Tamás Szabados, Economic Sanctions in EU Private International Law (Book Review)

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The author of this book, Tamás Szabados, LL.M. (UCL), PhD (ELTE) is associate professor of law at ELTE Law School, Budapest, and one of the founding members of the EAPIL Young EU Private International Law Research Network.[1]

Economic Sanctions are one of those 'repeat players' in international politics. They have become an important instrument of EU foreign policies.[2] States or State Unions can impose penalties against another State, a political group or certain individuals for political and sometimes social issues. Such penalties can be trade embargos or barriers or (perhaps more important today than in the past) restrictions on financial transactions. While these sanctions usually come from International Public Law, they affect international trade, and, thus, become a matter of private international law (PIL). The book is one of the first comprehensive works that scrutinizes the issue of Economic Sanctions from the PIL perspective in EU Private International Law.

While Economic Sanctions have frequently been used as one of the typical examples where public law enters into the domain of PIL, and scholars from international law or international politics have thoroughly discussed issues regarding that topic, a comprehensive study from the PIL point of view in the English language literature had been missing – until now. Szabados undertook the task to write a book with a special focus on the PIL matters. As economic sanctions from the PIL perspective usually become relevant in the areas of international contract law and international tort law, the phenomenon had to be studied not from the mere national but a European perspective, in particular, from the perspective of the Rome I and Rome II regulation.

While this topic and an analysis from the point of view of EU PIL would already have been enough to focus on, Szabados broadens his perspective in a truly European way by adding a comparative view. He analyses the relevant rules and their application and discussion in scholarship and case-law from different national angles, especially the German, English/Welsh, Dutch and French perspective. The result is a well-written, multi-dimensional and entertaining book that shows a deep knowledge of European and comparative PIL that will certainly be of interest for everyone working or writing in that area.

The book starts with an introduction to clarify the core concepts of the book, especially, of course, 'economic sanctions' and the author's general approach to

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1 *See* at https://eapil.org/eapil-activities/young-eu-private-international-law-research-network/.

2 *See e.g.* the EU Sanctions Map at https://sanctionsmap.eu/#/main.

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PIL.[3] For a scholar from the realm of PIL Chapter 2 about the legal framework for imposing economic sanctions is a very interesting read, as it goes more into detail than usual PIL articles do. Furthermore, and maybe more importantly, Szabados takes a stand in the question of how PIL must be understood and how the EU uses this field of law. At this point, already one of the main topics of the book unfolds: Szabados repeatedly comes back to the notion of an allegedly 'neutral' PIL and shows that this neutrality is only a starting point in theoretical thinking but, as he puts it, is a "fading" notion.[4] He could have been even bolder in his statement. Even though today it is generally recognized that PIL is neither 'neutral' nor 'apolitical' and never has been so, in several academic works this idea is still present. Szabados gives a short introduction into the political nature of PIL and its connection and interplay with substantive law and domestic values, with special regard to the EU and her foreign policy aims. That helps prepare the groundwork for the following discussion and how that idea must be refuted. Szabados, in that regard, is a bit timid, as he only hesitantly and carefully does strides away from the neutrality idea. But maybe he does not need to be bolder, as economic sanctions work as a self-explanatory example to show how political PIL can be. Economic sanctions are usually regarded as overriding mandatory law. These rules have been regarded from the beginning the exception to the 'neutral' PIL and, obviously, their enforcement or non-enforcement is always a result of a political decision.

Another recurrent theme of the book is the EU law's focus on coherence and legal certainty as the main values of EU PIL. Coherence is usually discussed with regard to EU substantive private law. Szabados innovatively also brings PIL and EU external relations law together under one roof and looks at coherence between economic sanctions as instruments of foreign policy and PIL as a supposedly 'apolitical' instrument. The book demonstrates through various examples that a common and coherent EU foreign policy approach (particularly in respect of foreign sanctions) is lacking. Therefore, coherence and legal certainty on the PIL level will more often than not, not be achieved – reflecting a general problem all over the EU.

A part of this argument forms the third key element of the book. Referring to national case-law and national articles, Szabados shows that in different jurisdictions questions regarding the implementation of economic sanctions are treated very differently. As a consequence, the outcome of a case depends highly on the court where the case is brought, even though those courts might apply the same harmonized PIL rules.

Szabados weaves together these three elements. On the theoretical level, he describes several highly controversial issues related to overriding mandatory law that have been discussed in the literature for the last 200 years and have gotten new fuel since Article 9 Rome I Regulation has been in force. The book unfolds a rich spectrum of general knowledge and comparative analysis. These questions

3 Tamás Szabados, *Economic Sanctions in EU Private International Law*, Hart Publishing, 2020, *see* the Introduction, and Chapters 2-3.

4 Id. p. 149.

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involve the functioning of overriding mandatory provisions in relation to the general law applicable, *i.e*. whether public law rules apply as part of the applicable law (*lex cause* theory or *Einheitsanknüpfung*) or as a different statute (*Sonderanknüpfungstheorie*) or a combination of both (*Kumulationslehre*) and how far the Rome I Regulation can be the relevant instrument to determine their application.[5] Furthermore, Szabados describes the discussion whether overriding mandatory provisions foreign to the *lex fori* and *lex causae* will be applied as a different statute or can become relevant on the substantive law level within the application of the *lex fori* (especially *via* the so-called theory of local data or *Datumstheorie*). Unclear is also the treatment of overriding mandatory provisions of the *lex causae* (part of the *lex contractus* or not?).[6]

Szabados approaches these questions first from an academic point of view. He analyses Article 9 Rome I Regulation in depth from a historical-comparative-functional perspective, referring to Dutch, German, English/Welsh, French, Swiss and other case-law and scholarship. Afterwards, he analyses the concrete case-law on these questions, focusing primarily on French, German and English/Welsh court decisions and the reception of those decisions in the afore-mentioned jurisdictions. Here he elaborates on the finding (and one of the key topics of the book), namely: the high diversity in how Member States treat economic sanctions, therefore coming to different conclusions even though courts deal with the same facts and apply harmonized PIL rules. Szabados includes the famous *Nikiforidis* judgment[7] of the CJEU regarding the interpretation of Article 9 Rome I and derives from this judgment and the embedding of Article 9 how to treat overriding mandatory provisions in EU PIL. Nevertheless, a recurring conclusion is the inadequacy of the current legal situation. To substantiate this view, he arrives at the same findings regarding 'blocking statutes', *i.e*. provisions that prohibit the application of a foreign economic sanction and can lead to a "conflict of overriding mandatory provisions."[8] Finally, he also invokes a topic connected with economic sanctions but often neglected in the academic debate: the treatment of choice-of-court and arbitration agreements having the purpose to avoid a certain *lex fori* and, thereby, certain overriding mandatory provisions. The result is a very diverse picture which nevertheless can be connected by the three above-mentioned recurring elements. Szabados shows deep understanding of PIL and EU law and an impressive knowledge of scholarship from all over Europe. A small point of critique: he could be bolder in drawing his concrete conclusions. Demonstrating as he does, that he knows how to play on the PIL methodology keyboard in a masterful way, and given his deep understanding of the issue, clearer suggestions or legislative proposals would have been highly desirable.

To conclude: we need more books like this, particularly in languages accessible to many of us all over Europe. European PIL still has the big flaw that it is applied by national courts in their respective languages, and, consequently,

5 Id. p. 39 *et seq*.
6 Id. p. 59 *et seq*.
7 Judgment of 18 October 2016, *Case C-135/15, Nikiforidis*, ECLI:EU:C:2016:774.
8 Szabados 2020, p. 155 *et seq*.

academic discussions very often center on national decisions and are limited to the native tongues of the respective academics. Access to case-law and literature from different Member States is still scarce, even though several projects try to bridge that gap.[9] Hopefully, in the future there will be more books like this one, promoting a truly European discussion, *i.e.* a thorough academic discussion based on academic articles and cases from different jurisdictions. For a European PIL scholar, this book is a must-read; and for those who want to become an EU scholar, hopefully a great model on how to succeed.

9 *E.g.* databases such as unalex, at www.unalex.eu/ and lynxlex at www.contentieux-international.net/358_p_12967/base-lynxlex.html.

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