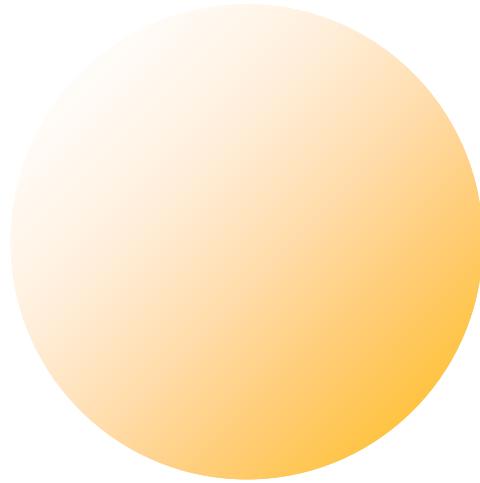
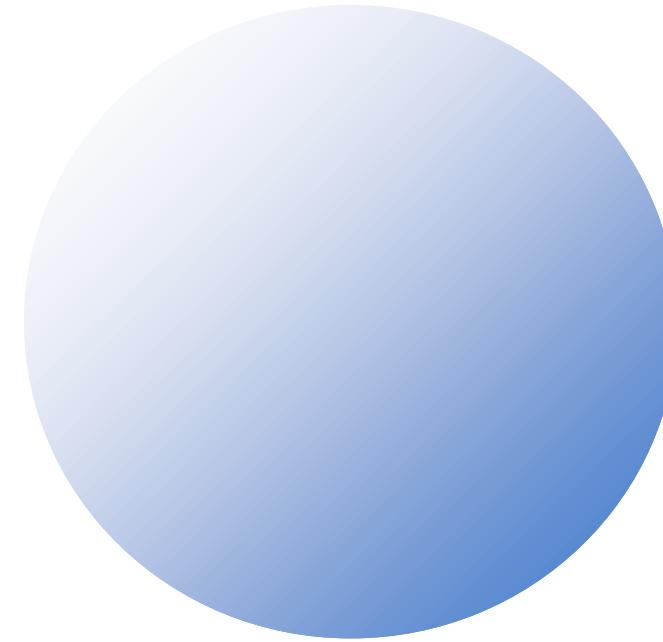


Warming up: Instruments in international family law and terminology



13 million
Europeans living in another EU
Member State



16 million
International couples in the EU

**Some 2.2 million marriages and 946 thousand divorces took place
in the EU in 2016**

Source: https://ec.europa.eu/eurostat/statistics-explained/index.php/Marriage_and_divorce_statistics

Contents

- 1) The development of EU law in family matters
 - the free movement of persons as background
 - the EU competence in civil judicial cooperation as broader context
- 2) The EU legal instruments in family matters
 - the EU secondary legislation governing selected PIL issues
 - the interplay with the already existing international legal instruments
- 3) The EU family law instruments ‘in action’
 - the uniform interpretation of the CJEU
 - the autonomous concepts under EU law

Useful links

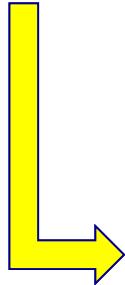
- European e-Justice Portal:
<https://e-justice.europa.eu/home.do>
- On family matters:
https://e-justice.europa.eu/content_family_matters-44-en.do
- European Judicial Network (EJN) in civil and commercial matters:
https://e-justice.europa.eu/content_ejn_in_civil_and_commercial_matters-21-en.do?init=true
- EU law:
<http://eur-lex.europa.eu>
- EU case law:
<http://curia.europa.eu>
- HCCH (Hague Conference on Private International Law)
<https://www.hcch.net/en/home>

1) The development of EU law in family matters

- 1.a) The free movement of persons
as background
- 1.b) The EU competence
in civil judicial cooperation
as broader context

1.a) The free movement of persons as background

- EU Treaties
- EU secondary legislation



**mutual recognition of personal and
family status**

- The EU has stepped into MS competences
 - a) enactment of EU PIL legislation
 - b) in those areas that remain under the MS' competences (e.g. civil status), national legislations still need to comply with EU law
 - + role of the CJEU

1.b) The EU competence in civil judicial cooperation as broader context

- **Purpose** set out in the Treaties: building a European area of justice
- **Tools:** different levels of cooperation (mutual recognition and mutual trust)
- **Benefit** for EU citizens: no complexities
- Evolution of the competence (Amsterdam, Nice, Lisbon – Art. 81 TFEU).

- **Art. 81(3) TFEU:**
 - family law matters with transnational implications
 - **special legislative procedure**
- **Enhanced cooperation** (Art. 20 TEU, Arts. 326 to 334 TFEU)
- Special position of some MS
 - **the UK and Ireland (Protocol No. 21)**
 - **Denmark (Protocol No. 22)**

2) The EU PIL secondary legislation in family matters

- 2.a) Overview of the main EU PIL acts in civil judicial cooperation
- 2.b) The EU PIL instruments governing selected aspects of family law
- 2.c) The interplay with the international legal instruments

On a preliminary note

PIL questions:

- a) which **court** has international jurisdiction to hear the case? (*jurisdiction*)
- b) which **law** governs the substantive aspects of the case? (*applicable law*)
- c) under which conditions can a **decision** issued abroad be recognised and enforced in the requested State? ()

2.a) Overview of EU PIL acts in civil judicial cooperation

Brussels regime

(jurisdiction/
recognition and enforcement)

- **Brussels Ia** Regulation, for civil and commercial matters (Reg. No. 1215/2012)
- **Brussels IIa** Regulation, for matrimonial matters and parental responsibility (Reg. No. 2201/2003)

Rome regime

(law applicable)

- **Rome I** Regulation, for contractual obligations (Reg. No. 593/2008)
- **Rome II** Regulation, for non-contractual obligations (Reg. No. 864/2007)
- **Rome III** Regulation, for divorce and legal separation (Reg. No. 1259/2010)

“Complete” PIL instruments

- Maintenance Regulation (Reg. No. 4/2009)
- Succession Regulation (Reg. No. 650/2012)
- Matrimonial property (Reg. No. 2016/1103)
- Property consequences of registered partnerships (Reg. No. 2016/1104)

Acts on uniform EU procedures in civil and commercial matters

(alternative to domestic procedures)

- European enforcement orders for uncontested claims (Reg. No. 805/2004)
- European order for payment (Reg. No. 1896/2006)
- European small claims procedure (Reg. No. 861/2007)
- European account preservation order (Reg. No. 655/2014)

- **Insolvency proceedings** (Reg. No. 2015/848)
- **Service of documents** (Reg. No. 1393/2007)
- **Taking of evidence** (Reg. No. 1206/2001)

2.b) The EU PIL instruments governing selected aspects of family law

- acts of secondary law (Regulations)
- analysis of the respective scope of application and main issues
- focus on
 - Brussels Ila Reg.
 - Maintenance Reg. (and 2007 Hague Protocol)
 - Rome III Reg.

Predecessor:

**Convention on Jurisdiction and the
Recognition and Enforcement of
Judgments in Matrimonial Matters of 28
May 1998 (Brussels II Convention)**

- never ratified nor come into force
- limited scope of application regarding parental responsibility

Reg. 1347/2000 (Brussels II)

- **Advantages of a EU Regulation over an international Convention**
- **1999 proposal based on the Brussels II Convention → Reg. 1347/2000** on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses
 - Adopted: 29.5.2000. In force: 1.3. 2001
 - Scope of application

Reg. 2201/2003 (Brussels IIa)

- repealing Reg. 1347/2000 (Brussels II)
- concerning jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility
- In force: 1 March 2005
- binding on all EU MS (including the UK and Ireland) with the exception of Denmark

Reg. 2201/2003 (Brussels IIa)

- **Scope of application – Art. 1(1)**

- Divorce, legal separation or marriage annulment
- Attribution, exercise, delegation, restriction or termination of parental responsibility

Unresolved issues

- 1) Definition of “marriage”
- 2) enforcement procedures
- 3) difficult interplay with the 1980 Hague Convention (Art. 11 IIa)
- 4) no provisions on the applicable law
 - divorce/separation: Rome III Reg.
 - parental responsibility: 1996 Hague Convention

Maintenance obligations

- **Jurisdiction:** originally Brussels I regime (Art. 5 of Reg. 44/2001)
- Key aspect: **applicable law** - negotiations between the **EU** and the **HCCH**
- **Scope of application:** maintenance obligations arising from a family relationship, parentage, marriage or affinity
- entry into force: 30.1.2009; applying since 18.6.2011
- binding on all EU MS (no Denmark)
- Complete PIL legal instrument, but **2 procedures on recognition and enforcement** (MS bound by the 2007 Hague Protocol or not)

Law applicable to separation/divorce claims

- 14 March 2005: **Commission's Green paper** on applicable law and jurisdiction in divorce matters (COM(2005)82 final)
- 17 July 2006: proposal complementing the Bill Reg. (**COM(2006)399**), **withdrawn** by the Commission (lack of unanimity in the Council as required by Art. 81(3) TFEU)

Reg. 1259/2010 (Rome III)

- **enhanced cooperation** in the area of the **law applicable to divorce and legal separation**
- **17 MS** participating
 - originally, 14 MS (Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia)
 - 3 MS joined at a later stage (Lithuania, Greece, Estonia)

Reg. 650/2012 (Succession)

- concerning jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession, and the creation of a **European Certificate of Succession**
- it applies to deaths on or after 17 August 2015
- UK, Ireland and Denmark opted out

Reg. 2016/1103 (Matrimonial property)

- **enhanced cooperation** in the area of **jurisdiction, applicable law** and the **recognition and enforcement of decisions** in matters of matrimonial property regimes
- it applies as of 29 January 2019
- **18 MS** participating
 - Belgium, Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Spain, France, Croatia, Italy, Luxembourg, Malta, Netherlands, Austria, Portugal, Slovenia, Finland and Sweden
 - Estonia announced its intention to take part

Reg. 2016/1104 (Property registered partnerships)

- **enhanced cooperation** in the area of **jurisdiction, applicable law** and the **recognition and enforcement of decisions** in matters of the property consequences of registered partnerships
- it will apply as of 29 January 2019
- **18 MS** participating
 - Belgium, Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Spain, France, Croatia, Italy, Luxembourg, Malta, Netherlands, Austria, Portugal, Slovenia, Finland and Sweden
 - Estonia announced its intention to take part

2.c) The interplay with the international legal instruments

1980 Hague Convention (Child abduction)

- entered into force on 1 December 1983
- 100 Contracting States (**all EU MS**; most recently: Tunisia since 1.10.2017, Cuba 1.12.2018, Guyana 1.5.2019, Barbados 1.10.2019)
- interplay with **BIIa Reg.** with regard to child abduction (the Reg. **complements** the 1980 Hague Conv. **in intra-EU cases**)

1996 Hague Convention (Child protection)

- entered into force on 1 January 2002
- 49 Contracting States (**all EU MS**; most recently: Cuba since 1.12.2017, Honduras 1.8.2018, Fiji 1.4.2019, Paraguay 1.7.2019; only signatory States: USA, Canada, Argentina)
- interplay with **BIIa Reg.** with regard to the **law applicable to parental responsibility matters** (not governed by the Reg.)

2007 Hague Protocol

(law applicable to maintenance obligations)

- entered into force on 1 August 2013
- 30 Contracting States (**all EU MS, except the UK and Denmark**, + Serbia, Kazakhstan and Brazil; Ukraine signed on 21.3.2016)
- interplay with **Maintenance Reg.** with regard to the **law applicable to maintenance obligations** (Art. 15 of the Reg. directly refers to the Protocol)

3) The EU family law instruments 'in action'

3.a) The uniform interpretation
of the CJ

3.b) The autonomous concepts
under EU law

3.a) The uniform interpretation of the CJ

I. Reference for a preliminary ruling (Art. 267 TFEU)

- **national court or tribunal**
- Role of the **parties**
- **Requirements**
- **costs and legal aid**

II. Urgent preliminary ruling procedure (Arts. 107-114 of the

Rules of Procedure of the CJ,

https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_it.pdf

- **AFSJ** (in particular, parental responsibility cases)
- shorter deadlines in the procedure

3.b) The autonomous concepts under EU law

(I) **common definitions** to **overcome** (at least partially) the **differences** in national legislations (+ clarification by the CJ):

i. **COURT** (Art. 2 BIIa, Art. 2 Maint., Art. 2 RIII, Art. 3 Succ.)

CJ, 20.12.2017, C-372/16, Sahyouni

ii. **JUDGMENT** or **DECISION** (Art. 2 BIIa, Art. 2 Maint., Art. 3 Succ.)

iii. LIS PENDENS (Art. 19 BIIa, Art. 12 Maint., Art. 17 Succ.)

- False lis pendens (divorce/separation)
- CJ, 6-10-2015, case C-489/14, A v B

iv. SEISING OF A COURT (Art. 16 BIIa, Art. 9 Maint., Art. 14 Succ.)

- Interaction **Reg. No 1393/2007** on **service of documents**
- CJ, 22-6-2016, case C-173/16, M.H. v M.H.

(II) uniform notions

HABITUAL RESIDENCE (HR)

- **BIIa:** used as ground of jurisdiction in both matrimonial and parental responsibility matters
- **Maint.:** used as ground of jurisdiction, and by reference to the 2007 Hague Protocol, also as a connecting factor to determine the applicable law
- **RIII:** used as connecting factor for a choice of law, as well as in the absence of a choice
- **Succ.:** used both as general ground of jurisdiction and general connecting factor

BUT in none of them the notion is defined

- **Only the Succ. Reg.** provides **guidance on the determination of HR** of the deceased at the time of death (Recital 23)
- **overall assessment** of the circumstances of the life of the deceased during the years preceding his death and at the time of his death
 - relevant factual elements, in particular: duration and regularity of the deceased's presence in the State concerned, and conditions and reasons for that presence
- a **close and stable connection** with the MS must be established
- **possible inter-instrumental interpretation? NO**, given the specific subject matter dealt with in this Reg.

Case law on habitual residence

- a) CJ, 15-9-1994, case C-452/93, *Pedro Magdalena Fernandez*, para. 22, regarding an expatriation allowance
- b) CJ, 2-4-2009, case C-523/07, A, paras. 37-42 on the HR of a child
- c) CJ, 15-2-2017, case C-499/15, *W and V v Z*, paras. 60-66, on the HR of a child
- d) CJ, 28-6-2018, case C-512/17, *HR v KO*, on the HR of a child (MS of dual nationality or MS of residence)

- e) CJ, 22-12-2010, case C-497/10 PPU, Mercredi, para. 56 on the **HR of an infant**
- f) CJ, 8-6-2017, case C-111/17 PPU, OL v PQ on the **HR of an infant** born in a MS other than the parents' HR
- g) CJEU, 9-10-2014, case C-376/14 PPU, C v M, para. 54 on the **HR of a child** in an **child abduction case**

Summarising conclusions

When addressing an intra-EU cross-border family dispute:

	jurisdiction	applicable law	recognition & enforcement
matrimonial matters	Brussels Ila Reg.	Rome III Reg.	Brussels Ila Reg.
parental responsibility	Brussels Ila Reg.	1996 Hague Conv.	Brussels Ila Reg.
maintenance	Maintenance Reg.	Maintenance Reg. + 2007 Hague Protocol	Maintenance Reg. + 2007 Hague Protocol
international child abduction	1980 Hague Conv. + Brussels Ila Reg.		1980 Hague Conv. + Brussels Ila Reg.