This concise book is mainly intended as an introduction to the rules of private international law within the legal system of the European Union. It is our hope that it can be useful as an introductory textbook in elective undergraduate courses and master programmes on EU law offered today by many law schools, both to their own students and exchange students.

Provisions of EU law dealing with private international law issues have become so numerous and voluminous that they cover many hundreds of pages in the Official Journal and a detailed analysis of them all would require much more than a thousand pages. Substantial selections and simplifications were thus made in order to keep the size of the book within reasonable limits. The book will hopefully serve as a springboard towards more profound studies of statutory texts, case law, and legal literature. The bibliography and footnote references to legal writing are highly selective, mainly because the amount of literature has become so large. The subject is, for example, treated to some extent in practically all current textbooks on private international law published in Europe.

The first three editions of this book were authored by Michael Bogdan. Marta Pertegás Sender joined as a co-author of the fourth edition. She has assumed the main responsibility for updating this fifth edition, with Michael Bogdan as active consultant and adviser. The authors wish to thank Camila Ugaz Heudebert, Mia Schürkamp and Haneen Kawash for their assistance with the references, case law table and the bibliography.

This edition intends to reflect the state of the law as of 1st September 2025. Critical suggestions by readers are welcome and will be considered seriously if and when this book appears in a new edition.

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1.1 The Subject

The field of law called Private International Law (PIL) deals with private-law relationships and civil proceedings having international implications. It is, for example, not unusual that a marriage or a contract is entered into by parties who are citizens and/or habitual residents of different countries; a tort is sometimes committed or the resulting damage arises in a country other than that or those where the parties habitually reside; an object pledged while situated in one country may be moved to another country where the validity of the pledge is challenged, *etc*.

Whenever a private-law relationship having connections to more than one country (and thereby to more than one legal system) gives rise to a legal controversy, one may ask which law should govern the substance of the dispute: should the court apply its own law (*lex fori*) or foreign law? If foreign law is to be applied, which of the legal systems involved is to govern? The problem is often perceived as involving a conflict between the legal systems of the countries connected in some way with the legal relationship in question. The legal provisions determining the national legal system to be applied are therefore commonly called conflict rules (*règles de conflit, Kollisionsregeln, etc*.) and constitute the very core of PIL, which is the reason why the whole subject is sometimes called Conflict of Laws (*conflit de lois, Kollisionsrecht, etc*.). An example of a conflict rule is Article 21(1) of the EU[1] Succession Regulation No 650/2012,[2] which provides that:

> [u]nless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

This example illustrates the fact that conflict rules are mainly of a "technical" nature, as they do not deal with the substance of the dispute but merely with the question about which national legal system is to be applied to that substance. Conflict rules are therefore "rules about applicable rules" rather than rules about "reality".

The above-mentioned conflict rule is taken from an EU Regulation, but many conflict rules in force in the EU Member States continue to be of purely national origin. The word "international" in "Private International Law", thus, may be somewhat misleading, as it does not refer to the nature of the sources of law but rather to the character of the legal relationships the subject deals with. The sources of the national conflict rules are usually the same as the sources of other fields of law in the country of the forum (Acts of Parliament and other

1 Valid statutes adopted pursuant to the former EC Treaty can be referred to correctly as EC instruments, but they can also be called EU instruments on account of being parts of the legal system of the EU.

2 See section 6.2 *infra*.

statutes, judicial precedents, preparatory legislative materials, opinions of legal writers, *etc.*). Each country has thus its own PIL which may – and in fact does – vary largely from country to country, even among the EU Member States. This does not, of course, apply to those parts of PIL that have been subjected to unification or harmonisation by international conventions or by EU law.

The principal theoretical idea behind most of the conflict rules is that each private-law relationship should preferably be governed by the legal system with which the relationship has the closest and most relevant connection, but different countries often hold different views on which connecting factor is the most appropriate one. For example, while the PIL of some countries gives in family matters decisive weight to citizenship (nationality) of the person(s) concerned, other countries prefer to apply to the same matters the law of the country of habitual residence or domicile. There are also conflict rules which do not specify the decisive connecting factor at all, and provide in rather general terms for the application of the law of the country that has the closest relationship to the legal relationship under scrutiny.[3] Such approach may often lead to the application of a suitable legal system, but has at the same time the serious drawback of often making the applicable law difficult to predict.

In a wider sense, PIL comprises not only conflict rules but also procedural rules dealing with certain situations having international character. In procedural matters there are normally no conflict rules prescribing the application of foreign law. The courts of each country follow practically always their own procedural rules, but the procedural rules of the *lex fori* may include special provisions on situations having international character. Similarly to conflict rules, some of these special procedural rules have been unified or harmonised through international conventions or EU law. The most important of the procedural rules regulate the international jurisdiction of courts (*i.e.*, they specify which connection – or which combination of connections – between a dispute and the country of the forum is sufficient to make the courts of that country competent to adjudicate), without necessarily designating the locally competent court of first instance. A typical jurisdictional provision is, for example, Article 7(1) of the EU Regulation No 1111/2019 on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and Matters of Parental Responsibility, and on Child Abduction (the so-called Brussels II Regulation):[4]

> The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

Of great importance are also rules on recognition and/or enforcement of foreign judgments, for example Article 36(1) of the EU Regulation No 1215/2012 on

3 See, for example, Article 4(4) of the Rome I Regulation on the Law Applicable to Contractual Obligations (section 8.3 *infra*).

4 See section 5.3.1 *infra*.

Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the so-called Brussels I Regulation):[5]

> A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

Among other procedural issues within the scope of PIL, it is possible to mention the service of documents or taking of evidence in one country upon a request from a court conducting civil proceedings in another country, and the treatment in civil proceedings of foreign nationals and persons habitually residing abroad. In some EU countries, the concept of PIL is much wider and includes, at least for teaching purposes, even some public-law issues (such as citizenship and immigration) and international criminal law (such as the jurisdiction of courts in penal proceedings), but this work limits itself to civil matters and civil proceedings, which constitute the core of PIL in all of the Member States.

The rules on applicable law, jurisdiction of courts and recognition and enforcement of judgments are interconnected. Thus, a very restrictive approach to recognition and enforcement of foreign judgments makes it necessary to extend jurisdiction even to cases with only a relatively weak connection with the forum country, in order to avoid the risk of creating a legal vacuum wherein the forum has no jurisdiction at the same time as foreign judgments are not recognised and enforced. The extension of jurisdiction to such cases leads, in turn, to a more frequent application of foreign law, as the forum will more frequently face situations with a dominant connection with a foreign country (and consequently with a foreign legal system).

International cooperation is of particularly great importance to PIL, due to the international nature of the situations and legal problems involved. Such cooperation has a long tradition and it sets forth under the auspices of specialised international institutions, in particular The Hague Conference on Private International Law (also known by its acronym HCCH).[6] In spite of its name, this is not a mere conference or meeting place but a properly constituted intergovernmental organisation, with a long history starting far back in the nineteenth century. There are today more than 40 Hague conventions, dealing with a variety of issues pertaining to PIL along with varying numbers of ratifications. The Conference currently has more than 90 Members, including all Member States of the EU, and the EU as such is a member too.[7]

5 See section 3.4 *infra*.

6 See <www.hcch.net>.

7 See section 1.2 *infra*.

1.2 EU Involvement

The involvement of PIL in the European integration process is of a relatively recent date.[8] When the European Economic Community (EEC) was founded in 1957, the original Rome Treaty focused on the creation of a common market based on the freedom of movement for goods, persons, services and capital, and the rules intended to achieve this result were almost exclusively rules of administrative and other public law, such as rules regarding customs duties, qualitative and quantitative import restrictions, residence and labour permits, prohibition of anti-competitive behaviour, *etc*.

The original Rome Treaty contained, consequently, practically no mention of PIL or PIL-related problems. A small exception was Article 215 (today Article 340 TFEU), stipulating that the contractual liability of the Community is governed by the law applicable to the contract in question, but this was hardly anything new. Of greater interest was the undertaking in Article 220 (later renumbered 293 and now repealed) by the Member States to enter, "so far as is necessary", into negotiations with each other with a view to securing for the benefit of their nationals, *inter alia*, the mutual recognition of juridical persons and the

8 On the development of PIL within the EU legal order during the last decades, see the regularly appearing surveys by Jayme & Kohler in *IPRax* 1985, pp. 65-71, 1988, pp. 133-140, 1989, pp. 337-346, 1990, pp. 353-361, 1991, pp. 361-369, 1992, pp. 346-356, 1993, pp. 357-371, 1994, pp. 405-415, 1995, pp. 343-354, 1996, pp. 377-389, 1997, pp. 385-401, 1998, pp. 417-429, 1999, pp. 401-413, 2000, pp. 454-456, 2001, pp. 501-514, 2002, pp. 461-471, 2003, pp. 485-495, 2004, pp. 481-493, 2005, pp. 481-493, 2006, pp. 537-550, 2007, pp. 493-506, continued by Mansel *et al.*, *IPRax* 2009, pp. 1-23, 2010, pp. 1-27, 2011, pp. 1-30, 2012, pp. 1-31, 2013, pp. 1-36, 2014, pp. 1-27, 2015, pp. 1-32, 2016, pp. 1-33, 2017, pp. 1-39, 2018, pp. 121-154, 2019, pp. 85-119, 2020, pp. 97-126, 2021, pp. 105-138; 2022, pp. 97-140; 2023, pp. 110-145; 2024, pp. 73-105 and 2025, pp. 93-127. Among the general works on the interrelation between the EU law and PIL, see Ballarino & Ubertazzi, *Yearb.PIL* 2004, pp. 85-128; von Bar (ed.), *Europäisches Gemeinschaftsrecht*; Bariatti, *Cases and Materials*, pp. 1-59; Baur, *Yearb.PIL* 2003, pp. 177-190; Beaumont et al., *Cross-Border Litigation in Europe*; Besse, *ZEuP* 1999, pp. 107-122; Boele-Woelki & Van Ooik, *Yearb.PIL* 2002, pp. 1-36; Borrás, *Rec.des cours* 2005, vol. 317, pp. 313-536; Dickinson, 1 *JournalPIL* 2005, pp. 197-236; Fiorini, 57 *I.C.L.Q.* 2008, pp. 969-984; Fletcher, *Conflict*; Fuchs *et al.* (eds.), *Les conflits*; Hatzidaki-Dahlström, *EU:s internationella privat- och processrätt*; Hellner, *SvJT* 2011, pp. 388-412; Hess, *IPRax* 2001, pp. 389-396; Von Hoffmann, *ZfRV* 1995, pp. 45-54 and Von Hoffmann (ed.), *European Private International Law*, pp. 13-37; Hommelhoff *et al.* (eds.), *Europäisches Binnenmarkt*; Jayme, *Ein Internationales Privatrecht*; C. Kessedjian, *Essays Nygh*, pp. 187-196; Kohler, *Rev.crit.d.i.p.* 1999, pp. 1-30 and in *IPRax* 2003, pp. 401-412; Kreutzer, *RabelsZ* 2006, pp. 1-88; Lagarde & von Hoffmann (eds.), *L'européisation*; Lasok & Stone, *Conflict*; Lefranc, *Rev.crit.d.i.p.* 2005, pp. 413-446; Lefranc, *Rev.crit.d.i.p.* 2005, pp. 413-446; Meeusen in Meeusen, Pertegás & Straetmans (eds.), *Enforcement*, pp. 43-76; Meeusen, *Liber Pocar*, pp. 685-700; Meeusen, *Yearbook* 2022, pp. 1-33; Partsch, *Le droit*; Philip, *EU-IP*; Picone, *Diritto*; Reichelt (ed.), *Europäisches Kollisionsrecht*; Roth, *RabelsZ* 1991, pp. 623-673 and in *IPRax* 1994, pp. 165-174; Van Calster, *European Private International Law*; Vékás, *Liber Memorialis Petar Šarčević*, pp. 171-187; Wagner, *IPRax* 2014, pp. 217-225 and 469-473; Wilderspin & Lewis, *Rev.crit.d.i.p.* 2002, pp. 1-37 and 289-313.

simplification of formalities governing the reciprocal recognition and enforcement of judgments and arbitration awards. Negotiations regarding the recognition and enforcement of judgments resulted in the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.[9]

The creation of a truly common internal market has progressively made clear that even differences in the field of private law may constitute obstacles hindering such internal market. The EU has therefore attempted, with some success, to harmonise substantive rules of the Member States regarding some limited questions of private law, such as rules on certain aspects of consumer contracts or companies, but many of the harmonising directives impose merely certain minimum requirements and do not forbid the Member States to go further, for example in matters of consumer protection. It is at present not realistic to expect a total unification or harmonisation of the private law of the Member States; a European Civil Code will within the foreseeable future hardly be anything else than a dream.[10] This is due not only to the existing differences of substantive law, but even to the differences in legal techniques, as the very idea of a comprehensive civil code is in some Member States, for example Ireland or the Nordic Member States, regarded as peculiar and odd. Furthermore, the principle of subsidiarity expressed in Article 5(3) TEU, which is one of the fundamental principles of EU law, requires that the EU regulate only matters where the objectives of the proposed action cannot be satisfactorily achieved by the Member States on the national level and can be better achieved by the EU. The example of the USA shows that a well-functioning integration does not require a total unification of private law. The ongoing process of European integration will not, consequently, make conflict rules superfluous in relations between the legal systems of the Member States.

On the other hand, EU unification or harmonisation of certain parts of private law, especially rules on the protection of the weaker party in consumer and other similar relations, has, in spite of its limited character, given rise to the need to ensure that such unified or harmonised rules shall be complied with whenever the situation has a sufficiently close (even if not necessarily the closest) connection with the EU as a whole. Such substantive requirement impacts on the application of the usual conflict rules according to which the matter is governed by the law of a Member State or not. For example, Article 12(2) of the EU Directive No 2008/122 on the Protection of Consumers in respect of Certain Aspects of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts (the Timesharing Directive) stipulates, *inter alia*, that even where the law applicable to the timeshare contract is that of a non-member country, consumers must not be deprived of the protection granted by the Directive if any of the immovable

9 See section 3.1 *infra*.

10 This does not exclude harmonisation of substantive law in some selected areas, such as digital services. See, for example, the Digital Services Act package: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>.

properties concerned is situated within the territory of a Member State.[11] A similar conflict rule may sometimes even be considered to be tacitly implied in the directives unifying or harmonising provisions of substantive law.[12]

The realisation of the difficulties in achieving a uniform European substantive private law has led to an increased understanding of the importance of unifying or at least harmonising the PIL of the Member States. Despite the continued diversity of substantive law, the unification or harmonisation of the rules of PIL improves the chances that the outcome of a legal dispute will normally be the same regardless of where in the EU the judicial proceedings take place.

By introducing Articles K1 and K3 into Title VI of the EU Treaty of 1992, the Treaty of Maastricht placed judicial cooperation in civil matters under the "third pillar" of the European integration, and created in this manner a legal base for the negotiating and adoption of more comprehensive EU conventions (but not regulations and directives) in the field of PIL. This was not a very radical change, as such conventions, formally separate from EC law itself, could be adopted even before the Maastricht amendments despite the lack of express support in the EC Treaty, as is witnessed by the Rome Convention on the Law Applicable to Contractual Obligations of 1980.[13] Some PIL conventions were actually formulated on the basis of Article K3,[14] but before they could be ratified by the Member States and enter into force, the EC Treaty was amended again through the Treaty of Amsterdam. The Amsterdam amendments moved "judicial cooperation in civil matters" from the European integration's "third pillar" to its "first pillar", making it possible to regulate PIL matters directly by EU law.[15] Compared to international conventions, EU regulations are much more efficient, in particular because their entry into force does not require a certain minimum number of ratifications, which is a requirement that sometimes causes a long delay in the entry into force of conventions. In addition, there is no need to keep track of the varying dates when a convention entered into force in the various Contracting States. However, the principal advantage of EU regulations compared with conventions is that they are as such directly applicable in all Member States without transposition into national law, which makes it easier to preserve their uniform interpretation and application throughout the Union.

Article 61(c) of the EC Treaty, as it stood after the entry into force in 1999 of the Treaty of Amsterdam, provided that the Council, in order to establish

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11 See section 10.2.3 *infra*.

12 See *Ingmar v. Eaton Leonard Technologies*, case C-381/98, [2000] ECR I-9305, section 10.2.2 *infra*.

13 See section 8.1 *infra*. In contrast, the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters had its legal base in Article 220 of the original wording of the EC Treaty (see *supra*).

14 See, for example, the Convention on the Service in the Member States of the European Union of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *OJ* 1997, C 261, p. 1, and the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters, *OJ* 1998, C 221, p. 1.

15 See, for example, Kohler, *Rev.crit.d.i.p.* 1999, pp. 1-30 and in *IPRax* 2003, pp. 401-412.

progressively an area of freedom, security and justice, had to adopt measures in the field of judicial cooperation in civil matters as provided for in Article 65. Article 65 stipulated, in turn, the following:

> Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include
> (a) improving and simplifying:
> – the system for cross-border service of judicial and extrajudicial documents;
> – cooperation in the taking of evidence;
> – the recognition and enforcement of decisions in civil an commercial cases, including decisions in extrajudicial cases;
> (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
> (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Notwithstanding that Article 65 was found in Title IV of the EC Treaty titled "Visas, Asylum, Immigration and Other Policies Related to Free Movement of Persons", it is clear that its ambitions encompassed practically the whole PIL and in no way were strictly limited to matters related to the freedom of movement of persons. On the other hand, Article 65 dealt merely with "civil matters having cross-border implications", which meant that it could not serve as the legal basis for measures concerning purely domestic substantive or procedural situations unless these situations had, at least to some extent, an international aspect.

As pointed out by the wording of Article 65, measures based on that Article could be taken only "insofar as necessary for the proper functioning of the internal market", but this condition appears to have been interpreted very – some may even say too – liberally. Another limitation on the legislative powers pursuant to Article 65 followed from the above-mentioned general principle of subsidiarity. It appears, however, that the requirements imposed by this principle were generally considered fulfilled as far as PIL is concerned. On 1 December 2009, Article 65 of the EC Treaty was replaced by Article 81 TFEU, whose first two paragraphs stipulate the following:[16]

> The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of

16 On the impact of the Lisbon Treaty on PIL, see Baratta, *Liber Pocar*, pp. 3-22; Barrière Brousse, *Clunet* 2010, pp. 1-34; De Groot & Kuipers, *Maastricht Journal of European and Comparative Law* 2008, pp. 109-114. Article 81 TFEU also contains provisions on the legislative procedures, which need not be presented here.