

EU PRIVATE INTERNATIONAL LAW IN FAMILY MATTERS

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LAW IN FAMILY MATTERS

Legislation and CJEU Case Law

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PREFACE

Every family lawyer involved in cross-border disputes, be it a practising lawyer, a court officer, an academic or even a simple student, is aware of the overwhelming complexity to be found in this specific field of law. Because of the joint application and interconnection of multiple legal sources, even a ‘simple’ cross-border divorce with children requires the application of at least four – if not five – different instruments, hence calling for above-average legal skills and attention.

An increasing number of EU Regulations in private international law (PIL) in family matters, some of which implemented an enhanced cooperation and hence are not applicable to all EU Member States, need to be coordinated with each other and with some international conventions, such as the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. Each of these instruments has a very sectoral scope of application, requiring coordination and joint application of rules from different instruments to the same case. The new Brussels II-ter, with its 100 articles and complex structure, increases the overall difficulties.

Furthermore, the rising number of cases discussed in national courts and the complexity of issues raised have led to an impressive number of references for preliminary ruling to the Court of Justice of the European Union (CJEU). As of today, the Court of Justice has handed down more than 70 decisions in cross-border family matters, which have become more and more rich and elaborate. Full knowledge and understanding of these decisions is paramount because, as it is well known, the Court’s decisions clarify the meaning and scope that EU rules have from the outset, and thus become binding for all parties and situations. It is not possible to apply EU Regulations without giving due consideration to the relevant EU case law. However, it is not easy to keep track of everything that is continuously handed down by the EU Court of Justice.

The trickiness of such a situation inspired the authors to conceive the present work, which has no equal on the legal market.

This volume thus firstly collects all legislative instruments available in the field of EU private international law in family matters: the Brussels II-bis Regulation on jurisdiction, recognition and enforcement of decisions in matrimonial matters, parental responsibility and child abduction and its recast, the so called Brussels II-ter, which applies to all proceedings instituted on or after 1 August 2022; the Maintenance Regulation; the Rome III Regulation on the law applicable to divorce and legal separation; the twin Regulations

on property regimes and the Regulation on succession. Three international conventions which are connected to the mentioned EU instruments have also been included: the 1980 Hague Convention on international child abduction, the 1996 Hague Convention on measures for the protection of children and the 2007 Hague Protocol on the law applicable to maintenance obligations.

The innovative character of this volume lies however on the fact that all texts have been complemented with the appropriate references to all decisions issued by the Court of Justice. The choice was made not to publish the relevant judgements in their entirety nor in their official operative part, as both these references are today easily traceable on the Internet. Instead, each and all of the many legal arguments that are disseminated through the decisions, and that sometimes get overlooked due to the length and complexity of the decision, have been sorted out and reported in a concise synopsis, which comes as a footnote to the relevant part of the rule concerned. While the content of all footnotes is sole responsibility of the authors, an effort was made to retain as far as possible the exact wording of the Court of Justice. A reference to the exact paragraph of the decision makes it easy for the reader to go to the source and read the relevant passage in its proper context.

This structure makes the volume a complete and accurate, yet user-friendly, tool for both practitioners and academics who need to keep track of the overwhelming EU case law in cross-border family matters. At the end of the book, two tables of cases offer full indexes in both chronological and analytical order, providing a useful resource to retrieve relevant information.

The volume is updated to decisions handed down as of 31 July 2022. A list of references for preliminary ruling pending at that same date is also provided. The reader is thus made aware of decisions that may be adopted on certain issues over the coming months, which will be then included in the forthcoming editions.

The authors are grateful to Intersentia for having believed in the innovative structure underlying this work and for all the precious advice and editing offered in the process of making this volume possible. They strongly hope that the book will soon become a useful companion for a successful and correct application of EU PIL rules in family matters. The word is now to the market.

Costanza Honorati and Maria Caterina Baruffi
Milan, July 2022

Authors' Note:

All CJEU decisions were taken following references for a preliminary ruling on Regulation (EC) No 2201/2003, so-called Brussels II-bis. From 1 August 2022 this Regulation is repealed by Regulation (EU) 2019/1111, so-called Brussels II-ter. For this reason, in the present volume the latter Regulation is placed before the former.

Brussels II-bis continues to apply to proceedings pending at the date of 31 July 2022, or for the recognition and enforcement of decisions taken after that date, but rendered in proceedings started before that date.

Brussels II-ter applies to all proceedings instituted on or after 1 August 2022, or for the recognition and enforcement of decisions rendered in proceedings started after that date.

Case law rendered in regard of Brussels II-bis in principle also applies to Brussels II-ter, insofar as the rule the decision refers to is the same under the new Regulation. In order to make the necessary comparison between the two Regulations smoother, a footnote has been inserted to each Article of Brussels II-ter referring to the corresponding Article under Brussels II-bis where the relevant case law can be found.

CONTENTS

Preface v

PART I. GENERAL RULES IN FAMILY MATTERS

- Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels II-ter) 3
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II-bis) 73

PART II. MINORS' PROTECTION

- The Hague Convention of 25 October 1980 on the civil aspects of international child abduction 125
- The Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children 137

PART III. MAINTENANCE OBLIGATIONS

- Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations 157
- The Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations 201

PART IV. LEGAL RELATIONSHIPS OF A COUPLE

- Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III) 215

- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes 227
- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing 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 261

PART V. SUCCESSION

- Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. 299

Case Law of the Court of Justice of the EU

- Chronological Index 355
- Analytical Index. 361