective redress in the EU: will it finally come true?', in: *Class actions in Europe: Holy Grail or a wrong trail?* (Eds. Uzelac A. & Voet S., Springer, forthcoming, 2020)**

**Biard A. & Azar- Beaud M.J, 'The Dawn of Collective Redress 3.0 in France?'; in : *Class actions in Europe: Holy Grail or a wrong trail?* (Eds. Uzelac A. & Voet S., Springer, forthcoming, 2020)**

**B. Kas and C. Mak, *Civil Courts and the European Polity: The constitutional role of private law adjudication in Europe* (Hart Publishing, forthcoming in 2021)**

## SHORT PAPERS, BLOGS & MEDIA

- ◆ J. Hoevenaars & X.E. Kramer, [Mass Litigation in Times of Corona and Developments in the Netherlands](#), [conflictoflaws.net](#), 22 April 2020;
- ◆ E.M. van Gelder, X.E. Kramer & E. Themeli (with support of the ERC team), [Access to Justice in Times of Corona](#), [conflictoflaws.net](#), 7 April 2020;
- ◆ J. Hoevenaars, 'Interview: [Hof van Justitie? Ervaring gewenst!](#)', *Het Advocatenblad*, 27 February 2020;
- ◆ J. Hoevenaars, 'Bridging the Gap Between Communities: Creating a Common Vocabulary', ['e' meets justice](#), p. 32-33;
- ◆ E.M. van Gelder, X.E. Kramer & E. Themeli, 'Enhanced cooperation to provide citizens access to justice throughout the EU', ['e' meets justice](#), p. 48-51;
- ◆ S. Philipsen & E. Themeli, [Een introductie op de robotrechter](#), *Rechtstreeks: Algoritmes in de rechtspraak*. *Wat artificiële intelligentie kan betekenen voor de rechtspraak* (2019) 2, p. 46-49;
- ◆ A. Biard, [Ensuring the quality of ODR platforms: a new \(voluntary\) certification scheme in France](#), [conflictoflaws.net](#), 13 November 2019;
- ◆ G. Antonopoulou & E. Themeli, [Seminar Report - Innovating International Business Courts](#), *Rotterdam, European Review of Private Law* (2019) 27(5), p. 1207-1214;

# ORGANISED EVENTS

## Seminar with students from the Sigmund Freud University Vienna



On Friday 21 February 2020, the team of the ERC project Building EU Civil Justice organised a seminar on European Cross-Border Procedures. Guests of this seminar were nine students from the Sigmund Freud University Vienna. The aim of this event was to create an international outlet where students would discuss topics related to the theme of the seminar and receive feedback from senior academics.

Before joining the Seminar, the students prepared a presentation which they presented and discussed at the Austrian Ministry of Justice, EU institutions in Brussels and the Hague Conference on Private International Law. The Erasmus

School of Law was the last stage of this trip and the Building EU Civil Justice team gladly accepted to discuss with the students.

The Seminar was opened by Prof. Xandra Kramer, the leader of Building EU Civil Justice, and Florian Heindler, assistant professor at the Sigmund Freud University who was accompanying the students. After these warm greetings, Alina Ontanu gave a short lecture on Access to Justice via e-Handling of Cross-border Procedures. Next, Felix Gruber, Sarah Kremser, and Mariella Sturz presented respectively their research on the amendment of the EU Evidence Regulation in the light of IT, the amendment of the EU Service Regulation in the light of IT, and the impact of the Hague Service Convention on Austria. Priskila Pratita Penasthika from the ESL commented on their presentation and gave some feedback.

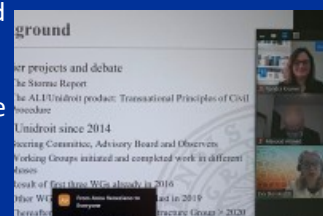
Emma van Gelder started the second half of the seminar with a lecture on online dispute resolution in Europe. Her lecture was followed by the presentations of Stella Galehr, Tessa Grosz, and Tanja Pflieger who respectively presented on the liability of states and private entities in relation to the use of IT in international legal cooperation, non-discriminatory access to IT-based judicial infrastructure, and questions of data protection in judicial cooperation under the Hague Adults Convention. For this panel, Betul Kas served as discussant and moderator. In the last panel of this seminar, Julius Merhaut, Simon Kirschner, and Andrea Szell presented while Erlis Themeli provided feedback. The presentations of these students focused on iSupport status quo and further perspectives, possibilities and risks of IT for a uniform commercial register, and the EIO - The implementation of the Directive 2014/41/EU.

## Webinar on the ELI-Unidroit Model European Rules of Civil Procedure

On 6 November 2020, we organised the webinar [‘The ELI-Unidroit Model European Rules of Civil Procedure: soft law shaping the future of European Civil Procedure?’](#) This webinar focused on the ELI-Unidroit Model European Rules of Civil Procedure as adopted by the European Law Institute and Unidroit in 2020. The Rules build on the ALI-Unidroit Principles of Transnational Civil Procedure and cover a wide array of civil procedural issues for Europe. It is the most encompassing set of soft law rules in the area of civil procedure. Xandra Kramer was closely involved in the project having participated in the kick-off event in October 2013, being a member and reporter of the working group on Provisional Measures and co-reporter (together with Loic Cadiet, Paris 1 Sorbonne) of the overarching Structure working group.

Xandra presented on the creation, main principles and future prospects of the Model Rules. Eva Storskrubb (University of Uppsala) discussed the Cost rules, in the drafting of which she was closely involved being one of the co-reporters. Masood Ahmed (University of Leicester) viewed the rules on cost, management and ADR from the English perspective. Despite the small set up and short notice, over 60 people participated in the webinar and the discussion.

This webinar was part of our ERC project and at the same time anticipates the future adjacent project on Costs and funding in civil litigation.



Keep an eye on forthcoming webinars organised by our research group at [www.euciviljustice.eu](http://www.euciviljustice.eu)



# PRESENTATIONS

August 2019–November 2020

## Xandra Kramer installed as member of Royal Netherlands Academy of Arts and Sciences

Following the election as a member to the Royal Netherlands Society of Arts and Sciences (KNAW) earlier this year, Xandra Kramer was installed at a ceremony on 17 September 2019, along with 21 other Dutch and foreign scholars. After giving a short speech, focusing on the importance of access to civil justice for civil society and research spearheads, the sound of the chime confirmed the installation.



Xandra was elected for her work in the area of European civil justice and private international law. The Royal Academy is the forum, conscience, and voice of the arts and sciences in the Netherlands, the Academy promotes the quality of scientific and scholarly work and strives to ensure that Dutch scholars and scientists make the best possible contribution to the cultural, social, and economic development of Dutch society. The Royal Academy currently has around 500 Dutch members and a selection of foreign members, elected for life, representing all arts and sciences.

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## INTRALaw Colloquium Aarhus

The INTRALaw programme of the Aarhus University organised a colloquium on 21st and 22nd November 2019 intended to discuss issues related to access to justice. The organisers were particularly interested in legal aid and digitisation and access to justice in environmental cases. Erlis Themeli was invited to participate and bring his expertise and that of our project in the discussion. During the discussion Erlis pointed out the new challenges that digital technologies bring to courts, court-users, and legislators. He pointed-out that these challenges should not be isolated from other aspects of access to justice. A comprehensive approach, like the one Building EU Civil Justice takes, is more beneficial to the parties involved. The colloquium ended with a pledge to meet again in the future and further discuss on this important topic.

## HCCH a|Bridged e-Service

On 11 December 2019, Xandra Kramer and Emma van Gelder participated in the HCCH a|Bridged Edition 2019 held at the Peace Palace in the Hague.

The conference evolved around innovation in cross-border litigation and civil procedure, focusing on the HCCH Service Convention in the era of electronic and information technology.



Emma presented within the Panel 'The Prism: The Tech Battle for e-Service'. Her topic was distributed ledger technology (DLT). She first briefly explained what DLT is. Subsequently, she explained how DLT could support and improve the operation of the HCCH Service Convention, touching upon benefits as efficiency, transparency and the mitigation on the dependence of an intermediary. After setting out the benefits, she presented several challenges of DLT touching upon challenges as lack of an international legal framework and legal standards, scalability challenges and the digital divide.

Xandra chaired the Open Lab panel, involving an academic examination of the operation of the Service Convention in the world of tomorrow and a discussion with the audience. Xandra's presentation focused on the achievements of the Service Convention, as one of the most successful Conventions. She highlighted problems encountered in the EU context extrapolated to the global level as well as the tension between the required efficiency to improve access to justice and the need for protecting other fundamental rights, including the right to be heard, privacy and security in the digital context. She addressed the question in how far the Convention would need amendment, considering the principle of functional equivalent, and the need for an overarching instrument on digital judicial co-operation.

## Presentation EU Law Mobilization at VSR Annual Conference 2019



On 28-29 November 2019, the Ius Commune Research School organised its annual congress. Emma van Gelder and Eris Themeli presented at the workshop Technology for Civil Justice.

Eris presented on The virtual courtroom and users' perception, which relates to his research on the use new technologies in courts rooms. Emma presented jointly with Bianca Kremer (University of St Gallen) on Consumer ODR and blockchain within the workshop Technology for Civil Justice, aimed to explore the impact of technology on civil justice from the perspective of access to justice and procedural fairness. Both Eris and Emma participated in the open discussion organised at the end of this workshop. In addition, Eris presented also at the workshop on Artificial Intelligence and Fundamental Rights. His presentation on Applying AI in Courts received positive feedback and served as an important building block for the discussion during the workshop.

## Presentation Mass Settlements in Rio de Janeiro, Brazil

As part of a two weeks stay in Brazil, Xandra Kramer gave a presentation at a seminar on collective redress, organized by the Public Prosecutors Office and ProcNet, in Rio de Janeiro on 31 January 2020. Our stay was kindly hosted by Prof. Antonio Cabral (UERF).

The seminar assembled public prosecutors involved on collective action in Brazil, lawyers, academics and students. Her presentation focused on Collective redress and mass settlements in a Dutch, European and private international law perspective. Discussion evolved around the WCAM settlement mechanism and international jurisdiction, safeguards in collective actions and the new Dutch act on collective action for damages that came into force on 1 January of this year.

## Studium Generale interview on affordable justice

Xandra Kramer was interviewed by Geert Maarse at Talk show Studio Erasmus on 20 October 2020. She was asked to participate on the occasion of obtaining a Vici grant from the Dutch Research Council. The interview was about the costs litigation and the importance of keeping access to justice affordable. The interview was held in Dutch and is available [here](#).



## Presentation at the European Consortium for Political Research

On 28 August, Georgia Antonopoulou presented at the General Conference 2020 of the European Consortium for Political Research (ECPR). Georgia's presentation entitled 'From Forum Selling to Forum Marketing' focused on international commercial courts and explored the various marketing techniques these courts employ in order to attract cases and gain a foothold in the dispute resolution market. Moreover, Georgia acted as a discussant for the panel 'Communicating the Judiciary' focusing on the use of strategic communication tools by courts. The ECPR General Conference is an annual gathering of political scientists from across the globe.

## Presentation e-justice and evidence in Campinas



On 6 February 2020, Xandra Kramer gave two presentations on developments in e-justice and e-evidence in Europe and globally at Mackenzie University in Campinas, Brazil. These presentations were part of a 'trilogy' on civil justice,

focusing on the past, the present and the future. Prof. Remco van Rhee (Maastricht University) focused on historical aspects, while Prof. Alan Uzelac (University of Zagreb) addressed the use of artificial intelligence in civil justice.

These lectures were part of the celebration of the 150th anniversary of MacKenzie University in Campinas. Our stay in Campinas was kindly hosted by Prof. Edilson Vitorrelli.

## Presentation on European procedures at ERA Conference

At an online conference on European civil procedure organized by the European Law Academy in Trier on 26 October 2020, Xandra Kramer presented on 'European civil procedure 4.0? The European Account Preservation Order & Payment Order at the Court of Justice'. She showed that considering the case law and legal practice these European procedures still operate in the shadow of the Brussels I-bis Regulation and national civil procedure. Discussing the first case of the European Court of Justice on the European Account Preservation Order and case law on the European Payment Order it is clear that the Court maneuvers it's way into the national intricacies when implementing the European regulations on civil procedure.

## Seminar International Judicial Cooperation Brazil

Xandra Kramer participated, on invitation by Paula Sarno, in an Instagram Live event organized as part of the Projeto mulheres no processo by the the Brazilian Institute of Procedural Law (IBDP). Her talk evolved around international judicial cooperation and business litigation, in particular the trend of establishing international business courts and the importance of the new The Hague Judgment Convention for international dispute resolution. Her discussion partner was Thiago Borges who secured a lively conversation, only hampered a bit by the technique.

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## Presentation at the Annual Conference of the Society of Legal Scholars

On 2 September 2020, together with Eva Nissioti (PhD Candidate, European Doctorate of Law and Economics, University of Hamburg) Georgia Antonopoulou presented at the Annual Conference of the Society of Legal Scholars. Eva and Georgia presented a paper with the title: Litigating in Austerity: The Impact of the 2015 Greek Justice Reforms on the Right to a Fair Trial and Economic Efficiency. In the aftermath of the Greek financial crisis, Greece undertook various civil justice reforms and introduced a novel Code of Civil Procedure. The code aimed at accelerating the notoriously slow pace of Greek civil courts by promoting Alternative Dispute Resolution, increasing self-representation before courts and devising a written procedure without public hearings. Eva and Georgia explored what served as the source of inspiration for the reforms and examined the impact of these reforms on the procedural rights of litigants, the Greek justice system and ultimately their contribution to economic recovery.

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## Presentation on the ELI-Unidroit Model Rules and future perspectives

On 25 September 2020, Xandra Kramer presented on the ELI-Unidroit Model European Rules of Civil Procedure: perspectives for national and European legislators at the closing workshop on the occasion of the UNIDROIT Governing Council meeting. While the Rules cannot be copied into a national or supranational legal order one-on-one as they are not created as an all encompassing code, they have a number of interesting features that can serve as a model for national and European legislators.

The ELI-Unidroit Model European Rules of Civil Procedure were adopted by the European Law Institute and Unidroit in 2020. Xandra Kramer was involved in this large scale project from the inception at an exploratory workshop in Vienna in October 2013. She was a member and reporter of the working group on provisional and protective measures, and together with Loic Cadiet (Paris 1, Sorbonne) acted as co-reporter of the overarching Structure group, charged with coordinating the work of the different working groups, filling the gaps, and securing a coherent set of model rules.

## Covid-19 and Social Science Research

Together with Andrea Evers (professor of Health Psychology, Leiden University, Delft and Erasmus University), Xandra Kramer moderated a webinar on research practices during and after Covid-19 in the social sciences and humanities. The webinar took place on 10 September and was organized by the Dutch Royal Academy of Arts and Sciences, of which Xandra is a member.

Panellists discussed the influence of Covid-19 on their research and research practices in general. It led to vivid and very interesting discussions. While research practices and in particular international collaborations and field research is challenged, the pandemic and the opening up of more intensive online collaborations also creates opportunities. In particular for younger researchers and research communities in countries that are less versed in online communication, however, the pandemic has created uncertainties that need attention. The expectation is that the pandemic will continue to be topic of research in many areas of social sciences and will have a long-lasting effect on research practices.

These effects are also experienced by our research team. While it gave some food for thought (see also our blog-posts on access to justice in times of corona and on collective redress and this webinar), it also hampers field research, research stays abroad, daily interaction between our team members as well as the participation in and organisation of live events that are more than the content of presentations only.

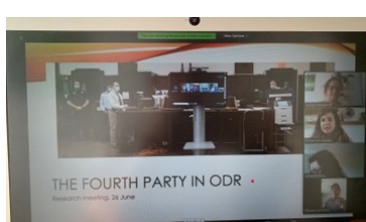
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## Digital workshop European Civil Studies

Xandra Kramer participated as a commentator in a digital workshop organized by the Swedish Network for European Legal studies and Uppsala University on 20 August 2020. Xandra discussed a paper presented by Eva Storskrubb on the European Account Preservation Order and its implementation in the Member States.

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## Inhouse presentations during the pandemic



During the (partial) lockdowns the team has not been sitting still. Even though working circumstances altered in March we have become active ‘Zoomers’ over the last half years. With (bi-)weekly meetings to discuss the progress of the research conducted we created a sounding board and a opportunity to discuss and gather refreshing insights into our research topics. During the latest research meeting where Emma presented on the PayPal procedure, the new team members from the Vici Affordable Justice project, which will start in December 2020, participated as well.

## Presentations at seminar 'The Democratic Courthouse?'



On 27 September 2019 the VSR and the ESL-research programme 'Rethinking the Rule of Law' organised a socio-legal seminar at the Erasmus University Rotterdam. During this meeting, Linda Mulcahy (Professor of Socio-Legal Studies and the Director of the Centre for Socio-Legal Studies at the University of Oxford) presented her research titled 'The Democratic Courthouse? Unravelling the complex relationship between design, due process and dignity in English courts'. Xandra Kramer acted as a discussant for professor Mulcahy.

Additionally, Jos Hoevenaars presented results of his doctoral research on litigation before the European Court of Justice and tied it into his research on (self)representation and the impact of lawyers in the courtroom, to be published in 2019.

## ODR Forum 2019

On the 29 October 2019, Emma van Gelder gave a presentation at the ODR Forum 2019, held in Virginia, United States of America. This conference gathers ODR experts and practitioners from around the world to discuss topical issues within ODR. Emma presented her research on the European Union approach to consumer ODR with references to two case-studies she undertook giving insights derived from the United Kingdom and the Netherlands. She outlined the EU legislation on Consumer ADR/ODR, discussing the ADR Directive 2013/11 and the ODR Regulation 524/2013, and the first results of this legislation in practice. Based on the findings as well as the case-studies, she gave some recommendations and thoughts on how to improve the legislation on.

## Presentation at the Society of Legal Scholars, Preston

On 3 September 2019, Erlis Themeli participated in the 110th Annual Conference of the Society of Legal Scholars, "Central Questions about Law" held at the University of Central Lancashire in Preston, the United Kingdom. This Conference gathers academics from the UK and abroad to discuss almost all the topics related to law. A part of the Conference is dedicated to private international issues. Erlis presented his research on possible limits to consumer protection in the Brussels I (recast) Regulation. This study suggests that in the digital world some customers may conceal or deform their identity. As a result, unaware traders may find themselves dealing with customers domiciled in jurisdictions where they do not want to trade. The aim of the study is consider the possible consequences that new technologies have on private international law.

# OTHER ACTIVITIES & NEWS

## A SELECTION

### Guest researcher Anna Wysocka-Bar from Poland

In February, we hosted Anna Wysocka-Bar as a guest researcher at our team and Erasmus School of Law. Anna is a lecturer at Jagiellonian University (Poland) and an academic coordinator of a Jean Monnet Module 2019-2022 on European private international law. She holds PhD degree (the thesis on party autonomy in international succession law was successfully defended at Jagiellonian University, Poland) and an LLM in law and technology (Ottawa University, Canada).

Anna reported: "I came to Rotterdam to kick-off my research on the interaction between EU private international law and unified transport law conventions. Within three weeks of my stay in the Netherlands, I profited greatly from the Sanders Law Library in Rotterdam and Peace Palace Library in the Hague, attended seminars and guest lectures, spotted best practices when observing how EU private international law is taught at Erasmus School of Law, and, last but not least, was given the opportunity to discuss my ideas with top experts from Erasmus University – the hub of international transport, trade and private international law in Europe. My stay in the Netherlands was possible thanks to the famous Dutch hospitality and a research grant from the Miniatura programme of the National Science Center (Poland)."

## **New year, new ERC team member!**

On 1 January 2020 Betül Kas joined our ERC team as a postdoc researcher on the subproject on privatisation of civil justice. She is the successor of Alexandre Biard, who as of December 2019 continued his career as a senior advisor at BEUC in Brussels, where he will be able to use his extensive research experience for the benefit of enforcing consumer rights in the EU. We are grateful for his invaluable contribution to our project, resulting in an impressive number of publications and conference presentations among others. We all greatly appreciated his many initiatives, his fieldwork, support of the other researchers, work spirit, and good sense of humour. We are happy to keep him in our team as an affiliated researcher and look forward to our further collaboration.

We welcome Betül to our team as the successor of Alexandre for the postdoc project on privatisation. She has worked among others as a PhD researcher in the ERC Advanced project of Hans Micklitz at the European University Institute in Florence and as a postdoc researcher in the Vidi project led by Chantal Mak at the University of Amsterdam. Broadly speaking, Betül's research falls within the areas of European law and European private law. Within these areas, she is particularly interested in law enforcement, legal remedies, judicial protection and judicial co-operation. Within our project, she aims to examine the interaction and relationship between private and public justice for individual and collective disputes. As a starting point, during the initial months, she has been exploring how to conceptually interlink the judiciary with ADR mechanism and deals in that context with one of its most controversial aspects, namely the possible mandatory nature of ADR processes. Her research thereby aims to contribute to the definition of the 'principle of voluntariness' in ADR processes and how it can be effectively reconciled with ADR's possible mandatory nature in light of Article 47 of the European Charter of Fundamental Rights and Article 6 of the European Convention of Human Rights. We are happy to have Betül on our team!

## **Student assistant Kyra graduates, Wouter takes over**

Kyra Hanemaayer joined our project at the start on 1 September 2017, and has supported all of us in our research and management of the project in tremendous ways! We are grateful for that. After graduating both in law and in economics, she decided to start a PhD at Erasmus School of Economics on 1 September 2020.

We are happy to welcome another rising star, Wouter Hoogeveen, as our new student assistant. He obtained his masters degree in law already and is now pursuing a master in behavioural economics.

## **Research traineeship**

From September-December 2020, **Veronica Autorini** from Milan University does a research traineeship in our group, working on the Uniform Patent Court.

## **Erlis and Georgia invited as tutors in two master programmes**

In October 2020, Erlis and Georgia were invited as tutors for the Research and Writing Skills class for the International Arbitration Business and Law LLM, and the Commercial and Company Law LLM at the Erasmus School of Law, Rotterdam. As tutors Erlis and Georgia had to develop a topic and discuss it with students. Erlis invited students to discuss the possibility to grant personality rights to advance autonomous systems, which is a topic of particular theoretical and practical importance. Theoretically, personality of advance autonomous systems may prove challenging to harmonise with human legal personality and companies' legal personality. Practically, personality for autonomous systems may be needed to free humans from unwanted liability and create room for further technological development. Georgia asked students to research and discuss on sport arbitration. Students showed a lot of enthusiasm on this topic, which reflected in the essays they wrote.

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## **Teaching at the China-EU School of Law, China University of Political Sciences and Law**

Since September 2020, Georgia Antonopoulou works as a teaching assistant at China-EU School of Law at China University of Political Sciences and Law, Beijing. Georgia is teaching at the Master for European and International Law focusing on European Human Rights and European Private Law.

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## **Experiences of Consumers with Dutch Online Complaint Platform *Klachtenkompas***

In April 2020, Emma van Gelder, Kyra Hanemaaijer, Martijn de Groot, Jos Hoevenaars wrote a report for the Dutch consumer organization, the Consumentenbond. This report presents the results of an extensive Survey conducted with users of Klachtenkompas. Klachtenkompas is an online complaint platform for consumers, the survey aimed at exploring consumers' experiences with Klachtenkompas.

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## **Xandra joins Advisory Board Court Rotterdam**

In July 2020, on invitation of the Board of the District Court of Rotterdam, Xandra Kramer joined the Advisory Board. These boards are intended to serve as a sounding board for the court and to connect the court to society. The members have different professional backgrounds. Xandra was asked to provide feedback on innovation activities at the court, in particular on the digitization of the judiciary. Covid-19 has boosted the digitalization and has also created challenges during the period that the courts were closed down in the Spring of 2020.

## Dutch Sectoral Plan PhD project

Jos Hoevenaars and Alexandre Biard wrote a research proposal for a PhD position within the broader 'Sectoral Plan' of the Erasmus Law School. Funded with a grant by the Dutch Ministry Education, Culture and Science, this is an interdisciplinary research initiative on the role of private actors in safeguarding public interests, and. The aim of the PhD project, titled 'From participation to legitimacy: the new role of civil society in defining public interest' is to study in-depth, using a case study approach and qualitative research methodology, the various instruments used by civil society organizations in formulating as well as enforcing public interest by putting pressure on both businesses as well as governments. By mapping current developments and organizations this project will reassess the relationship between private and public parties in the formulation and enforcement of public interests and scrutinize the related legitimacy. We are very happy to have been able to recruit Antonia Christopoulou to fill this position and are confident that, under the supervision of Xandra Kramer and Jos Hoevenaars, she will successfully develop this research further.

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## Summer School New Trends in European Civil Procedure in Vitória

Xandra Kramer presented at a Summer School on New trends in European Civil Procedure and the ELI-Unidroit Model Rules that took place in Vitória, Brazil, from 3-5 February 2020. Her key note focused on the mission, general principles and prospective of the ELI-Unidroit Model European Rules of Civil Procedure, which were this year. Commentators were Profs. Antonio do Passo Cabral (UERF) and Ricardo Gueiros (UFES).

This Summer School was organized by Profs. Hermes Zaneti jr. (UFES) and Antonio Cabral, and hosted by the Federal University of Espírito Santo. Other key notes speakers were Prof. Remco van Rhee (Maastricht University) and Alan Uzelac (University of Zagreb). Our stay in Vitória was kindly hosted by Prof. Hermes Zaneti.

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## Research stay Georgia at Singapore Management University

At the beginning of 2020, Georgia obtained a research stay opportunity at the School of Law of the Singapore Management University. The research was scheduled between 1 February and 19 March in order to conduct empirical and theoretical research on the Singapore International Commercial Court. The research stay, however, was cut short because of the Covid-19 pandemic. Nevertheless, Georgia conducted several interviews with and established important bridges for her research.

## Vici grant costs and funding

The Netherlands Organisation for Scientific Research (NWO) has awarded Xandra Kramer a Vici grant of 1.5 million euros for the project 'Affordable access to justice: towards sustainable cost and funding mechanisms for civil litigation in Europe'. This grant will enable to further develop her research in the area of civil justice and to consolidate her research group in the coming five years. Vici is one of the largest scientific grants for individuals in the Netherlands and targets advanced researchers.

The project will assess new pathways to civil justice funding and cost schemes, with a view to developing a balanced financing system, thereby securing access to justice in Europe. We will analyse the development of (private) financing and cost mechanisms in several European jurisdictions and build on a framework for financing and cost rules that contributes to a sustainable European civil justice system.

The Vici project will start in December 2020 and some of the researchers will join in January 2021. We are happy to welcome PhD researchers Adrian Cordina and Eduardo Silva de Freitas, (postdoc) researchers Maria Carlota Ucin and Adriani Dori, (parttime) associate professor Eva Storskrubb (Uppsala University, attorney at Roschier) and affiliated researcher Masood Ahmed (University of Leicester).

This grant enables to build on the ERC project Building EU Civil Justice and in the coming year, the two research groups will work together.

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## ACES research grant

Two ERC members – Erlis Themeli and Emma van Gelder – in cooperation with Anna van Duin (UvA) and Rachel Rietveld received the ACES research grant to organize an academic conference. The theme of this Conference focuses on the question if and how digital and intelligent technologies can contribute to enhancing access to justice for EU citizens and consumers. It aims at bringing together legal scholars and social scientists with an interest in (automated) decision-making processes and dispute resolution mechanisms in contemporary Europe.

The conference was to take place in October of 2020, but has been postponed to 2021 because of the pandemic.

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## Conference Frontiers in Civil Justice!

On 16 and 17 November 2020 our Conference **Frontiers in Civil Justice** will take place (safely online). We have a great line up of speakers and look forward to a vibrant discussion. Information and registration [here](#).

# TEAM

THESE ARE OUR ERC PROJECT MEMBERS



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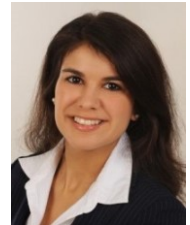


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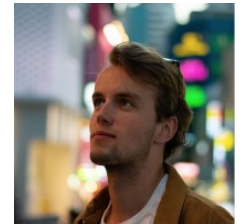


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## Staying in touch during the pandemic



Next to online research and project meetings, regular 'Zoom coffees' were held in 2020. The daily lunch and cup of coffee conversations were missed more than we could have imagined.

These meetings helped the team stay up to date on the well-being and activities of other teammates.

For more information: <http://www.euciviljustice.eu/>

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