



Training module on Cross-border divorce and maintenance: jurisdiction and applicable law

Guide to the training module

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GUIDE TO THE TRAINING MODULE ON CROSS BORDER DIVORCE AND MAINTENANCE: JURISDICTION AND APPLICABLE LAW

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Introduction

This self-standing training module on 'Cross-border divorce and maintenance: jurisdiction and applicable law' developed by ERA on behalf of the European Commission is addressed to training institutes, networks of legal practitioners, trainers and end users of European Union member states wishing to organise training sessions in the area of EU family law and, more concretely, on cross-border divorce and maintenance.

In today's world, where people are increasingly mobile, the number of families made up of citizens of different EU countries, or of EU citizens and third-country nationals, is increasing – there are currently around 16 million international couples in the EU. The greater use of the rights of free movement of persons, goods and services results in an increase in the potential number of cross-border disputes and makes the provision of training in European family law progressively more relevant.

The training module is structured as a 'training package' and includes information on the programme and methodology to be employed and the training material necessary for setting up a workshop on EU cross-border divorce and maintenance. It covers the EU *acquis* in this area of law and illustrates how this has been applied in the member states.

1. Scope of the training module

More concretely, the training material of the training module covers the **EU *acquis*** in the following thematic units:

- **Cross-border divorce – jurisdiction and procedure:** Regulation Brussels IIbis, its interaction with other EU and national legal instruments and the preliminary reference procedure.
- **Cross-border divorce – applicable law:** Regulation Rome III and the concept of enhanced cooperation, the application of foreign law and the role of e-justice tools.
- **Cross-border maintenance – jurisdiction, applicable law and maintenance recovery procedures:** the Maintenance Regulation and its interaction with the 2007 Hague Convention and Protocol.
- **EU initiatives in the area of matrimonial property regimes:** the proposed legislation on matrimonial property regimes and on the property consequences of registered partnership and its possible impact on the current way of dealing with cross-border matrimonial property cases.

The varying training methods that can be used in future workshops based on this material will also be presented in the module, together with recommendations on how and in which part of the training they may be best employed. Face-to-face presentations can be combined with practical exercises requiring the active contribution of participants, IT-supported learning, allowing participants to familiarise themselves with available e-justice tools and interactive sessions promoting the exchange of good practice and experience.

2. Content of the training module

The training module includes training material to be further disseminated to the participants of an implementing workshop through the following means:

- **An E-learning course**, providing an overview of the four key areas covered by the module is included. This could be made available to end users before the implementation of a workshop, in order to allow them to prepare for it.
- **Background material**, including the legislation and jurisprudence on divorce and maintenance, as well as international conventions that are also applicable in this area of law.
- **Links to online tools and legal databases** facilitating cross-border cooperation in civil matters.
- **Workshop exercises** on the basis of case studies, which should be carried out during the workshop by participants, after the analysis in each thematic unit.
- **Examples of trainers' contributions**, supporting the different presentations during an implementing workshop in the form of outlines, notes, written versions of their lecture, PowerPoint presentations etc.
(Material to be submitted in the framework of the initial implementing workshops)
- **26 national sections** covering all EU member states (with the exception of Denmark), illustrating the application and implementation of European family law at national level and **a general bibliography**, including some of the most representative articles, books and publications on EU family law.

Further to this, **a guide to the training module** providing advice on how to set up a workshop implementing the training module is included. The above mentioned materials are presented in detail, so that their function and possible integration in future training programmes is effectively explained and trainers are assisted in using their full potential. Input on how to structure the programme of the workshop and which methodology to employ when dealing with each specific topic is offered, as well as organisational advice on how to bring together a group of participants, chose the workshop venue, identify the trainers and evaluate the event.

Last, **a trainers' manual**, centralising all information that would be of relevance for the trainers engaged in an implementing workshop, has been included in the materials.

3. Implementing the training module

A workshop implementing this training module will provide judges or legal practitioners attending with an in-depth analysis of cross-border divorce and maintenance in the EU and enable them to apply the relevant EU legal instruments and international conventions. Workshop participants will be able to identify which court has jurisdiction, which law is applicable, what are the rules for recognition and enforcement of judicial decisions issued in another member state, as well as familiarise themselves with tools and procedures in place.

A workshop implementing the training module would:

- provide **expert training** on Regulation Brussels II bis, Regulation Rome III and the Maintenance Regulation and their interaction with other EU instruments in the area of civil justice,
- raise **awareness of the interrelation between EU, international and domestic legislation** on cross-border divorce and maintenance cases,
- **remind end users of the preliminary ruling procedure** using practical exercises,
- provide participants with a **practical introduction to e-justice tools**.

I. User's pack: function of the different elements of the training module

The 'user's pack' consists of all the material that will be made available to the implementing workshop participants. This will comprise mostly training material (the e-learning course, related legal documents, links to online sources, trainers' contributions and case studies), as well as supporting documents, such as the workshop programme, the list of participants, workshop evaluation forms etc.

It is of course at the discretion of the workshop organisers and trainers to use the material provided as they see fit and to also include additional documents. Details of all key EU legal instruments necessary for the provision of training on cross-border divorce and maintenance are already part of the user's pack, but as implementing workshops may be structured with a specific focus, further material could be of use. Emphasis could for example be given to national legislation or some international conventions that are particularly relevant in certain member states. The trainers may also wish to include articles going into greater detail on cross-border divorce and maintenance cases, additional EU legislation providing a more comprehensive overview of European Family Law, more EU instruments in the area of civil justice etc.

The user's pack will be provided mainly electronically on a USB stick or by making the contents available online and giving access to it to all workshop participants. Where material needs to be regularly referred to during the workshop or is necessary to follow the programme better (the texts of the Regulations to be analysed, the case studies that need to be prepared etc.), this should also be provided in hardcopy during the event.

➤ *When presenting the material that should accompany each sub-session, a distinction between 'necessary material' to be provided in hardcopy and 'additional material' that should be included in the electronic documentation will be made.*

More concretely, the user's pack will include:

1. The E-learning course

The training module has been structured to promote 'blended learning' as the methodological approach, given that it combines the interactivity of face-to-face training during the workshops with the flexibility provided by an e-learning course. As the e-learning course has different functions and can be of use to the workshop participants at several stages of their learning process, it is important that they have access to it at different times. Before the implementation of the workshop, in order to prepare for the meeting, while it takes place, in order to make best use of the available material with the help of the trainers, after the workshop, as a point of reference for finding information on EU cross-border divorce and maintenance issues.

The key function of this e-learning course is to introduce end users to cross-border divorce and maintenance and the main EU legal instruments in this area. For this reason, access to the e-learning course should be provided to workshop participants well in advance, ensuring

that they have sufficient time to visit the course and go through its main elements. Once the group of participants has been selected, they should receive information on how to access the course and be encouraged to go through the contents. 10 -15 days before the implementation of the workshop they could be reminded again. In this way they will have the possibility to refresh or acquire some basic knowledge a minimum level knowledge will be ensured.

The e-learning course on cross-border divorce and maintenance has been developed round the three EU Regulations that constitute the core of the training module. The first part is dedicated to Regulation Brussels II bis and its provisions related to jurisdiction in cross-border divorce cases, the second part deals with Regulation Rome III and the applicable law in such proceedings. The Maintenance Regulation follows next and the course is completed by a brief reference to the proposed instruments on property regimes. The course provides a comprehensive overview of the Regulations, their interpretation and related case-law and their interaction with other legal sources. Links to the legal texts that will be discussed, further sources of information on the subject matter and other websites containing online tools and databases have also been integrated. The contents of the e-learning course have been developed by Professor Cristina González Beilfuss from the Spanish Judicial School (Thematic units I, II and IV) and Ms Juliane Hirsch former Senior Legal Officer with the Hague Conference on Private International Law (Section III on cross-border maintenance).

Raising end users' interest and motivating them to invest time and effort into learning more on European Family Law during the workshop is the next objective of the e-learning course. For this reason, the material has been structured in a concise, user-friendly and interactive way, exploiting the specific potential of new technologies. The course includes not just texts presenting the law, but examples from real practice, tables, charts and other visual elements.

When first visiting the e-learning course, end users have the possibility to answer a few introductory quiz questions, structured in accordance with the course's content. In this way, they will be able to assess their knowledge on the issues covered in the different thematic units, identify in which parts of the course they should focus and allocate their time accordingly. A self assessment exercise, in the form of quiz questions, has also been included at the end of each thematic unit. By working through the questions, end users will have the opportunity to compare their knowledge before and after using the e-learning course. As they will also have access to the e-learning course after the workshop, they will be in a position to go back to the questions and evaluate their progress after completing the training.

When relevant to the workshop programme, references to material included in the e-learning course could be made. Some of the visual elements could be helpful for clarifying a technical point, links to certain online sources could be referred to, the quiz questions could be used at the end of a sub-session for ensuring that the main information has been transmitted effectively etc.

➤ It will be noted while analysing the specific sub-sessions of the workshop (part V) when references to the e-learning course would be particularly opportune.

The 27 national sections will also be provided in the e-learning course. End users seeking specific information on the application of these EU legal instruments in the member states will thus be able to refer to the e-learning course as a starting point for their research.

The e-learning course has been developed in HTML format, in order to be usable for blind or visually impaired persons. The course, available on the European E-Justice portal, has been encapsulated in a ZIP File as a package¹. This file includes not only the academic contents, but also all the files including the metadata, workflow and structure, to allow for full transfer to other e-learning platforms.

2. Background material

The main contents of the training material will consist of legal texts: treaty articles, Regulations, directives, case law of the Court of Justice of the European Union, international treaties etc. that constitute the background to the analysis that will be carried out in the workshop.

Links to the key materials are contained in the e-learning course; it would however be useful to also provide it independently to end users. A comprehensive collection of all background documents, to which reference will also be possible after the workshop, should be included in the electronic documentation. Participants are likely to come back to these texts in order to refresh their memory, find a specific provision or judgment, seek guidance or inspiration if confronted with a cross-border divorce or maintenance case at a later stage. This format could also support easy further dissemination of this material, which workshop participants could forward to their colleagues, thus achieving a multiplier effect.

All European legal instruments related to the issues that will be discussed during the workshop should be included in this collection of material, as well as international legal sources, e.g. the Conventions of the Hague Conference on Private International Law and – when the workshop is organised at national level – the related national provisions. The jurisprudence of the Court of Justice of the European Union interpreting the Regulations to be discussed or shedding light on further issues that arise in the context of cross-border family disputes has to be included. The parts of the national sections which list domestic case law or any further national judgments providing links to the practice in a specific member state may as well be of relevance here.

In addition to legal texts, links to online databases, tools and sources, such as the E-Justice portal, the Judicial Atlas, Eur-Lex, Curia and other similar websites should as well be included as background material in the electronic documentation. When relevant to the target group of the seminar, online tools and sources included in the national sections could be referred to as well.

➤ Proposals on which specific material to include in this part of the user's pack are included in Part V on the analysis of each sub-session of the workshop.

After the finalisation, the training module including the e-learning course will be published and available for download on the E-Justice portal.

The material should be provided in the language of the workshop. When international workshops are organised, links to the EU databases (e.g. www.eur-lex.europa.eu or www.curia.europa.eu) could be included, so that end users can access EU legal texts in the language of their choice.

In addition to including them in the electronic documentation, providing the few documents that are absolutely essential during the workshop in hardcopy is recommended. The EU Regulations that constitute the focal point of the analysis, The Hague Convention and Protocol on Maintenance and other key documents should be available to the participants for consultation during the different sub-sessions of the workshop and for the preparation of the exercises. Being able to locate a provision quickly, see the structure of a legal instrument, make notes etc. could help end users to better follow the training and better familiarise themselves with the legal instruments.

➤ *The legal texts that are considered particularly useful in each specific sub-session are indicated in Part V of this guide.*

The background material necessary for the implementation of the training module on cross-border divorce and maintenance: jurisdiction and applicable law is available in Annex 2.

3. Workshop exercises material

Three workshop exercises are proposed for the workshops in the training module on “Cross-border divorce and maintenance: jurisprudence and applicable law” and all three are structured on the basis of case studies. Preparatory material supporting the workshop exercises, such as the facts of the different cases that will be discussed or additional legal texts that will be needed for solving the cases should be provided in hardcopy during the workshop.

➤ *The case studies, as well as the solutions suggested, currently available in Annex 3, could also be included in the electronic documentation.*

4. Trainers' contributions

In addition to the e-learning course and the background documents, every time an implementing workshop is organised the trainers involved should be asked to prepare their own supporting material, in the form of PowerPoint presentations, outlines, notes or full texts of their lectures.

Trainers should be free to structure the material supporting their presentations in their own way. The main objective is to help end users to better follow the presentation and for this reason emphasis should be given to the provision of a clear structure. The trainers' contributions could also be used as reference documents for identifying the main points of the subject matter.

Examples of what would be expected in this context and some guidance for the trainers may be provided by reference to the PowerPoint presentations and outlines that were used in previous implementing workshops.

- The contributions of the trainers engaged in the two first implementing workshops, realised in September and October 2012 may be found in Annex 5.

Speakers' contributions should also be included in the user's pack. They should be included in the electronic documentation and possibly also in hardcopy. The decision on whether to provide the presentation during the lecture will depend on the structure of the supporting material (an outline or PowerPoint presentation would be useful during the lecture, whereas a long text less so) and should be taken by the trainer responsible for the sub-session.

- Providing some kind of written support of the lectures is always recommended and for this reason always included under the 'necessary documents' of each sub-session. In particular, an outline of the PowerPoint presentation reflecting the structure of the sub-session allows participants to better understand the structure and follow the lecture.

5. National sections and general bibliography

The national sections on cross-border divorce and maintenance constitute a further element of the training material. They aim at complementing the EU acquis, allowing end users to make the link with national practice in the 26 member states and identify and access domestic measures and procedures in this area of law.

There are 27 national sections, corresponding to all member states, with the exception of Denmark and – given the significant discrepancies in their applicable law – there are two different national sections for England and Scotland. The national sections were devised on the basis of various key questions, linking EU Family Law with national practice: special rules adopted to facilitate the application of the Regulations, links to the domestic provisions on jurisdiction and applicable law in cross-border divorce and maintenance cases, information on the international Family Law conventions to which each member state is a party, online legal databases etc. are included in the information provided by the national experts entrusted with the development of this part of the training module. Further to this, references to national jurisprudence applying the Regulations are also included².

The national experts have also provided a list of the most representative articles, books and publications on EU Family Law from their member state and in their national language. The publications they recommend are included in each national section, as well as in a general bibliography. In this way, end users wishing to find additional information or acquire more

²So far, under national jurisprudence, mainly judgments on the application of Regulation Brussels IIbis are included, as the other EU legal instruments discussed in the module are relatively new.

comprehensive knowledge on a specific jurisdiction will have access to some key bibliographical references.

It will be up to the workshop leader and the trainers to decide how to integrate the national sections into the workshop. Depending on the target group and scope of the course, the national context of one or more member states could be particularly relevant, in which case entire national sections could be discussed. Alternatively, references to the national sections can be made on an ad hoc basis when the topic discussed during the workshop is addressed in the national sections (e.g. accessing foreign law).

➤ Recommendations as to when references to the national sections may be most pertinent will be made during the analysis of the specific sub-sessions.

Access to the national sections and the general bibliography are provided as part of the e-learning course. This will allow participants not only to better identify the links between EU Family Law and their domestic practice, but more importantly to refer to this material on future occasions. When confronted with a cross-border divorce or maintenance case, end users will be able to look into the national section of the member state that interests them and identify basic information and the relevant legal sources.

➤ A special online tool has been developed as part of the e-learning course, centralising the content of the 27 national sections and allowing easier navigation. By making use of this tool, end users and trainers will have access not only to each individual national section, but they will also be able to identify the specific questions of interest to them and the member states they wish to look upon. This more focused, individualised research will increase significantly the national sections' functionality.

Depending on the specific implementing workshop, the workshop leader may decide that one or more national sections should also be available as part of the electronic documentation or even made available in hardcopy during the event – in a workshop organised for a purely national audience for example, having access to the national section of the member state in question could be helpful.

➤ The 27 national sections and the list of all national experts who contributed to this part of the training module are available in accompanying document 'National sections on cross-border divorce and maintenance'.
➤ The general bibliography may be found in Annex 4.

6. Additional documents

In addition to the training material, a number of documents relating to the organisation of the workshop must be made available to participants. These would be of immediate use during the workshop and should therefore be provided in hardcopy.

The finalised workshop programme must be provided to participants at the start of training, allowing them to plan accordingly and better understand the training flow. A list of all workshop participants should also be provided. This would facilitate interaction between the end users attending the workshop and, by including some contact details, also allow them to keep in touch after the workshop. Finally, in order to obtain an immediate evaluation of the workshop, a questionnaire asking participants for feedback on the workshop's content, organisation and overall effectiveness will be distributed.

II. Methodology

1. Time frame

The workshop is designed to last approximately two and a half days. The exact structure and length will of course be decided by the training providers, taking into account the number of participants, their specific training needs, the priorities of the training etc.

Elements that should in all cases be taken into account when finalising the workshop programme and deciding on the allocation of time for the different sub-sessions are the need to effectively cover all main elements of the subject matter and the provision of sufficient time for participants to ask questions and interact with the trainers and with each other. The fact that long sessions have proven to be less effective in adult education should as well be borne in mind. Frequent breaks or changes of teaching style should therefore be a feature.

➤ *An indicative time allocation by sub-session will be provided in Part V of the guide to the training module.*

2. Trainers' profiles

Crucial for the success of the training workshop is the selection of trainers. It has been proven that trainers with a common professional background to that of the participants tend to have a better understanding of their training needs and be more effective in addressing them. For this reason, a factor to consider when selecting the trainers of a particular workshop would be the characteristics of the target group.

That said, it is also important to identify the right trainer for each session: in sub-sessions where emphasis is given to practical issues (e.g. how to access foreign law); the involvement of a practitioner, lawyer or judge with their own experience in this area would be ideal. When the focus of a presentation is the transmission of information or the introduction to concepts or an area of law, an academic could also be a good option.

➤ *More concrete input on the trainer's profile seemingly best fitting to each sub-session will be provided when presenting the workshop's breakdown in Part V.*

In addition to professional qualifications, the quality of an implementing workshop would also depend on trainers' didactic competence and pedagogical skills. The trainers selected should not only be knowledgeable, but also able to effectively transmit information, assist end users in developing new skills and motivate them to actively follow the training. They would have to provide the necessary information in a clear and structured manner, highlight the links between participants' daily work and the issues being discussed, retain some flexibility in order to adapt to the specific needs and interests of the end users attending the workshop and be open and encouraging in discussing and exchanging views with them in the course of the session.

Other skills that would also be useful to consider would be trainers' linguistic skills in the case of international workshops, their IT literacy, as the use of technology would be required in at least parts of the training (IT-training sessions, use of PowerPoint or other audiovisual material, the e-learning course, etc.).

For the successful implementation of the workshop and in order to better address participants' training needs, some diversity of trainers should be sought. Variety between speakers' professional backgrounds, gender and – in the context of cross-border training – nationality would enrich the event, offering different perspectives on the issues, employing different teaching methods and ensuring a more comprehensive analysis of cross-border Family Law in Europe.

Last, although not always easy to assess, the motivation of potential trainers could be a factor to consider. For the implementation of a workshop on the basis of the training module, significant flexibility and commitment, as well as the willingness to interact with end users is expected from the trainers. Using experts who have an interest in the project and are prepared to make the necessary effort for a successful outcome would bring an added value to the workshop, while further motivating the participants.

Criteria for selecting the workshop's trainers:

- Subject and objectives of each sub-session
- Didactic competence and pedagogical skills
- Linguistic and IT skills
- Professional background similar to that of the workshop's participants
- Diversity in the group of trainers
- Motivation

3. Teaching methods

➤ Front (face-to-face) presentation

A significant part of the training will rely on the provision of information on different legal instruments and their application, as it is not possible to assume prior knowledge on EU activity in the area of Family Law among end users. The optimal method for the provision of a large amount of information in a limited period of time is face-to-face presentation, conducted in full sessions. This method provides the trainer with the necessary time and flexibility to structure and present the content of the sub-session as he or she sees fit.

Supporting material such as outlines and PowerPoint or other presentation tools could also be employed during the lecture. This would not only help participants to follow the presentation better, but constitute as well a reference document for the future, should end users wish to review the main issues of the sub-session.

One of the objectives of the workshop is to familiarise participants with existing legislation. In this context, reference to the material included in the user's pack should be made throughout the lecture and participants should be encouraged to go through the legal texts, identify the provisions and acquire a better understanding of their structure and applicability.

Enriching the lecture with practical examples could also be a means of emphasising the link between theory and practice and better illustrating the application of the various legal instruments. Brief exercises or questions could also be formulated by the trainers, requiring participants to reflect and discuss them before presenting the answer. Trainers would thus not only create an atmosphere of dialogue within the group, but also assess whether the concepts have been properly explained.

Time for discussion or Q&A sessions should in all cases be ensured for end users wishing to ask for clarification or further information. Depending on the content and structure of each lecture, questions may be raised during the presentation or in a subsequent discussion session moderated by the trainer or the workshop leader.

Although the key role in front presentations is played by the trainer, end users should also be encouraged to actively contribute to the different sub-sessions. Participants learn not only from the provision of training per se, but also from hearing questions and problems they have not yet found themselves confronted with. For this reason it is important that all end users attending the workshop are encouraged and feel comfortable enough to share thoughts and ideas and contribute their own experiences. This element is of particular importance in international workshops, where participants have the possibility to expand their knowledge with information on the application of EU Family Law in other member states, learning from each other.

➤ **Workshop exercises**

In addition to information on the EU legal framework, however, the training also aims at providing participants with some practical experience in the particularities of cross-border divorce and maintenance cases, the procedures in place and the tools available.

In order to further highlight issues requiring special attention and allow participants to develop specific skills, it is important to ensure their involvement in this part of the training. For this reason, specially designed workshop exercises will complement each thematic unit. Another advantage of this method is that the preparation of an exercise constitutes an interactive way of learning. After having listened to face-to-face presentations or read background material, participants would appreciate a change of presentation technique.

The methodology to follow in each exercise will depend on the content and training objectives of the various thematic units: for the workshop exercise on cross-border divorce jurisdiction and on cross-border maintenance the recommended option would be the preparation of case-studies and for the workshop on applicable law in cross-border divorce cases IT-supported learning.

➤ **The 3 workshop exercises of the training module are available in Annex 3.1 - 3.3.**

- **Case studies prepared in working groups**

During the workshop exercises, participants will be given the opportunity to use their skills and knowledge to solve case studies on cross-border divorce and cross-border maintenance. The exercise should start with a brief session in plenary, with a presentation by the trainer or the workshop leader of the organisational aspects of the exercise. A brief introduction to the case studies and the main issues end users should deal with could also be included.

Participants should subsequently be divided into smaller working groups and working space provided for each of them. Working in smaller groups has significant advantages for participants: the possibility to focus on case-studies will enable them to deepen their recently acquired knowledge by applying it to concrete cases. This approximates a real-life scenario and can constitute valuable experience for the future. The working group format would allow participants to be actively involved in the debate and improve their communication skills.

As one of the key objectives of the exercise is the exchange of opinions between end users, it is important that the workshop leader allocates participants to the working groups to support this interaction: in international implementing workshops and as long as participants' working languages allows it, end users from different member states or from jurisdictions with different legal traditions should be brought together in the working groups. If a workshop is organised as national judicial training, judges from different courts could be asked to work together; in workshops addressed to both lawyers and judges, the working groups should not be composed of only one of the professional groups etc. Further to solving the case, this diversity would allow participants to obtain better insights on how the questions would be dealt with and how EU Regulations are applied in another country, by a different legal profession, in a different city or court.

➤ *As three exercises are recommended for the workshops implementing this training module, altering the composition of the working groups in each exercise would be a way to further increase participant interactivity.*

Depending on the time available, the trainer coordinating each exercise will have to decide whether all working groups should deal with all case studies or if specific case studies should be allocated to different groups in order to ensure that end users are able to thoroughly examine all issues.

Once the working groups have been set up, they should organise themselves, develop a working method and identify which member(s) of the group will be responsible for reporting the conclusions of their discussion to the other end users. The trainer leading the exercise should be present, following to a certain extent the interaction in each group, offer advice on time management, be available to provide clarification and answer questions and prepared to assist participants if they face major difficulties or their discussion is derailed.

When the groups have completed their work, all participants should come together again to discuss their conclusions. This will allow them to compare their solutions to the features of

the case studies, get further ideas from their colleagues in the other groups and broaden their understanding of the subject matter.

To achieve the objectives of this closing discussion, it is important to ensure that all groups take the floor and present the results of their work. It would be most effective to discuss one case at a time, invite the rapporteur of one of the groups to present their conclusions and the main elements of their discussion and then ask the end users of the other groups for additional comments, different opinions etc. In conclusion, the trainer should summarise the main points raised in the discussion and give his own feedback, so that participants can confirm whether they successfully dealt with the case or whether there could be further improvement.

- **IT-supported learning**

IT-supported learning can enhance the efficiency of the training and give end users the opportunity to gain practical experience by making use of the possibilities the internet offers on cross-border cooperation in civil matters. This way end users will have the chance of becoming familiar with the various EU websites in the area (such as the E-Justice Portal, the EJM website, Eur-lex, the Curia Website and the Judicial Atlas), where they can acquire further information and advice on how to apply the EU instruments covered by the workshop. By efficiently using these websites, participants will actively learn how to find the relevant legal texts and cases and receive assistance on the practical problems they may face when applying EU law in this area.

This method is recommended for the workshop exercise on the applicable law in cross-border divorce cases and the analysis of how to access the law of another member state. Dealing with conflict of laws rules, identifying which law must be applied in a specific case and finding information on how to apply it could be significantly supported by making use of the online tools available. Explaining their function and giving end users the possibility to familiarise themselves with them could be helpful in promoting the use of online tools and ensuring that legal professionals make use of their potential. Here as well, the principle method could be a front presentation or an exercise structured on the basis of case studies to be prepared in smaller groups, but end users must have access to a computer for online research.

➤ *Additional subject-specific ideas and tips on how to improve a sub-session, better support end users' active participation and stimulate their interest will be included in Part V. Further discussion points that could be relevant if there is sufficient time during the workshop will also be proposed.*

III. Organising an implementing workshop: practical aspects

1. Defining the target group – bringing together a group of participants

One of the first elements to consider when organising an implementing workshop is defining the target group. A course on European family law may be structured in many different ways, as it can have a purely national perspective, be open to end users from a specific region in Europe, e.g. from neighbouring countries, or be open to participants from the whole Union. Different options are also available relating to end users' professional backgrounds, as workshops may be organised for a specific legal profession or to promote exchanges between judges, lawyers, officials etc. Finally, a decision on the level of the workshop should also be made, as a workshop may be addressed to participants without any prior knowledge on the subject matter, to legal professionals working on family law but with no experience in cross-border cases or to more experienced judges or lawyers who seek primarily to update their knowledge and the opportunity of discussions with colleagues and sharing experience.

- The specific focus of each implementing workshop will depend on the nature, function, mission and objectives of the training provider.
- Information on how to adapt the workshop programme to the target group's specific training needs has been incorporated in the analysis of the different sub-sessions in Part V of the present guide.

Once established, information on the organisation of the event should be disseminated to the target group and this circle of persons should be invited to attend. Depending on the interest expressed, the resources available and the training priorities, the workshop organiser should decide on an indicative number of participants. For an intensive, interactive workshop a fairly small and flexible group of 20 to 30 participants is recommended. In these circumstances, participants will more readily ask questions, raise additional issues of interest and interact with each other, whereas the trainers will be able to better assess and adapt to the group's rhythm and training needs.

- It is crucial to provide information on the organisation of a training course well in advance, in order to allow potentially interested professionals to organise their schedule in order to attend it. Particularly for seminars addressed to members of the judiciary, having a strict planning of their hearings, the announcement of workshops should take place months before their implementation.

As a factor influencing the success of a training programme is the coherence of the group of participants, it would be useful for the workshop organisers to have some information on end users' backgrounds and training priorities. An initial assessment questionnaire covering some key issues, included in the registration form, could constitute an effective means of doing this. End users of the designated target group could be invited to provide some information on their experience with family law, with European law, with the three basic instruments that will be analysed during the workshop; they could indicate why they are interested in attending this training and what they primarily expect from a workshop. By

evaluating this information, the workshop organisers will be able to assess which end users are in the target group and whose training priorities best match the objectives of the programme.

This same questionnaire could also be of use if the interest expressed in attending the workshop exceeds the number of places available. In such cases, certain registrations will have to be given priority over others and the information contained in the initial assessment questionnaire could constitute a basis for selection. Elements to consider in this context would be the creation of a representative group of end users: if the event is open to more than one nationality, region or professional background or is to be held in more than one working language, ensuring some balance between nationalities, areas, professions, participants' gender and working languages should be sought. A further criterion that should be considered in such a selection would be the possibility that a participant would further disseminate the information he or she receives. If the number of places is limited and more than one person working together are interested in attending, one could attend the course and transmit the knowledge gained to his or her colleagues. Similarly, participants prepared to further disseminate the information acquired during the training could be prioritised, as this would increase the output of the workshop and make training accessible to an even greater number of legal professionals.

➤ A template of the initial assessment questionnaire is available in Annex 6.

After the completion of this procedure, a list of all workshop participants should be drawn up. Information on their professional background, their national or regional origin and possibly also their contact details could be included. It should be noted that before including and making publicly available end users' e-mail or postal addresses, their approval must always be sought. The list of participants should be included in the users' pack and possibly also in the preliminary information that should be provided before the beginning of the event.

➤ A template list of participants is available in Annex 7.

2. Venue and necessary equipment

In order to effectively set up a workshop implementing the training module, it will be necessary to find a venue that provides the premises and equipment that are required for the success of the course.

The option to use conference and working rooms of variable sizes could be explored, in order to allow some variations in participants' working space. A larger room could be used for front presentations in plenary and smaller areas, where participants could work in groups, used for the preparation of the exercises. Further factors to be taken into account are the setting, lighting and air-conditioning of the room, as the creation of a comfortable atmosphere is crucial to allow participants to follow the workshop successfully.

- When only one room is available for the workshop, the possibility to rearrange the layout in order to better accommodate the needs of each workshop sub-session could be considered.

Further to this, it is particularly important for the effective implementation of the course that media technology is available. Trainers should be able to use PowerPoint presentations, videos and other audiovisual material, so LCD beamers, video facilities, film screens and audio equipment could be useful in this context. In workshops implemented in more than one language, interpreting equipment will also be needed.

As in a number of sub-sessions IT-supported learning is the recommended working method, it will be necessary to find a venue that provides work stations with computer and internet access for trainers and participants.

- If there are not enough work stations available in the workshop venue, the possibility to bring together groups of participants to share those provided should be explored as an alternative.
- End users' support could also be sought: participants could be invited to bring their own computer and use it during the event.

The area for coffee and lunch breaks should also be specified, as they play a significant role in encouraging participant interaction and familiarisation with each other. End users will be able to interact with each other in a less formal way during that time, which would most probably also impact on the working atmosphere, allow a more effective exchange of experience and opinions and increase their commitment to the course.

It is also important to ensure that the selected venue is easily accessible, e.g. by public transport in the case of local workshops or close to an airport in the case of international ones. A further element to consider is whether participants travelling to the workshop can easily arrange for accommodation in the area.

3. Preliminary information for end users

After setting up the workshop and taking a decision on the composition of the group of participants, the workshop organisers should ensure that all the information necessary for the effective implementation of the workshop is made available to the end users.

As already mentioned, it is important for the success of the workshop to ensure a level playing field for end users when they arrive at the event. For this reason, some background information on the subject matter should be made available to them in advance and considered as a prerequisite at the beginning of the course. The three key legal instruments (Regulation Brussels II bis, Regulation Rome III and the Maintenance Regulation) could be sent to all participants and access to the e-learning course provided. End users should be encouraged to take some time to look at the material, particularly to look at the e-learning course and take part in the self assessment exercises (quiz questions) contained therein. As a

result, all end users will have an initial acquaintance with the main instruments of cross-border divorce and maintenance, and will be in a position to identify which aspects they are particularly interested in and expect to see analysed during the course and may even develop concrete questions to discuss during the meeting.

Sending one or more of the workshop exercises to participants before the beginning of the workshop could also be considered. The facts of the case studies together with the questions could be sent and participants encouraged to start thinking of possible solutions.

- *In addition to increasing end users' interest in the e-learning course and the workshop in general, this could be a means of reducing the time needed for absorbing the facts of the case studies during the workshop.*

In addition to this, it would be helpful to ensure that participants are also prepared and informed of the organisational details of the workshop. The finalised workshop programme together with some basic information on the trainers' profiles and – provided that they have agreed to this– on the other participants should be given. Practical information concerning the venue, the services available during the course and, when participants need to travel, their accommodation and travel arrangements could also be provided.

Crucial in this context is the timescale for sending preliminary information to participants. Particularly as far as the e-learning course is concerned, it would be important to ensure that end users have sufficient time to go through the material it contains. Similarly, organisational information related to the workshop would be interesting and useful quite some time in advance, so that participants can take it into account for making their arrangements.

- *It is recommended that end users be given with access to the e-learning course approximately one month before the workshop.*

4. Evaluation of an implementing workshop

In addition to the information received during the closing session and the informal interaction throughout the event from trainers and participants on what they appreciated most in the workshop and where they still see room for improvement, feedback could be sought in a more systematic way.

A two-stage evaluation system is recommended, as this would allow not only immediate feedback but also an assessment of the results and impact of the workshop in the longer term.

All participants will be asked to complete a detailed questionnaire at the end of workshop, focusing on the quality of the workshop itself. End users could be asked:

- to give a general evaluation of the seminar content and methodology;
- to comment on trainers, giving their opinion on expert knowledge, contents of lectures, lecturing style, presentation and the discussion of each lecture;

- to give their opinion on whether the subject matter was dealt with according to their expectations, whether they gained new insights into the subject matter and finally whether they received useful advice on the application and implementation of EU family law;
- to comment on the suitability, usefulness and quality of the e-learning course;
- to assess the organisation, the preliminary information and the training material provided;
- to give their opinion on activities, topics and priorities they would like to see further developed.

- *A small incentive, e.g. a souvenir, could be offered in order to increase the number of assessment forms returned.*
- *A template of the immediate evaluation form is available in Annex 8.*

Participants will also be sent an additional evaluation questionnaire at a later stage (e.g. one month after the workshop), focusing on the impact of the training. End users could be asked:

- to assess the impact of the training on their professional life and identify the elements of the workshop that were particularly useful in that regard;
- to provide information on whether they had an opportunity to apply the EU family law instruments in their work;
- to comment on the usefulness of the material provided during the training for their work;
- to indicate whether they had been able to further disseminate the information and material they received in the workshop;
- to give input on how the workshop could be further improved and which other topics should be covered by training.

- *A template of the mid-term evaluation form is available in Annex 9.*

IV. Organising an implementing workshop: structure, content and methodology

1. The breakdown of the training module into thematic units and sub-sessions

For the training module on 'Cross-border divorce and maintenance: jurisdiction and applicable law' and the workshops implementing it, we propose a structure on the basis of thematic units, combining practical and more theoretical sub-sessions.

Each thematic unit will focus on a specific topic of cross-border divorce and maintenance – this division would constitute the basis for structuring any future workshop implementing the training module. For the implementation of this training module, the following four thematic units are proposed: i) Cross-border divorce: jurisdiction and procedure, ii) Cross-border divorce: applicable law, iii) Cross-border maintenance and iv) EU initiatives in the area of matrimonial property.

In order to ensure a thorough understanding of the contents of the training module, each thematic unit should be split into sub-sessions, dealing with specific aspects of the subject matter. Each workshop will thus consist of several sub-sessions, ensuring alternation between theoretical and practical parts; its final structure will however have to be determined taking into consideration end users' prior knowledge and training priorities. With the addition of opening and closing sub-sessions, serving both pedagogical and organisational purposes, a workshop of two and a half days could be set up as detailed below:

Indicative programme for an implementing workshop

A. Opening sub-session

First thematic unit: cross-border divorce – jurisdiction and procedure

- B. Setting the scene: framework and key elements of cross-border cooperation in family matters
- C. Cross-border divorce within the EU: jurisdiction, recognition and lis pendens
- D. Interaction of Regulation Brussels II bis with other EU legal instruments and mechanisms: legal aid, service of documents, preliminary ruling procedure, alternative dispute resolution
- E. Exercise 1: Case studies on a cross-border divorce case (including reference for a preliminary ruling)

Second thematic unit: Cross-border divorce – applicable law

- F. Cross-border divorce within the EU: applicable law
- G. The application of foreign law in a cross-border divorce case
- H. Exercise 2: Case studies on the identification and application of foreign law in a divorce case, making use of E-justice tools

Third thematic unit: Cross-border maintenance

- I. Jurisdiction and applicable law in cross-border maintenance cases
- J. Cooperation of Central Authorities and access to justice in cross-border maintenance cases.
- K. Exercise 3: Case study on a cross-border maintenance case

Fourth thematic unit: EU initiatives in the area of matrimonial property regimes

- L. The proposed Regulations on matrimonial property regimes and the property consequences of registered partnerships
- M. Closing sub-session

➤ A template of an indicative workshop programme is available in Annex 1

The proposed structure currently consists of eleven different sub-sessions. The organiser of an implementing workshop could, however, always rearrange the thematic units, decide to go into greater detail in some of them, merge certain sub-sessions or decide to reallocate the time between exercises and more theoretical presentations.

The different sub-sessions could all be dealt with by different trainers or fewer people who would cover more than one topic. Four to six trainers would perhaps be an ideal number, as this option offers sufficient time for end users to adjust to the trainer's teaching style and for the trainer to better perceive their training needs and address them, while ensuring some variety between the different sub-sessions. The decision on how, concretely, the different sub-sessions should be allocated, belongs to the workshop organiser, the following elements could however be taken into account:

- A first idea would be to allocate thematic units to trainers in accordance with their expertise: a trainer specialised in maintenance could, for example, take over the presentations and the exercise dealing with this topic, another could deal with jurisdiction in cross-border divorce cases etc.
- Another option would be to select the trainer for each presentation on the basis of professional background. An academic could take over the somewhat more theoretical presentations (such as 'Setting the scene: framework and key elements of cross-border cooperation in family matters', 'Cross-border divorce: applicable law', etc), whereas a judge could deal with topics more closely linked to judicial practice (e.g. 'Interaction of Regulation Brussels II bis with other EU legal instruments and mechanisms' or 'The application of foreign law in a cross-border divorce case).
- A further possibility would be to identify an expert to deal with all the exercises in order to have a coherent approach and allow participants to develop a certain working method, whereas the more theoretical part could be covered by several trainers.

➤ More concrete input on the trainer's profile seemingly best fitting to each sub-session will be provided when presenting the workshop's breakdown in Part V.

2. Detailed content of each sub-session: scope and objectives, training material, methodology

A. Opening sub-session

The main objective of this first session is to welcome trainers and participants to the workshop, to set the scene by reminding them of the framework of the training and to encourage their interaction and active participation in the course.

1. Introduction of participants and trainers

The opening session should also be used to allow participants to introduce themselves, present their national and professional background and explain their expectations from the workshop. This way, end users will familiarise themselves with addressing the group, which should facilitate their active participation in the following sessions and they will get to know a little more of their colleagues' backgrounds. Making trainers and participants aware of which nationalities and professional groups are represented in the workshop can be of great relevance in the discussion and an asset in ensuring an effective exchange of information and experience. The opportunity of hearing from participants what experience they already have in this area and what they are primarily seeking from the training could help the workshop leader to better adapt the programme to participants' specific needs, by emphasising certain aspects, making adjustments to the time allocated to the different sub-sessions, etc.

- This may be achieved by inviting participants to put a key question they expect to see addressed during the workshop or to indicate which element made them register to the course.

2. Presentation of the workshop's programme

The workshop should begin with a presentation of its programme, scope and objectives. The four thematic units should be outlined as well as their structure into sub-sessions. The focus of each sub-session will be indicated and the contribution expected from participants in each part of the programme emphasised. It is important that end users appreciate the goal of each sub-session and the flow of the workshop programme, in order to follow the discussions better and to make sure they do not miss the opportunity to raise questions or clarify any ambiguity.

3. Presentation of the training material

The opening session would also be the occasion to present the material contained in the user's pack and its function, so that end users may use it throughout the workshop. The e-learning course could be mentioned and its role as a reference tool following the workshop illustrated. The content of the electronic documentation should be outlined (all related legal texts, links to online sources, suggested solutions to the case studies, national sections and

general bibliography, etc.) and explanations provided on the documents that will be made available to the participants in hardcopy during the workshop (e.g. trainers' presentations and outlines, key legal texts, the case studies for the workshop exercises, documents such as the list of participants, the workshop assessment tools etc.)

4. Presentation of the workshop's organisational aspects

Further to this, all logistical aspects of the workshop should be presented. Details will be given of the locations that will be used during the workshop for the different sessions, the exercises and the breaks, the possibility to use computers, Wi-Fi, a library, a business station etc. and information on the lunches, dinners or other social activities provided. It is important to ensure that end users are reminded of and able to profit from all measures taken to optimise their participation in the workshop and of the importance of the joint activities in allowing a less formal interaction between trainers and fellow participants.

Objectives of the sub-session:

- Introduction of trainers and participants
- Guaranteeing end users' awareness of the workshop programme, scope and objectives
- Ensuring the proper and effective use of the training material (user's pack)
- Provision of practical information necessary for the implementation of the workshop

Training material

Necessary material

(to be made available in hardcopy during the sub-session)

a.	The final version of the workshop programme
b.	The list of trainers and the list of participants

In this sub-session, the workshop leader should demonstrate the entire user's pack, including the e-learning course and the electronic documentation, in order to inform participants of all the different features of the user's pack.

Methodology

1. Timeframe

The time allocated to the opening session will depend on the number of participants attending the workshop. Given that ideally the workshop will be attended by 20 to 30 participants, the opening session should last approximately 45 minutes, to ensure sufficient time for all trainers and participants to present themselves and to provide all the necessary information.

2. Trainers' profiles

The opening session will be held in plenary and coordinated by the workshop leader, the person responsible for ensuring the coherent management of the workshop. There would be an added value in assigning the role of the 'workshop leader' to the person responsible for the organisation of the workshop. He or she would be the most suitable person to present the programme's structure and main objectives, having made all decisions and given priority to specific features of the training over others.

3. Teaching method

This sub-session should be held in plenary with the active cooperation of all participants and as far as possible also of the trainers.

The sub-session will consist of two parts: the first will be interactive with all participants taking the floor and briefly introducing themselves and the second will focus on the provision of information on the workshop. The order in which the different items will be covered during the session will be decided by the workshop leader.

➤ End users' involvement being crucial for the successful implementation of the workshop, the opening sub-session could serve as a good opportunity for fostering discussion between trainers and participants from the beginning, making sure that everyone feels comfortable taking the floor and raising any issue.

B. Setting the scene: framework and key elements of cross-border cooperation in family matters

The first sub-session should stress the relevance of the workshop's subject matter and illustrate the importance of being aware of and prepared to apply European Family Law instruments. Explaining why and how this legislation was developed and which position it holds in the wider legal framework, while making the link to end users' professional life, would be a means to achieve this. Overarching concepts and issues that will be further analysed in the next sub-sessions could also be touched on here.

1. Development and aim of the EU civil justice area

The evolution and main objectives of judicial cooperation in civil matters in the European Union could be the starting point. The changing of the legal basis, the key concepts of mutual recognition and direct judicial cooperation and the main legislative choices that were made (e.g. Regulations versus other legal instruments) could be of relevance here. The principal objectives of this legislation, namely legal certainty and equal, easy and effective access to justice could also be analysed. From a practical point of view, it would be useful to highlight the specific phenomena that this EU legislation aims at impeding, such as parallel proceedings in different member states, forum shopping, etc.

To complete the picture, the various Regulations, directives and policy programmes

constituting today's EU civil justice could be enumerated. Recent legislative initiatives by the European Commission that are likely to have an influence on EU Family Law, such as the proposals on matrimonial property regimes, measures for the protection of vulnerable adults or the rights of children, the Regulation on successions and wills and the initiative on Europe-wide civil status documents, may be referred to as well.

2. General legal framework for cross-border Family Law disputes

In addition to the EU area of civil justice, an overview of the wider legal framework of cross-border Family Law could be provided and the range of legal issues that may arise in cross-border family disputes presented (e.g. issues linked to divorce, maintenance, parental responsibility or marital property proceedings, questions relating to the competent court, the applicable law, the recognition and enforcement of foreign judgments, etc.).

The presentation should point out the variety of legal sources in this field – national, European and international – and highlight the position of EU Family Law within the general legal framework. The Conventions of the Hague Conference on European Private Law, the European Convention on Human Rights, and other international treaties in this area, as well as the Lisbon Treaty and the Charter of Fundamental Rights at EU level would be of relevance in this context.

➤ *The national sections could as well be interesting to look at in this point: Question D.3. indicates to which international or bilateral treaties in the area of Family Law the different member states are party.*

Finally, an illustration of how EU Family Law specifically developed from the Brussels II Convention to the pending proposals on matrimonial property and a first delimitation of its scope could be attempted here.

3. Key concepts and basic elements in dealing with cross-border cases

A brief reminder of some of the main considerations when dealing with questions of international jurisdiction or conflict of laws could also be of help before discussing specific Regulations. Cases with an international element may not always be part of end users' daily work. For this reason, highlighting pertinent international private law features could be a means to ensure all workshop participants are reminded of concepts and structures that will be employed in the next sub-sessions. The different connecting factors that may be considered for establishing international jurisdiction or the law to be applied in a cross-border case (parties' nationality, habitual residence, the forum, etc.), the possibility to rely on the parties' agreement, the need to consider the factual or legal proximity to another case or to protect the weaker party of the dispute and the interaction of conflict of law rules with the procedural and mandatory rules of the forum could be addressed. The choices made by the EU legislator in the various legal instruments would in this way become easier to understand and contextualise.

4. Interpretation of European Family Law provisions

Also important in this context – and perhaps particularly so for workshops targeted to members of the judiciary – is to discuss interpretation. The characterisation of legal terms becomes particularly challenging in an international context, so the interpretation tools employed by the Court of Justice of the European Union (reference to the Regulations' aims and development, the use of the *ex aequo et bono* principle, etc.) must be recalled. Particular emphasis should be given to the mechanism of autonomous interpretation and key concepts of European Family Law analysed in the light of the Court's jurisprudence.

Objectives of the sub-session:

- Inform end users about the broader context of EU divorce and maintenance Regulation
- Illustrate EU activity in the area of civil justice
- Indicate the various legal sources in the area of cross-border Family Law
- Clarify key concepts and basic elements of international private law
- Discuss the interpretation of European Family Law provisions

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	PowerPoint presentation or outline provided by the trainer
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2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Articles 3 and 6 of the TEU
b.	Articles 26, 67, 81 Treaty on the Functioning of the European Union (consolidated version)
c.	Articles 7, 9, 24, 33 of the Charter of Fundamental Rights of the European Union
d.	Article 8 of the European Convention on Human Rights
f.	National sections: Question D.3

Methodology

1. Timeframe

The time allocated to this sub-session could be approximately 45 minutes and should include some time for discussion with participants.

2. Trainers' profiles

An academic could be a good option for dealing with this first item on the workshop agenda. Given the session's objective, priority lies here not so much on the practical experience of the expert leading the session, but on his or her sound knowledge of the developments in this area of law and ability to transmit knowledge on basic yet complex conflict of laws issues.

Alternatively, and depending on the composition of the target group, a judge or lawyer with experience in cross-border issues could be appropriate for making this material accessible to his or her colleagues.

3. Teaching method

This sub-session should be held as a front presentation in plenary. The order of presenting the different points of the sub-session should be defined by the trainer.

In the context of international implementing workshops:

- Point 4 of the analysis could constitute a basis for exchanging information on how key notions are interpreted in different jurisdictions, how judges deal with arising interpretation issues, etc. The trainer could decide whether to simply present the autonomous interpretation of key terminology and the various interpretation tools or to cover these issues as part of an open discussion, seeking input from the end users present in the room.
- This sub-session could also provide an opportunity for touching on the different legal traditions in family matters across Europe. There are significantly different legislative or jurisprudential tendencies in the member states (e.g. the lack of divorce legislation in Malta until recently, the more egalitarian tradition of the Nordic countries, etc.) and a discussion on their background and development could assist end users to better understand and access the various legal systems.

C. Cross-border divorce in the EU: jurisdiction, recognition and lis pendens

Turning to the subject matter of cross-border divorce, the first issue which arises is which court can hear a case. The focus of this sub-session will thus be Regulation 2201/2003 (Brussels II bis) relating to jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility – to the extent in which it addresses the end of the matrimonial bond.

1. Basic elements of Regulation Brussels II bis (history, scope, definitions of key concepts)

A brief illustration of the history of the Regulation could set the scene by referring to the initially conceived convention between EU member states, the subsequent Regulation 1347/2000 and its repeal and the broadening of scope, in order to also include parental

responsibility issues. In 2012 a first evaluation report on the application of Regulation Brussels II bis is expected; an examination on whether there is a need to review the Regulation is also planned.

The scope of the Brussels II bis Regulation would then have to be presented in greater detail. Its applicability in the 26 member states, after the opt-in of UK and Ireland and the exception of Denmark, as well as its temporal scope and the different date of entering into force and becoming applicable should be pointed out.

The material scope of the Regulation covers civil matters relating to divorce, separation and marriage annulment. The notion of “civil matters”, which has been autonomously interpreted by the ECJ, could be analysed, as well as what is meant by marriage in the light of EU law doctrine.

- Cases C-435/06 C-400/10 PPU providing that even decisions adopted under public law rules are covered by the Regulation, could be referred to.
- Given the significant differences in the systems of marriage dissolution recognised in the different EU member states, a discussion on whether divorce, legal separation and marriage annulment form part of the various domestic systems could be interesting.
- Reference could be made at this point to the national sections and more specifically to Question A.1 presenting domestic provisions on divorce, separation and marriage annulment.

Necessary for defining the Regulation's scope is to clarify which issues that may arise in a Family Law dispute are not covered by the Regulation – for example issues of matrimonial property, maintenance, adoption, issues related to the parties' personal status, the name of the spouses, etc.

The Regulation contains in Article 2 a number of definitions. Terms such as “court” or “judgment” that are crucial for the correct application of the Regulation could be clarified at this early stage of the discussion.

2. International jurisdiction

The first element to clarify when starting to analyse the main provisions of the Regulation, is that it only defines international jurisdiction. End users should be made aware that to identify the competent court, once international jurisdiction is established, recourse to the national provisions on civil procedure is necessary.

- For implementing workshops addressed to members of the judiciary, emphasis should be given to the role of the national judge in ex officio controlling whether a seized court has international jurisdiction.

The exclusive nature of jurisdiction under the Regulation should be discussed next, as identifying which legal instrument is applicable is the first step when dealing with a cross-

border divorce case. Article 6 provides that for spouses habitually resident or nationals of an EU member state the Regulation and not domestic international law provisions must be applied for the designation of the court having international jurisdiction. The exception to this principle of Article 7 providing for 'residual jurisdiction' should there be no link to any of the grounds for international jurisdiction in the Regulation should also be presented.

- Court judgment *C-68/07* consolidating the interaction of these two articles could be referred to [here](#).
- The national sections could also be used in this context: Question A.2 deals with the designation of the competent court according to national law, should Article 7 of the Regulation be applicable.

In article 3, Regulation Brussels II bis provides for 7 different grounds for international jurisdiction in cases of divorce, separation and marriage annulment, using habitual residence and nationality as connecting factors. Before presenting the different grounds, it would be helpful to concentrate on 'habitual residence', which should be established by the court, in line with the autonomous interpretation given by the Court of Justice of the European Union.

- Judgments such as *C-68/07*, *C-523/07* and *C-497/10* dealing with the interpretation of habitual residence in matrimonial matters could be discussed [here](#).

3. Specific grounds

The grounds for international jurisdiction on the basis of habitual residence of Article 3.1.a and the jurisdiction of the courts of the spouses' nationality could then be presented, emphasising that they are alternative and not hierarchically set. The two further grounds provided in Articles 4 and 5 for counterclaims raised in the middle of already ongoing proceedings and for the conversion of already pronounced legal separation into divorce respectively, should complete the picture. The application of the Regulation in the case of spouses with multiple nationalities or of third country nationals and the extent to which they are bound by the Regulation's provisions could also be mentioned here.

- The view taken by the Court in case *C-168/08* could be presented [here](#).

The 'lis pendens' rule of Article 19.1, which must ex officio be taken into account by the courts when examining their jurisdiction, should also be addressed. The practical relevance of this rule, aiming at impeding parallel proceedings, should more than one court have international jurisdiction according to the Regulation, could be underlined by giving practical examples.

- Court's judgment in case *C-296/10* could be referred to, as although on parental responsibility issues, it deals with the 'lis pendens' rule of the Regulation.

4. Recognition

The third chapter of the Regulation on recognition is the next key topic. Although the different international conventions provide for different rules on the recognition of foreign judgments, the provisions of the Regulation prevail, according to Articles 59 and 60.

➤ Reference could be made to Question D.3 in the national sections, giving an overview of the international or bilateral treaties to which the different member states are contracting parties.

A brief illustration of the scope of applicability of chapter III could be the starting point of the analysis, as not only court judgments, but also authentic, enforceable agreements between the parties may be automatically recognised according to the provisions of Brussels II bis when they change individuals' civil status in the member state in which they were issued.

The key element here is the principle of automatic recognition contained in Article 21 – the two aspects of updating the civil status records of one member state on the basis of a non-appealable judgment issued in a different one and of recognising a judgment as an incidental question in pending proceedings with no special procedure should be presented.

In addition to this, what happens if one of the parties decides to actively seek the recognition of a judgment in a different member state should also be discussed.

➤ A brief reference on how to identify the competent authorities in the different member states and which steps must be followed for seeking the recognition of a foreign judgment could be given here.

➤ The Judicial Atlas which provides assistance in identifying the competent authority could also be presented.

In this context, it is also important to stress Articles 24-26 relating to the control that can be exercised on the recognition of judgments issued in other member states: there shall be no substantial review of the judgment, no control over the jurisdiction of the national authority rendering it and no refusal to recognise because the institution of divorce, marriage annulment or separation is not allowed in the state in which recognition is sought. The grounds for which recognition may be refused are in the case of divorce limited to four (there is a differentiated approach when it comes to parental responsibility judgments). Besides listing the four grounds mentioned in Article 22, it would be interesting to analyse further their scope and interpretation.

From a more practical point of view, it would be useful to also refer to the concrete steps to follow when seeking recognition of a foreign judgment – the necessary documents, their form, language etc. are described in Articles 37, 38, 52 and Annex I of the Regulation.

5. Jurisprudence

Given the limited number of judgments issued by the Court of Justice of the European Union on matrimonial matters, it would probably be best to integrate their main points where relevant during the presentation of the Regulation (e.g. with regard to double nationality, the notion of habitual residence etc.), instead of having a part of the lecture dedicated exclusively to EU jurisprudence.

- The extent to which the existing ECJ jurisprudence on habitual residence (issued mostly in parental responsibility cases) is also relevant in the context of cross-border divorce could be discussed.
- Depending on the member states represented in the workshop and the available material, reference could also be made to the national jurisprudence contained in the national sections.

Objectives of the sub-session:

- Allow participants to familiarise themselves with the structure and main elements of the Regulation
- Ensure that participants learn how to identify the court that has international jurisdiction in a cross-border divorce, separation or marriage annulment case
- Ensure that participants know how a cross-border divorce, separation or marriage annulment judgment issued in a different member state can be recognised

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000
b.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Explanatory Report on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (approved by the Council
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	on 28 May 1998) prepared by Dr Alegría Borrás, Professor of Private International Law University of Barcelona
b.	Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and the enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses
c.	Information relating to courts and redress procedures pursuant to Article 68 of 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, repealing Regulation (EC) No 1347/2000 – consolidated version
d.	Certificate referred to in Article 39 of Council Regulation No 2201/2003 concerning judgments in matrimonial matters
e.	Practice Guide for the application of the new Brussels II Regulation, European Commission, updated version, October 2005
f.	Judgment of the Court of 29 November 2007, Case C-68/07 , Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo
g.	Judgment of the Court of 2 April 2009, Case C-523/07 , reference for a preliminary ruling under Articles 68 EC and 234 EC from the Korkein hallinto-oikeus (Finland), in the proceedings brought by A
h.	Judgement of the Court of 16 July 2009, Case C-168/08 , reference for a preliminary ruling from the Cour de cassation (France), Laszlo Hadadi (Hadady) v Csilla Marta Mesko, married name Hadadi (Hadady)
i.	Judgement of the Court of 9 November 2010, Case C-296/10 , Bianca Purucker v Guillermo Vallés Pérez
j.	Judgement of the Court of 22 December 2010, Case C-497/10 PPU , Barbara Mercredi v Richard Chaffe
k.	European Judicial Atlas in civil and commercial matters – Matrimonial matters and matters of parental responsibility
l.	European Judicial Network in civil and commercial matters – Divorce
m.	E-Justice portal – Divorce
n.	E-learning course: Thematic Unit I, dealing with jurisdiction in cross-border divorce cases
o.	National sections: Questions A.1, A.2 and A.3, national jurisprudence and national bibliography on Regulation Brussels II bis

1. Time frame

The duration of this sub-session will be 120 minutes (including lecturing time and discussion sessions).

2. Trainer's profile

As this constitutes one of the most important sessions of the workshop, it is particularly important to identify a trainer with strong didactic abilities and the talent to clearly transmit information and explain complex concepts.

Ideally, the trainer should have some practical experience matching that of the end users attending the workshop, but of utmost importance would be his or her sound knowledge of the Regulation and the wider EU law legal context in this area. A professor of Family Law with a comparative knowledge of the Regulation's application across Europe could thus also constitute a good option – particularly for workshops organised on a Europe-wide basis.

3. Teaching method

As the focus of this sub-session lies in the provision of information and a number of different elements of the Regulation need to be covered, the best option would be to organise it as face-to-face training.

The scope of this sub-session is rather large and a great amount of information that is key for effective participation in the rest of the programme needs to be provided. For this reason it is essential that this sub-session is effectively structured. The Regulation's main features should be clearly presented and participants must acquire the knowledge and skills that would allow them to use this legal instrument if confronted with a cross-border divorce case. In order to achieve this, it is essential that the trainer ensures there is sufficient time for participants to raise questions or discuss any unclear points in relation to the Regulation.

Understanding the different grounds for jurisdiction could be significantly facilitated by practical examples or brief exercises. The trainer could thus incorporate such elements in the lecture and encourage end users to reflect on the application of the Regulation on the basis of brief case scenarios.

A further supporting tool for the preparation and implementation of this sub-session could be the first section of the E-learning course, dedicated to Regulation Brussels II bis and its provisions on jurisdiction in cross-border divorce cases. This part of the E-learning course was devised by Professor Cristina González Beilfuss from the Spanish Judicial School. Its structure, references to the legal framework and visual elements complementing the provision of information could be a source of inspiration for the trainer presenting this topic.

➤ If there is time available to enter into a broader discussion after analysing the Regulation, emphasis could be given to practical questions likely to arise in cross-border divorce proceedings, such as: forum shopping, the application in practice of the 'lis pendens' rule, getting a foreign judgment recognised, etc.

D. Interaction of Regulation Brussels II bis with other EU legal instruments and mechanisms: legal aid, service of documents, preliminary ruling procedure, alternative dispute resolution

Having illustrated the main elements of the Regulation and discussed how it may be applied, it would be interesting to complete the picture by addressing its interaction with other EU legal instruments in the context of cross-border Family Law cases.

1. Legal aid

The first instrument could be the Legal Aid Directive (Directive 2003/8/EC), which establishes a right to legal aid including for cross-border proceedings. After a brief overview of the directive's objective and main points, its relevance to cross-border divorce cases could be discussed in the light of article 50 of the Regulation.

➤ Question D.2 of the national sections covers the national systems of legal aid and access to justice, so reference could be made to this part of the training material.

2. Service of documents and access to evidence

Another EU instrument likely to be of relevance in the context of cross-border divorce proceedings and more specifically when dealing with the recognition of a foreign judgment is the Regulation on the service of documents (Regulation 1393/2007). As already mentioned, article 22 includes, as one of the grounds on which recognition may be refused, the inability to prove that the non-present respondent had been served the documents initiating the proceedings. The service of documents Regulation lays down procedural rules facilitating the sending of documents from one member state to another, so its application could ensure delivery 'in sufficient time and in such a way as to enable the respondent to arrange for his or her defence'. The Hague Service Convention could as well be referred to in this context.

A reference to Regulation 1206/2001 on access to evidence could also be made here, in order to complete the picture and provide a comprehensive overview of the EU instruments available for cross-border cooperation in civil matters.

3. Preliminary Ruling Procedure

When applying an EU legal instrument, and particularly a relatively new Regulation such as Brussels II bis, judges and lawyers may find themselves confronted with challenges regarding the interpretation of certain provisions, their interaction with national law etc. The possibility to address such difficulties by referring a preliminary question to the Court of Justice of the European Union could be discussed at this point. Depending on the target group of the

workshop, emphasis could be given to the role of the national judge or the counsel in the preliminary reference procedure and practical advice should be provided on the steps to follow. A reminder of the preliminary reference procedure could be particularly helpful here and a discussion on elements of the Brussels II bis Regulation, the interpretation of which is not absolutely clear and which could constitute the source of a future preliminary reference, could complement this analysis.

- The importance of the preliminary reference procedure in ensuring conform interpretation of European Law could as well be illustrated in this context.

4. Alternative Dispute Resolution

Finally, in the framework of family proceedings, the possibility of avoiding litigation by resorting to alternative dispute resolution measures could be addressed. An illustration of the different EU instruments available in this area could be given – in particular the Mediation Directive (Directive 2008/52/EC) could be considered at this point.

- Question D.1 of the national sections dealing with the provisions on mediation in the different national systems could be referred to here

Objectives of the sub-session:

- Familiarise participants with further EU legal instruments that may be applied in the context of cross-border family disputes
- Ensure that participants receive advice on facilitating access to justice at EU level
- Recall the preliminary reference procedure as a means of assisting national judges in applying the Regulation

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000
b.	Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
c.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the Service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

d.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters
e.	Article 267 , Treaty on the Functioning of the European Union (consolidated version)
f.	Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (The Mediation Directive)
g.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities <i>(when the workshop is addressed to legal practitioners)</i>
b.	Information note on references from national courts for a preliminary ruling <i>(when the workshop is addressed to members of the judiciary)</i>
d.	Convention on the service abroad of judicial and extrajudicial documents in civil and commercial matters , 15 November 1965, Hague Conference on Private International Law
e.	European Judicial Atlas in civil and commercial matters
f.	European Judicial Network in civil and commercial matters
g.	E-Justice portal – Legal aid
h.	E-Justice portal – Service of documents
i.	E-Justice portal – Mediation
j.	National sections: Questions D.1 and D.2

Methodology

1. Time frame

The duration of this sub-session will be 60 minutes, including time for discussion.

A possible challenge in this presentation could be the correct allocation of time. The trainer will have to strike a balance between the number of issues that need to be discussed and the depth of the analysis. The aim of the sub-session being to recall the interaction of the Brussels II bis Regulation with other EU legal instruments, a brief introduction of the different instruments and an illustration of how they may become relevant in the context of EU Family Law would suffice. Should there not be enough time to cover all the suggested topics,

priority should be given to refreshing knowledge of the preliminary reference procedure, as a related question will come up during the first workshop exercise.

2. Trainer's profile

The trainer leading this section should have a strong EU law background. It is not necessary to engage a Family Law expert, it would be sufficient for the person covering this subject matter to be able to make the link between the legal instruments and Regulation Brussels II bis. A member of the judiciary or an expert familiar with the judicial practice would be ideal.

3. Teaching method

This part of the workshop also requires the provision of a significant amount of information from the trainer, so using a lecturing style is recommended.

In the context of the different items that will be addressed, the possibility to include practical examples (e.g. on the application of the service of documents Regulation), to ask for participants' input (e.g. on the use of mediation in their member state or their experience with preliminary references) or to provide brief exercises requiring end users' contribution (e.g. asking them to draft a preliminary question) should be considered, in order to increase the interactivity of the sub-session.

- *Given the diversity of the items to be discussed, making regular references to the legal texts and encouraging end users to go through them and familiarise themselves with their structure would be crucial.*
- *If the national context is discussed in international implementing workshops, further to the two questions of the national sections already mentioned, references could be made to domestic systems for the service of documents and the competent authorities in the different member states identified with the help of end users.*
- *The integration of the preliminary ruling procedure in national judicial systems could also be discussed, as some differences may be found in domestic legal frameworks and especially and especially in the judicial practice of the member states.*

E. Exercise I – Case studies on cross-border divorce: jurisdiction and procedure

After presenting the legal framework and discussing its application, it would be good to consolidate the knowledge acquired by applying it to specific cases. This first workshop exercise will give participants the possibility to employ in practice what they have learned on identifying the court that has international jurisdiction in cross-border divorce disputes.

This session will allow trainers to assess whether some aspects of the issues have not been sufficiently explained and give them the opportunity to remedy that during the preparation and discussion of the case studies. Similarly, end users will also have the opportunity to evaluate what they have learnt and raise any remaining questions or further issues they would want to discuss.

The first workshop exercise was devised by Professor Wolfgang Hau, Vice-President and Chair for Private Law, Civil Procedure and International Private Law at the University of Passau. Professor Hau has prepared five different case studies covering a number of different situations likely to arise in cross-border divorce proceedings. Following the illustration of the facts of each case, he has added an indicative solution of the question.

The five case studies are structured to cover the key issues likely to arise when designating the court that has jurisdiction to hear a cross-border divorce case. Building on simple and sometimes even on the same facts, the case studies were created with the aim of allowing end users to thoroughly discuss the question, saving them time by clarifying complex facts.

More concretely:

Case 1 deals with the applicability of European Family Law and Regulation Brussels II bis and examines the seized court's international jurisdiction.

Case 2 requires the examination of the grounds of jurisdiction of Article 3 and their exclusive nature under Article 6 of Regulation Brussels II bis.

Case 3 involves again the grounds of jurisdiction of Article 3, the application of Article 6 as well as the residual jurisdiction of Article 7 of Regulation Brussels II bis.

Case 4 concludes with recourse to national law, as international jurisdiction cannot be established according to Regulation Brussels II bis.

Case 5 asks end users to draft a preliminary reference in order to interpret the concept of 'habitual residence'.

➤ Both the questions and the suggested solutions are available in Annex 3.1. of the guide to the training module.

Objectives of the sub-session:

- Consolidate the knowledge acquired during the previous three sub-sessions
- Allow participants to apply Regulation Brussels II bis in a number of different situations
- Identify any unclear point and address end users' remaining questions
- Invite participants to draft a preliminary ruling question
- Improve end users' communication skills

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
b.	Article 267 Treaty on the Functioning of the European Union (consolidated version)
c.	Workshop exercise I: Case studies 1 - 5 on cross-border divorce: jurisdiction and procedure

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities <i>(when the workshop is addressed to legal practitioners)</i>
b.	Information note on references from national courts for a preliminary ruling <i>(when the workshop is addressed to members of the judiciary)</i>
c.	European Judicial Atlas in civil and commercial matters
d.	European Judicial Network in civil and commercial matters
e.	National sections: Questions A.1, A.2, A.3, D.3 and D.4 of the German and Austrian national section could also be made available

Methodology

1. Time frame

Approximately 120 minutes should be allocated for the first workshop exercise. Fifteen minutes could be dedicated to introducing the cases and explaining the organisational aspects of the exercise, the working groups would then have approximately an hour to prepare the five case studies and the plenary discussion, in which all groups will present their conclusions, could last approximately forty five minutes.

2. Trainer's profile

For the implementation of this session, a trainer with a similar professional background to that of the participants should be identified. The allocation of the workshop exercise to an expert with experience in dealing with cross-border divorce cases would also be beneficial, as

he or she would be able to provide additional input from his own experience on the steps and procedures to follow.

3. Teaching method

This session is based on case studies that will be prepared by working groups. It could start in plenary with a brief introduction of the organisational aspects and the allocation of participants to working groups by the trainer or the workshop leader.

Participants should subsequently move to the working space provided to each of the groups, designate one or more rapporteurs and go through the facts of the cases. Any questions or clarifications should be discussed with the trainer coordinating the workshop and all members of the working groups should be encouraged to participate and present their ideas on how to solve the case.

When in plenary, it would be best to start with the answers of all groups to the first case study, then proceed to the second etc. The trainer should be open to any opinions expressed and encourage end users to present their thoughts, even if these differ from those of their fellow group members. Before closing the exercise, the trainer could summarise the discussion and provide some final conclusions, allowing participants to recapitulate the steps to follow for identifying the court which has international jurisdiction and confirm the solutions of all five case studies.

- *If during the discussion the trainer or the workshop leader realise that some of the issues that had been covered earlier are not clear to the participants, they should take some time at the end of the thematic unit on cross-border divorce: jurisdiction and procedure to explain them again in a more understandable manner.*

F. Cross-border divorce within the EU: applicable law

1. Conflict of laws in divorce cases: the background of Regulation Rome III

Having established which court has international jurisdiction to hear a cross-border divorce case, the next issue that judges and lawyers will find themselves confronted with is which law should be applied. Council Regulation 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation will thus be the focus.

The differing legal frameworks in the member states that are bound by the Rome III Regulation and those that are not, should be illustrated. If the forum is in one of the latter, the designation of the applicable law is made by recourse to domestic conflict of laws rules. In the case of the 14 member states that currently participate in the enhanced cooperation and are bound by the Regulation, applicable law would be defined by reference to its Chapter II. Lithuania, having announced its will to join the enhanced cooperation in June 2012, is expected to soon become the 15th member state in which Regulation Rome III is applicable.

To complete the picture, further international and bilateral conventions dealing with conflict of laws in divorce cases, such as e.g. the Hague Convention of 12 June 1902 relating to the settlement of the conflict of the laws relating to marriage, could be mentioned.

- Question A.4. of the national sections indicates which member states have participated in the enhanced cooperation implemented by Regulation Rome III
- In Question D.3. of the national sections international and bilateral family law conventions binding the member states are listed.

Introducing Regulation Rome III, the initial attempt at adopting an EU legal instrument regulating both jurisdiction and applicable law in cross-border divorce cases could be mentioned. After the lack of unanimity in the Council and in the light of the Lisbon Treaty, 14 member states decided to proceed to harmonising their conflict of law rules in this area through an enhanced cooperation procedure. The mechanism of enhanced cooperation should be illustrated at this point by presenting its legal basis, current EU experience with it and the main arguments in favour of and against this scheme.

Before beginning with the presentation of the Regulation itself, it would be important to stress that it does not aim at harmonising national laws on matrimonial matters or at achieving the recognition of unions that are not recognised in all jurisdictions, as indicated in its Article 13. According to point 9 of its preamble, Regulation Rome III was adopted in order to provide a single set of rules for determining the applicable law and to avoid “race to the court” phenomena.

2. Scope and key features of the Regulation

Having discussed the Regulation’s territorial scope by presenting the member states that participate in the enhanced cooperation, its temporal and of course material scope should also be addressed. Adopted on 30 December 2010, the Regulation has only been applicable since 21 June 2012, as indicated in Article 18’s transitional provisions.

Ratione materiae, it would be important to point out that the Regulation applies in international matrimonial matters, irrespective of the nature of the court hearing the case – this could for example be an administrative authority. The material scope of the Rome III Regulation follows that of Brussels II bis, in an attempt to ensure some parallelism between the designation of the forum and of the applicable law, covers however only divorce and legal separation and does not deal with marriage annulment. Similar to the provisions on international jurisdiction, ancillary issues to the marriage such as the spouses’ name or civil status, matrimonial property or maintenance do not fall within the scope of the Regulation. Also not defined according to Rome III is the law regulating the validity of the marriage or the parties’ capacity to marry, as well as parental responsibility issues.

An illustration of some of the Regulation’s key features could also be helpful in setting the scene before discussing concretely how the applicable law is defined. Such elements would be the universal application of the Regulation, namely the possibility to designate as

applicable the law of a country not participating in the enhanced cooperation (Art 4) and the exclusion of renvoi, by defining substantive and not conflict of laws rules as applicable (Art 11). It is also important to point out from the start that national judges are not obliged to apply a foreign provision manifestly contrary to their domestic public policy in the context of the Regulation (Art 12). The similar exemption of Art 10, providing for the application of the law of the forum should the law governing the case not allow divorce or access to divorce on equal terms to both spouses, could also be referred to.

3. Choice of applicable law by the parties

Regulation Rome III prioritises the choice of the spouses when it comes to the applicable law, providing them however with a framework within which they may agree on the law governing the dissolution of their marriage. The four different options available to the parties when deciding on the applicable law should be presented. Issues such as the interpretation of the notion of habitual residence or how the connecting factor of nationality is used in case of spouses with multiple nationalities could be described.

➤ Including practical examples that better illustrate the different options open to the parties would bring an added value to this part of the programme.

The next point to address could be the parties' agreement. The requirement to agree on the applicable law before the initiation of proceedings, the exception to this rule only if so provided under the law of the forum and the rules ensuring the formal and substantial validity of the agreement in Articles 6 and 7 could be described.

➤ Question A.5. of the national sections could be discussed at this point, as it indicates in which member states the parties may agree on the law governing the case even after seizing the national court.

According to Article 6, the validity of the agreement should be examined in the light of the law that would be applicable if it is indeed valid. The possibility offered to the spouses to challenge such agreement according to the law of their habitual residence in certain circumstances and the need to ensure that both parties have made an informed choice when concluding the agreement should be discussed. It would be good to refer to point 18 of the Regulation's preamble, as it analyses the principle of informed choice and stresses the need to respect the rights and equal opportunities of the spouses.

➤ Particularly in workshops addressed to judges, a discussion on how to assess whether the parties have made an informed choice could be of interest.

The formal validity of the spouses' agreement on the law applicable is also regulated. The provisions of Article 7 could thus be analysed and the need to provide written proof indicated. The role of electronic communication and the possibility to accept a choice of law agreement relying on e-mails or other electronic means should complement this discussion.

To complete the picture, the need to respect any additional requirements set by the law of the member state in which the spouses have habitual residence could be addressed.

- Reference could be made to question A.6. of the national sections illustrating whether special requirements for the validity of the agreement exist in the different member states.
- A discussion on the role and level of recognition of electronic communication in the different jurisdictions could take place in workshops organised in an international context.

4. Applicable law in the absence of a choice by the parties

The next point of the analysis should be the designation of the applicable law when there is no prior agreement by the spouses. Article 8 of the Regulation provides four different connecting factors, according to which the law governing the divorce or legal separation shall be defined. Unlike Regulation Brussels II bis, in this case the four criteria are set out hierarchically, so the seized court should examine them in the indicated order. Given that one of the connecting factors is nationality, reference should be made to point 22 of the preamble, leaving the decision on how to address such situations to national law. It would however be important to stress the need to respect the general principles of EU law and more specifically the principle of non-discrimination in Article 45 TFEU and Article 21 of the Charter of Fundamental Rights. Habitual residence also being a connecting factor, the need to interpret it autonomously could again be pointed out.

Finally, Article 9 providing an additional connecting factor for identifying the applicable law when converting a legal separation into divorce could be mentioned. The recourse to the provisions of Article 8 or to an agreement of the spouses, should domestic law not regulate such conversion, should complement the analysis.

- Question A.1. of the national sections, indicating the scope of member state national provisions when it comes to divorce, marriage annulment and legal separation, could be referred to here.

Objectives of the sub-session:

- Introduce the concept of enhanced cooperation
- Allow participants to familiarise themselves with the structure and main elements of Regulation Rome III
- Ensure that participants are able to identify the applicable law in proceedings in member states participating in the enhanced cooperation

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	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
b.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Articles 81.3 and 326-334 of the Treaty on the Functioning of the European Union (TFEU) Article 20 of the Treaty on European Union (TEU)
b.	Council Decision of 12 July 2010 authorising enhanced cooperation in the area of law applicable to divorce and legal separation
c.	21 of the Charter of Fundamental Rights of the European Union, Articles 2,3 and 6 of the Treaty on European Union (TEU) Article 45 of the Treaty on the Functioning of the European Union (TFEU)
d.	Hague Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage <i>(Document only available in French)</i>
e.	E-learning course: Thematic Unit II, dealing with the applicable law in cross-border divorce cases
f.	National sections: Questions A.1, A.4, A.5, A.6 and D.3, national jurisprudence and national bibliography on Regulation Rome III

Methodology

1. Time frame

This sub-session should last approximately 90 minutes, in order to ensure sufficient time for presenting the key elements of the Regulation and discussing any issue raised by participants.

2. Trainer's profile

As the main priority of this presentation is again on the provision of information and the analysis of some theoretical concepts, a trainer with strong pedagogical skills should be identified.

Experience with cases with an international element could be an asset, but as the Regulation is a new instrument that has not yet been applied, it must be ensured that the trainer engaged for this session has a good knowledge of this legal instrument. A judicial trainer or an academic should thus be approached. Alternatively, a judge or lawyer who has closely followed the recent developments in this area of EU law could be a good choice.

➤ *Crucial for the trainer giving this presentation is to ensure that he or she is up to date and provides information corresponding to the state of play at the time of the workshop. Enhanced cooperation being an open procedure which further member states may join, care must be given to not disseminating any invalid information.*

3. Teaching method

A front presentation in plenary would again be here the most effective way of providing information on the Regulation. Enhancing the speech with brief examples and case studies, especially when presenting the different connecting factors, could be a means to make the material more accessible. Requesting participant cooperation in identifying which law would apply in these scenarios would help to further engage them and ensure that they get a better understanding of how the Regulation should be applied.

A significant amount of information has again to be transmitted during this sub-session. What should perhaps be particularly emphasised is that the described legal framework currently applies in only 14 (soon to be 15) of the member states, whereas a whole different approach has to be followed in the remaining 12. The applicability of Articles 3 and 8 of the Rome III Regulation could be a further focal point of the analysis. A clearly structured presentation, guaranteeing that there is room for end users to ask questions and revisit problematic elements, would thus be the most effective way to deal with this topic.

The designation of the applicable law in cross-border divorce cases is the subject of the second section of the E-learning course, also devised by Prof Cristina González Beilfuss. The material included there may also be consulted by the trainer, referred to when making the analysis or made available directly during the presentation.

G. The application of foreign law in a cross-border divorce case

1. Rules regulating the application of foreign law

According to the provisions of Regulation Rome III, a national judge may have to apply foreign law in a divorce or legal separation case. Constituting one of the main challenges that arise in cross-border proceedings and, in certain cases, the reason why some member states choose not to participate in the enhanced cooperation, it would be interesting to look more closely at how foreign law may be accessed.

Regulation Rome III and European law in general do not deal with this question, which is directly linked to the national systems of civil procedure and regulated merely at national

level. The need to also examine whether international treaties on accessing foreign law have precedence in the jurisdiction in question must be borne in mind.

- Question D.5. of the national sections provides an overview of the way foreign law is treated in the different EU jurisdictions. Depending on the national background of the workshop's participants, a deeper analysis of the practice in certain member states could be included in this sub-session.
- Question D.3. of the national sections should also be referred at this point, as it provides an overview of the international and bilateral treaties to which EU member states adhere. Participants from member states that are contracting parties to these treaties could present their experiences with application.

In order to provide a better overview of the application of foreign law in practice, it could be useful to briefly illustrate some of the main choices made by the national legislators in this regard. Certain jurisdictions follow the 'iura novit curia' principle, according to which the judge must ex officio search for and apply the law of another country. In other legal systems, foreign law is subject to proof and information on its content, interpretation and application has to be made by the parties. It could thus be interesting to discuss the role of the judge and the role of the parties in the application of foreign law.

- A reflection on the advantages and disadvantages of these two systems could be incorporated in the discussion session with the participants, if time allows.

2. Traditional means of accessing foreign law

The next element of great practical significance is which means may be used to ascertain the contents of foreign law. The Ministries of Justice and Foreign Affairs or contacts with embassies could constitute possible sources, as well as formal evidence tools, such as expert opinions, bibliography or information contributed by the parties. In several member states, comparative law institutes play a crucial role, assisting courts in identifying the contents of foreign law.

- Question D.4 of the national sections must be referred to here, as it provides an overview of databases and online tools providing information on family law in the different member states.
- An exchange of information and experience between end users on which means they have or would use if asked to apply foreign law would be particularly interesting in workshops addressed to members of the judiciary.

3. Limitations on the application of foreign law

The limits of the judge's obligation to apply foreign law would also have to be addressed. If the evidence provided is not sufficient for the content of the foreign legislation to be

considered effectively proven, the case will have to be decided applying the laws of another jurisdiction.

The question of when foreign law is deemed proven should thus also be addressed, as some systems contain certain standards on when the available evidence is sufficient (e.g. Slovenia, Belgium, Bulgaria etc.), whereas in others this assessment is left to the judge (e.g. in France, Netherlands, Portugal). Time may as well play a role here, as in some cases the contents of foreign law should be ascertained within a certain period (e.g. Austria). The consequences of foreign law not being proven could be presented next, as in most cases this entails recourse to another law, possibly the *lex fori*. Finally, the possibility to appeal against a judgment on grounds related to the application of foreign law could be explored, as in principle foreign law may become the subject of judicial review.

- Here as well, input should be sought from participants in international workshops on the practice in different EU countries.
- In events organised for purely domestic audiences, the trainer running this sub-session could provide more concrete information on the national system.

National judges' obligation to apply foreign law is also limited in the case of incompatibilities with the domestic legal system: if an applicable foreign law provision is contrary to the public policy of the forum, the judge would in principle have the right to refuse its application.

4. EU online tools facilitating the application of foreign law – the European Judicial Network (EJN) in civil and commercial matters

Having discussed the challenges of accessing and applying foreign law and the related legal framework in the member states, it would be useful to present further structures and tools aiming at assisting with the application of other member states' law. A number of initiatives were developed at EU level in order to enhance judicial cooperation, also aiming at supporting the creation of a European area of justice.

The European Judicial Network in civil and commercial matters (EJN) was the first major initiative in this regard. It is a flexible, non-bureaucratic structure, which operates in an informal way and aims at simplifying judicial cooperation between the member states and access to justice for persons engaged in cross-border litigation. It gives unofficial support to the central authorities as stipulated in their instruments, and facilitates relations between different courts.

The Network is composed of:

- Contact points designated by the member states participating in the Network (all EU member states except Denmark).
- Bodies and central authorities that are specified in Community law, in international instruments where member states are also participants, or in domestic law relating to judicial cooperation in civil and commercial matters.
- Liaison magistrates with responsibilities for cooperation in civil and commercial matters.

- Other judicial or administrative authorities responsible for judicial cooperation in civil and commercial matters whose membership is deemed to be useful by the member state.

The contact points play a key role in the Network, as they have a dual function. Judicial and other local authorities of their member state can approach them directly if they require assistance with cross-border cases. Further to this, contact points of other EU countries can refer to them when seeking information or practical assistance on their domestic system.

➤ More detailed information on the network and its structure, function and objectives could be provided, as described in the Council Decision of 28 May 2011 establishing a European Judicial Network in civil and commercial matters and available on the EJM website.

The details in the section of the EJM website which is dedicated to divorce could also be referred to. This includes information not only on EU rules, but also on the related substantive law provisions of the member states participating in the Network.

➤ In question D.4 of the national sections, links to the part of the EJM website containing information on divorce in the different member states are included.

5. EU online tools facilitating the application of foreign law – the European E-Justice Portal

The European E-justice Portal is the most recent initiative in the area of European justice and it is conceived as an electronic one stop shop. It not only includes information on the legislation and case law of the European Union and the member states, but also provides an overview of member states' judicial systems, the various legal professions and their networks, advice on how to find lawyers, notaries, mediators, legal translators and interpreters in Europe. It facilitates access to official and trusted documents by making EU and national business, land and insolvency registers available, it contains tools such as standardised forms, glossaries and terminological databases and provides information on judicial training.

With regard to the application of foreign law in divorce cases, it provides a comprehensive overview of sources that may be used for accessing the legislation of another member state and includes links to the information contained in the EJM website on divorce matters.

From 2013, the European E-Justice Portal shall constitute an electronic 'one-stop-shop' for justice in the EU, centralising already available and newly developed information, tools, databases and applications. It will facilitate access to justice and the execution of judicial procedures.

➤ Depending on the state of development of the E-Justice Portal, references to some of the other websites may not be necessary, as their content will be integrated in the Portal (e.g. the EJM website, the Judicial Atlas, etc.)

6. EU online tools facilitating the application of foreign law – the N-Lex database

A further tool that may in certain cases be useful in finding foreign law provisions and information on their application is the N-Lex database. Developed through the cooperation of the European Publications' Office with national governments, this pilot project includes direct links to national legal databases, provides guidance on how to use them and contains a multilingual dictionary in order to facilitate research.

The database includes a search engine, by means of which information on national family legislation can be located by using key words related to the subject of interest (e.g. divorce, separation, family etc.)

7. EU online tools facilitating the application of the civil justice instruments – JURE database

JURE database was developed in order to centralise all case law of the European Union and the member states on Regulation Brussels I, Brussels II and the preceding Brussels and Lugano Conventions.

Summaries of judgments on jurisdiction, recognition and enforcement are available not only in their original language, but also in English, French and German.

➤ This database can be particularly useful when working with the training module's national sections. References to specific national provisions are contained there, several of which may be accessed via N-Lex.

8. EU online tools facilitating the application of the civil justice instruments – the European Judicial Atlas in Civil Matters

Although not really useful in a conflict of laws context or for accessing foreign law in divorce cases, the European Judicial Atlas in Civil Matters could also be presented here, in order to provide a comprehensive overview of the EU online tools available in the area of civil justice. Aiming at facilitating cross-border procedures and the identification of the competent authorities in other member states, the Judicial Atlas compiles information on national procedural rules and offers a number of standardised forms facilitating cooperation between courts and judicial authorities.

In the area of divorce, the atlas contains information on the authorities that are competent for the recognition of foreign divorce judgments, as designated by the member states. Practical information on legal aid, service of documents and taking of evidence in the different EU countries is also available.

➤ Reference to the earlier presentation on the interaction of Regulation Brussels II bis with other EU legal instruments could also be made here.

- In workshops organised for a purely domestic audience, additional tools or databases available at national level could also be presented in this context. Question D.4. of the national sections provides information on such online sources.
- Depending on participants' background and level of familiarisation with European law, this analysis could also include other websites, such as eur-lex, curia, etc.

9. EU online tools facilitating the application of the civil justice instruments – DEC.NAT, National decisions database of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

The Court of Justice has established a collection of the case-law of the courts and tribunals of the Member States concerning European Union law, on the basis of a selective trawl of legal journals and direct contact with numerous national courts and tribunals. An analysis of the main decisions is available via the 'DEC.NAT – National decisions' database of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

This database contains the national case law regarding European Union law and makes reference to annotations and comments in books and articles related to national decisions and judgements delivered under the preliminary ruling procedure by the Court of Justice of the European Union concerning those matters. The database contains some 21,400 references to national decisions concerning Community law from 1959 up to the present day. It has been lastly brought up to date on 10th November 2011. Keywords and references to the provisions concerned are available in French and in English, whereas the national data are mentioned in the original language of the decision. Information on national case law on the EU family law instruments can thus be retrieved through research in this database.

Objectives of the sub-session:

- Present the instruments available for accessing foreign law
- As far as possible, provide some information on accessing foreign law in the different member states.
- Raise awareness of the different EU online tools which facilitate access to the law of the member states.
- Provide a context for the use of the various EU online tools, explaining how they can assist in the framework of cross-border proceedings.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	European Judicial Network in civil and commercial matters
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b.	European Judicial Network in civil and commercial matters – Applicable Law
c.	European Judicial Network in civil and commercial matters – Divorce
d.	European E-justice portal
e.	E-Justice portal – member state law
f.	E-justice portal – Divorce
g.	N-Lex Database
h.	European Judicial Atlas in civil and commercial matters
i.	European Judicial Atlas in civil and commercial matters – matrimonial matters and matters of parental responsibility
j.	DEC.NAT, National decisions database of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.
k.	Jurisdiction Recognition Enforcement Database
l.	National sections: questions D.4 and D.5
m.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters
b.	Eur-lex – Access to European Union law
c.	Curia- the website of the Court of Justice of the European Union
d.	Hague Conference on Private International Law website
e.	National sections: all questions relating to domestic law provisions

Methodology

1. Time frame

The duration of this sub-session should be approximately 75 minutes, to also provide time for looking at the different websites. In principle, 20 to 30 minutes could be dedicated to the first part of the sub-session, providing the theoretical background on accessing foreign law and a further 50 minutes allocated to presenting the different online tools.

Given the subject-matter of this sub-session, which partly deals with national law, certain flexibility on its structure will be necessary. If an implementing workshop is addressed at an international audience, there may be more to discuss on how foreign law is applied in the different member states, whereas in a purely domestic context this discussion may be much

shorter.

Given the broad scope of the sub-session, time may become an issue. Should this be the case, it should be noted that participants will also have the opportunity to work with the different websites during Exercise II, so an illustration of their key functions would suffice if there is no time to present all their features.

2. Trainer's profile

The main characteristic of this sub-session is its interactivity, so the trainer's communication skills are the primary consideration. It is also crucial to find a trainer with experience with the tools and databases that must be presented and also good IT-skills.

An experienced judicial trainer could be considered for this sub-session or a judge or practitioner who deals with cases with an international element.

3. Teaching method

This sub-session is divided into two different sections – the first addressing the question of accessing foreign law, which could be structured as an interactive discussion, and a second section on the presentation of online tools, which would best be structured as IT-supported learning.

Some basic information should of course be provided in the first part, but the trainer must mainly try to engage end users in dialogue and encourage them to share their thoughts and experiences in applying foreign law. The composition of the group will be crucial for designing the first part of this sub-session: in purely domestic workshops, the trainer could, after presenting a general overview of how the application of foreign law is regulated in the different member states, focus on the situation in the country in question and illustrate with the help of the participants how national legislation and practice deal with this issue. In workshops with participants from different member states, this could be a very interesting session, as after the more theoretical illustration of the available legislative options, input on the current practice across Europe may be sought.

In workshops addressed to legal professionals who are not very familiar with cross-border proceedings, the trainer could invite end users to reflect and present ideas on how they would react if asked to identify and use foreign law in a case, again creating an atmosphere of dialogue.

➤ *Additional information and practical advice may become available this way, as end users will be able to profit from each other's experience.*

For the second part of this sub-session, the trainer should have internet access and demonstrate the relevant websites. The overall structure, the main features and useful tools, such as language selection, glossaries, search engines etc. contained in each of the websites should be presented.

- Links to previous discussions in the workshops can be made when presenting the online tools in order to better highlight their functionality and allow participants to appreciate their added value in cross-border proceedings.
- The same result could be achieved by using practical examples involving the application of foreign law and referring to the information contained in the online databases during their analysis.

For participants to profit as much as possible from the second part of the training, having access to computers and the internet is crucial. Even if it is not possible to provide as many work stations as end users in the course, all end users should ideally be able to follow the presentation of the different features of the websites and have some time for exploring them.

- The content of the national sections could also be highlighted in the framework of this presentation, in a more general way. Further to the specific questions dealing with access to foreign law, the online tool could be displayed, allowing end users a direct perception of its function.

H. Exercise II: case study on the identification and application of foreign law in a divorce case, making use of e-justice tools

Once the European framework of identifying the applicable law and information on how to access foreign law have been provided, participants could be asked to apply the Rome III Regulation in the context of more interactive exercises.

The second workshop exercise, also devised by Professor Hau, is structured as a follow-up to the work of end users during the first exercise. Having established which courts would hear the divorce case, end users could continue their work by reflecting on which law would govern each of the five cases.

The object of this exercise is to familiarise participants with the text of the Regulation and invite them to consider how they would deal with the application of foreign law. Allowing them to acquire some experience with the various online databases and tools is the second priority, as this could be an effective way of encouraging end users to continue using these websites in their professional life.

Here as well, active participation by end users can be useful for the trainers, giving them the opportunity to identify which points have not been sufficiently explained and where questions may still arise. Participants will also have the possibility to better assess their understanding of the concepts and rules presented and seek further clarifications if necessary.

The features emphasised in the different case scenarios are the following:

Case 1 requires the application of Regulation Rome III when there is no agreement between the parties on the applicable law. Habitual residence is the connecting factor and the seized court has to apply its own family law rules.

Case 2 involves again the application of Article 8 of the Regulation, only this time a different connecting factor is of relevance, leading however again to a situation where the law applicable is that of the forum.

Case 3 again deals with the application of Article 8. This time, however, it is point d, according to which if all other connecting factors are not present in the case, lex fori applies, that indicates the law governing the case.

Case 4 also requires the application of Article 8 of the Regulation. Here, applicable law is the law of a non-member state, so the discussion could extend to ascertaining the contents of foreign law using the tools available at national level.

➤ Question D.5 of the national sections could be of help in the context of this case study.

Case 5 is slightly different to the one in Exercise I. It also involves the application of the Regulation and its Article 8, raises however some additional issues, such as how to deal with multiple nationalities, how to assess the validity of the marriage and under which conditions a marriage can be dissolved. In order to address them, recourse to national law and to international treaties binding the member states involved in the case is necessary.

➤ Questions D.3 and D.4 of the national sections could be of help in the context of this case study.
➤ Both the questions and the suggested solutions are available in Annex 3.2. of the guide to the training module.

Objectives of the sub-session:

- Consolidate the information provided on designating and applying the law governing a cross-border divorce case.
- Provide end users with some experience in applying foreign law.
- Provide end users with some experience of using the different EU online tools and databases when working on a cross-border divorce case.
- Identify any remaining unclear points on the designation of the applicable law and address them within the sub-session.

Training material

Necessary material

(to be made available in hardcopy during the sub-session)

a.	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
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b.	European Judicial Atlas in civil and commercial matters
c.	European Judicial Network in civil and commercial matters
d.	European Judicial Network in civil and commercial matters, applicable law, Germany
e.	European Judicial Network in civil and commercial matters, divorce, Germany
f.	N-Lex database
g.	Hague Conference on Private International Law website
h.	National sections: questions A.4, D.3, D.4 and D.5 of the German and Austrian national section could also be made available
i.	Workshop exercise II: case studies 1 - 5 on cross-border divorce – applicable law

Methodology

1. Time frame

For the first workshop exercise, approximately 1 hour 45 minutes could be allocated. The introduction of the cases would be very brief, as they are the follow-up to the previous workshop exercise. Some time would simply have to be dedicated to creating the working groups.

➤ It would be preferable to create new working groups in order to allow participants to interact with as many of their colleagues as possible.

Approximately an hour could be provided to the working groups for preparation and the final debriefing session could last 30-40 minutes.

2. Trainer's profile

A judicial trainer could take over the exercise or a practitioner with experience in cross-border cases and well informed on the Regulation. Here, as well, IT-skills would be important, as the trainer should be in a position to assist end users to make use of the different online sources. Good interpersonal skills would also be an asset, because the trainer will have to motivate participants and encourage them to work together and participate in the discussions.

3. Teaching method

This session is again structured on the basis of case studies to be prepared by working groups. The key difference is that, in this exercise, all groups should be supplied with a computer and have internet access, in order to consult the online databases to solve the cases.

- Particularly in the fifth case study, online research would significantly facilitate solving the case.
- Questions D.4 and D.5 of the national section relevant to the case (the German national section) could also be useful in this context.

A change of working space would, in this exercise as well, be recommended in order to create a different atmosphere and further stimulate participants. Appointing a rapporteur would also be a way to improve the final discussion. The trainer should be available for dealing with any problems or questions raised by the groups. He or she should also encourage end users to refer to the different online sources, explore them and try to identify how to obtain information relevant to the case.

As soon as the different working groups complete their work, the rapporteurs should present the results. Here as well, all proposed solutions should be considered and possible differences identified and discussed. In order to ensure that no unclear points remain by the end of the session, the trainer could also provide some feedback on how the different cases could be treated, taking into account the solutions suggested by Professor Hau who devised the cases.

- In the discussion in plenary, in addition to the actual conclusions reached by the groups, citing the sources they employed could also be interesting. A comparison of which kind of information can be most efficiently accessed in the different databases could also be useful to participants for the future.
- In this exercise as well, if the trainer detects problems in the proper understanding of the subject matter, some time should be taken for revising the issues identified as problematic.

I. Jurisdiction and applicable law in cross-border maintenance cases

1. The applicable legal framework for cross-border maintenance

The specificity of this area of EU family law is the complexity of the legal framework, as not only an EU Regulation, but also two international instruments to which the EU is a party come into play. Although the focus of the analysis will be Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance and the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations have to be introduced and referred to when relevant.

- Presenting the three key legal instruments and their interaction from the start will be crucial to enable end users to better follow the analysis.

What would be interesting to highlight is the fact that the Hague Conference allows for the first time regional economic integration organisations to use its instruments and the EU, member of the Hague Conference since 2006, coordinated the development of these three instruments, in order to ensure their compatibility and enable the creation of a more efficient system of maintenance recovery.

Reference could also be made to the key pre-existing instruments in this area, such the UN Convention on the recovery abroad of maintenance, the previous Hague Conventions of 1956, 1958, 1973, Regulation Brussels I and the European Enforcement Order including rules on the recovery of cross-border maintenance, the 1968 Brussels and the 1988 and 2007 Lugano Conventions.

➤ *Question D.3. of the national sections could also be of interest here, as it provides an overview of the international and bilateral instruments to which EU member states are contracting parties.*

2. Scope and applicability of the Regulation and its interaction with other legal instruments

The Regulation was adopted in 18 December 2008 and has been applicable since 18 June 2011 in all EU member states, with the exception of Denmark, where only the contents of some of its provisions apply. The transitional provisions could also be mentioned and particularly Article 75.2, which provides for the Regulation also applying to decisions issued before its entry into force, if decision recognition and enforcement are sought after 18 June 2011.

Reference could be made to the ratification of at least two signatories that is required for the two international instruments to become applicable and their status at the time of implementation of the workshop presented. The fact that countries are free to join only one of the two instruments or both of them could also be pointed out.

➤ *The possibility to acquire an update on the status information regarding the two instruments on the website of the Hague Conference could be mentioned here.*

Regarding the Regulation's material scope, it covers maintenance obligations arising from a family relationship, parentage or affinity. The concept of maintenance obligations should be interpreted autonomously, according to Recital 11.

➤ *No further information is made available in the text of the Regulation as to the interpretation of 'maintenance obligations' and there is very limited ECJ case law on this issue. Case C-220/95 which touches on the scope of spousal maintenance could be referred to here.*

The rather broad scope of the Regulation, which deals with cross-border maintenance in an all-embracing way, could be juxtaposed with that of the convention and the protocol.

The Regulation contains rules on international jurisdiction, provides for the abolition of exequatur in recognition and enforcement procedures, sets up a system of cooperation between central authorities compatible to the one instituted by the convention, includes provisions on access to justice and refers to the protocol for the designation of the applicable law, whereas the convention covers only child and spousal support. The greater flexibility offered to the contracting states should also be highlighted: states may expand or further reduce the scope of application of the convention by declaration or reservation, always on the basis of the principle of reciprocity. To complete the picture, the scope of the Hague Protocol, following that of the Regulation, could be discussed.

Reference could also be made to the relation of the Maintenance Regulation to other EU legal instruments including rules on maintenance, such as Regulation Brussels I, the European Enforcement Order or the Legal Aid Directive. Interaction with international instruments could also be considered here. The Regulation would in principle have precedence over international instruments, such as the old Hague Conventions, the UN or the Lugano Conventions. It should therefore be emphasised that international instruments can only be applicable on matters falling outside the scope of the Regulation.

- Reference could be made here to EU websites and online databases such as the European Judicial Network for civil and commercial matters, the European Judicial Atlas and the European E-Justice portal, providing information on the various other EU legal instruments in the area of civil justice.
- Question D.3 of the national sections could also here be of use, indicating which international treaties bind the member states.

Similarly, both the 2007 Hague Convention and Protocol replace the pre-existing Hague Conventions dealing with maintenance obligations.

3. Rules of jurisdiction in cross-border maintenance cases

The Regulation's rules on jurisdiction could be presented next. The general provisions of Article 3 favouring the parties' habitual residence should be illustrated, as well as the choice of court rules which allow them to select where they wish to bring the case. Important to note here is that the conditions under which the court may be designated by the parties should be set when the parties conclude the agreement or when the court is seized. In order to be valid, the parties' agreement on the designated applicable law should be in writing or on permanent electronic communication equipment. Also presented should be: the submission to jurisdiction, the subsidiary jurisdiction and the forum necessitatis, providing three further grounds as regulated in Articles 5, 6 and 7.

- The fact should be highlighted that in the case of UK and Ireland, instead of nationality, the connecting factor employed is domicile.

➤ Practical examples showing the different options available on where to bring maintenance claims could better illustrate how the different provisions of the Regulation are to be applied.

In addition to the grounds of jurisdiction, it could also be useful to briefly refer to the additional related rules contained in Articles 8-15 of the Regulation. The limit on proceedings should the modification or replacement of a maintenance decision issued in the state of the creditor's habitual residence be sought and its exceptions could be mentioned. The following matters could be illustrated: definition of when the court is seized, its obligation to ex officio consider its jurisdiction and declare its lack thereof, the need to examine whether the absent defendant was effectively served the documents instituting the proceedings and interrupt the procedure until this is done, as well as the application of the lis pendens rule.

➤ Reference to the Service of Documents Regulation and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters could be made here.

The possibility for the seized court to stay the proceedings while a related case is heard in a different court could also be analysed in the light of the definition of 'related proceedings' contained in the Regulation. Finally, it would be interesting to recall that when provisional and protective measures are sought, the related applications may also be submitted before courts other than the one having jurisdiction to hear the actual case.

Completing the analysis of the Regulation, a reference to the 2007 Hague Convention could be made, as although not containing direct rules on jurisdiction, Article 20 includes indirect jurisdiction rules relevant in the framework of recognition and enforcement and Article 18 a negative rule limiting proceedings.

4. Recognition and enforcement of cross-border maintenance judgments (Chapter IV, Section 1)

While discussing recognition and enforcement, it would be important to explain that these procedures not only concern court judgments, but also decisions made by administrative authorities and court settlements that are enforceable in the member state of origin.

➤ The fact could be added that the 2007 Hague Convention goes a little further here, also allowing the recognition and enforcement of agreements or settlements approved by an authority or even maintenance arrangements enforceable in the state of origin.

The main feature introduced by the Regulation and which should be stressed in the analysis is the abolition of exequatur: a decision issued in one member state should be automatically recognised and enforced in the other member states without being treated as foreign or requiring special enforceability decisions.

- Special reference could be made here to Article 22 of the Regulation, which clarifies that the automatic recognition and enforceability of a decision issued in another member state does not entail the automatic recognition of the family relationship, parentage, marriage or affinity on which the maintenance obligation is founded.

Crucial for effective understanding of the framework set by the Regulation is to emphasise the practical aspects of enforcing a foreign maintenance decision.

- The necessary documents for proceeding with the enforcement, as indicated in Article 20 of the Regulation and the annexed standardised forms could be made available and advice offered on their correct use.
- The European Judicial Atlas, including all relevant forms, could also constitute a helpful tool in this context.

The possibility of a defendant who did not participate in the proceedings of opposing enforcement could be the next issue to address, by presenting the conditions under which he or she may seek the review of the decision before the court of origin, as provided in Article 19 of the Regulation. The exclusive reasons, on the basis of which the competent enforcement authority may refuse to proceed, should also be illustrated.

- Information on the local authorities before which an application for review may be made can be found in the Judicial Atlas.
- In the framework of international workshops, input on this may also be sought by the participants.

In order to comprehensively present the system introduced by the Regulation, it would be useful to add that public authorities can also make use of the Regulation and the 2007 Hague Convention when they substitute for the debtor and take over the provision of maintenance. Other provisions that should be referred to are Articles 41 to 43, stressing the prohibition of reviewing the decision of the member state of origin in substance, clarifying that enforcement is to be realised by applying the rules of the state of enforcement and confirming the precedence of the maintenance order over any further cost incurred in the application of the Regulation.

- Reference could be made here to question B.2. of the national sections, describing the enforcement procedure in the different member states.

5. Recognition and enforcement of cross-border maintenance judgments (Chapter IV, Section 2)

The failure to reach agreement on the designation of applicable law in all member states led the European legislator to include a second set of rules for the recognition and enforcement of maintenance decisions in those member states that are not bound by the Hague Protocol, namely UK and Denmark.

An illustration of the system of swift recognition and the enforcement proceedings applied in the two member states that have not abolished the exequatur could follow, on the basis of Articles 23 to 38 in Section 2 of Chapter IV of the Regulation. The need to acquire a declaration of enforceability and the possibility for the parties to intervene only in the framework of appeal proceedings against this declaration could be mentioned. The identification of the competent court by reference to the habitual residence of the defendant or the state of enforcement and the formal procedure described in Article 28 of the Regulation could also be referred to.

- Depending on the group of end users attending the seminar, this analysis could be more or less thorough. In workshops with end users coming from the UK (or Denmark), a more detailed presentation of the system in place could be provided. Emphasis should however be given in all workshops to the fact that a different set of rules is applicable when seeking the recognition or enforcement of a case from or in the UK or Denmark.

6. Recognition and enforcement of cross-border maintenance judgments according to the 2007 Hague Convention

Some reference could also be made to the system of recognition and enforcement, according to the convention, which would be relevant in relations with third countries who have acceded to it. The need to ensure that the issuing authority was competent according to the indirect rules of jurisdiction of Article 20 to establish whether the decision may be recognised and enforced according to the convention should be mentioned.

- It would be interesting to point out that not all the grounds of jurisdiction provided in the Regulation are recognised by the 2007 Hague Convention: the subsidiary jurisdiction, the forum necessitatis and, should there be such declaration by the country in which the decision should be enforced, also the jurisdiction established in the parties' agreement, are not included in the indirect rules.

The convention's standard procedure for the recognition and enforcement of foreign judgments could be briefly sketched and the alternative procedure for countries employing a single stage enforcement procedure referred to.

7. Identifying the applicable law according to the Hague Protocol

The last aspect of dealing with a cross-border maintenance dispute is the designation of the applicable law, which according to the Regulation is to be established as specified in the 2007 Hague Protocol. The decision of the EU to provisionally apply the protocol from 18 June 2011, although not yet ratified by two contracting parties and thus not in force, should be mentioned. Key elements of the protocol's conflict of law rules, such as their universal application and the fact that they designate substantive law rules as applicable and thus exclude renvoi, could be explained.

- Questions D.4. and D.5. of the national sections providing information on databases and online tools on domestic family law and on how to access foreign law in the different member states could also be of use in this part of the training.

The criteria according to which the applicable law should be defined could then be presented. The protocol provides for a general rule, based on the creditor's habitual residence and for special rules favouring certain creditors. According to these, if the creditor (child, parent or person under the age of 21) does not establish a right to maintenance according to the law of his or her habitual residence, the law of the forum or of the state of the debtor's and creditor's common nationality could apply. If the seized court is that of the debtor's habitual residence and the domestic law does not provide a right to maintenance for the creditor, the law of the latter's habitual residence and that of the parties' common nationality will again be considered.

- Reference should be made at this point to question B.1. of the national sections providing information on member state maintenance law.
- In the framework of international workshops, end users could provide some input on how their domestic law regulates child support.

The modification to the general rule to allow ex-spouses to object when a jurisdiction different to that indicated by the general rule has greater relevance to the case should be illustrated, as well as the defence rule, allowing the debtor to contest a claim when no maintenance obligation exists under the law of state of habitual residence of the creditor, the debtor or the law of the state of their common nationality.

- It should be noted that in the case of Ireland, instead of nationality, the connecting factor employed is domicile.

The main novelty of the protocol, namely the fact that it allows party autonomy in the designation of the applicable law, should be emphasised. The parties may decide on which law should govern a concrete case or agree in advance for future proceedings. In the first case, the applicable law would be that of the forum, whereas in general agreements the parties' nationality and habitual residence could constitute connecting factors, as well as the law governing other proceedings between them. In both cases, certain formal requirements will have to be fulfilled for it to be possible for the agreement to be proved.

- A written agreement signed by both parties is required, the protocol however explicitly permits agreements using electronic communication, as long as they can also be accessed later.

The exception to the choice of laws rule for persons below the age of 18 and vulnerable adults should be stressed. Also, if a public body substitutes for the debtor, the law to which this body is subjected will govern the proceedings for reimbursement of the benefit provided. Finally, it would be useful to make a reference to the single exception in applying

the law designated by the protocol in the case of applicable provisions manifestly contrary to the public policy of the forum.

Objectives of the sub-session:

- Allow participants to familiarise with the key instruments constituting the legal framework on EU maintenance.
- Ensure that participants learn how to identify the court that has international jurisdiction and the law to be applied in cross-border maintenance cases.
- Ensure that participants are aware of the steps to be taken for the recognition and enforcement of a maintenance decision in a different member state.
- Illustrate the possible use of databases and online tools in defining the applicable law in cross-border maintenance cases.
- Highlight the existence of two parallel systems for designating the applicable law and for the recognition and enforcement of maintenance decisions in the European Union.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

b.	<u>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</u>
c.	<u>Hague Convention of 23 November 2007 – convention on the international recovery of child support and other forms of family maintenance</u>
d.	<u>Hague Protocol of 23 November 2007 – protocol on the law applicable to maintenance obligations</u>
e.	<u>Website – Hague Conference on Private International Law</u>
g.	<u>European Judicial Atlas in civil and commercial matters – maintenance obligations</u>
h.	<u>European Judicial Network in civil and commercial matters – maintenance claims</u>
i.	<u>E-justice portal – maintenance claims</u>
f.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	<u>Council Decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance</u>
b.	<u>Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligation</u>
c.	<u>Commission Decision of 8 June 2009 on the intention of the United Kingdom to accept Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations</u>
d.	<u>Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</u>
e.	<u>Information communicated by member states in accordance with Article 71 of 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 (consolidated version)</u>
f.	<u>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</u>
g.	<u>Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims</u>
h.	<u>Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters</u>
i.	<u>Judgement of the Court Case of 27 February 1997, Case C-220/95, <i>Antonius van den Boogaard and Paula Laumen</i></u>
j.	<u>UN Convention of 5 March 1982 for the recovery abroad of maintenance</u>
k.	<u>Hague Convention of 24 October 1956 – convention on the law applicable to maintenance obligations towards children</u>
l.	<u>Hague Convention of 2 October 1973 – convention on the recognition and enforcement of decisions relating to maintenance obligations</u>
m.	<u>Hague Convention of 2 October 1973 – convention on the law applicable to maintenance obligations</u>
n.	<u>Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil and commercial matters</u>
o.	<u>Bonomi, Explanatory Report on the 2007 Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations</u>
p.	<u>Brussels Convention of 27 September 1968 – convention on jurisdiction and</u>

	the enforcement of judgments in civil and commercial matters
q.	Convention on jurisdiction and the enforcement of judgments in civil and commercial matters – done at Lugano on 16 September 1988
r.	Lugano Convention of 30 October 2007 – convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – protocol 1 on certain questions of jurisdiction, procedure and enforcement
s.	European Judicial Atlas in civil and commercial matters – maintenance obligations
t.	European Judicial Network in civil and commercial matters – maintenance claims- general information
u.	E-justice portal – maintenance claims
v.	E-learning course: Thematic Unit III, dealing with jurisdiction in cross-border divorce cases
w.	National sections: questions B.2, D.2 and D.3, national jurisprudence and national bibliography on the Maintenance Regulation

Methodology

1. Time frame

The duration of this sub-session will be 120 minutes (lecturing time and discussion sessions).

2. Trainer's profile

Identifying the right trainer for this sub-session is particularly crucial, as a somewhat complex legislative framework must be introduced. It would thus be very important for the person engaged to have a sound knowledge of the subject matter and training experience, because the ability to provide information in a clear and accessible way is particularly important in analysing this topic.

Some experience with maintenance cases in practice would of course be an asset, especially if it matches the professional background of the participants, but priority should be given to involving a trainer with high expertise. A judge, lawyer or official dealing with maintenance cases or an academic could be considered.

3. Teaching method

As the focus of this sub-session lies in the provision of information and a number of different elements of the Regulation and the 2007 Hague Convention and the Protocol need to be covered, the best option would be to organise it as face-to-face training.

Given the wide range of issues to be covered, there may be a need to prioritise certain elements over others. Depending on participants' level, background and training interests,

the presentation could either focus more on the Regulation or be more balanced between the three instruments. What should certainly be emphasised are the procedures in place and the key information on how to deal with maintenance cases in practice.

Regarding the designation of applicable law, reference could be made to the earlier presentation in the context of cross-border divorce and the knowledge acquired there, on how to use online tools, how to identify and apply foreign law. IT-supported learning would also be a method to consider, as it would be useful if at least the trainer had the possibility to use a computer and indicate how information related to maintenance may be located.

Ensuring sufficient time for questions and discussing the more complex aspects of the legal framework will be crucial for the effectiveness of this highly technical part of the training. In order to enable better understanding of the issues discussed and highlight the links to practice, examples of the application of the various provisions and brief cases that could be solved making use of them could be incorporated in the more theoretical presentation.

Particularly useful in the context of this presentation could be references to the related section of the E-learning course. The material, devised by Juliane Hirsch, former Senior Legal Officer with the Hague Conference on Private International Law, contains several visual elements, tables and schemes which consolidate the legal framework in a very accessible way. Elements considered particularly pertinent by the trainer of this sub-session could also be used during the workshop.

➤ *As a lot of new information has to be given and the rather complex legal framework explained, attempts to integrate this sub-session in the programme so that end users can profit of it most, shall be made. Scheduling this presentation at the beginning of a new workshop day or making sure that it follows a break or an interactive session, ensuring that they will be able to concentrate in a further lecture, could for example be considered.*

J. Cooperation between Central Authorities and access to justice in cross-border maintenance cases

1. Cooperation between central authorities

The Regulation establishes a system of cooperation between central authorities in the member states, similar to that set up in the framework of the convention, with the aim of facilitating maintenance recovery in the member states.

➤ *Information on the designated central authorities in the different member states is provided in question B.3. of the national sections.*

The structure of this system could be explained by presenting the main functions of central authorities and the role attributed to them by the Regulation. The applications that may be

submitted to the central authority should be listed and the process of transmitting them to the central authority of the selected member state explained. Particular emphasis could be given their focal role in maintenance recovery, as they assist in finding an amicable solution, help locate the debtor, support the provision of legal aid, initiate proceedings or an enforcement procedure, facilitate access to evidence and service of documents, establish parentage and secure the outcome of an application. The role of the central authorities in ensuring the completeness of the applications could also be highlighted.

Practical information on the steps to be followed when applying to a central authority should also be provided, to enable participants to employ this system in the future.

- *The relevant standardised forms annexed to the Regulation could be presented and advice on how to make use of them provided.*
- *The European Judicial Atlas includes information and the contact details of all member state central authorities and all standardised application forms.*

In addition to the applications, the central authorities perform a number of further general and specific functions, in order to ensure good cooperation with each other and the effective application of the Regulation. An illustration of the various activities contained in their mandate could be included.

Finally, the possibility for a central authority to make requests to other central authorities to take specific measures, such as locating the debtor, facilitating access to evidence or the service of documents, establishing parentage or institute proceedings, when no specific application is pending, would also be interesting to discuss.

2. Enabling access to justice

The Regulation includes an obligation to ensure effective access to justice and the provision of legal aid for the recognition and enforcement of a foreign judgment. Both the general rule and the exception available for cases covered by the cooperation between central authorities should be presented.

It would be important to stress that the legal aid provided should not be less than that provided in equivalent domestic cases and that it must be made available without requiring any security, bond or deposit to guarantee its provision. The rule, according to which a party having received legal aid in the member state of origin is entitled to the most favourable legal aid in the state of enforcement, would as well be interesting to mention.

- *Question D.2. of the national sections would be interesting to look into at this point, as it provides an overview of the transposition of the Legal Aid Directive in the member states.*

The definition and scope of legal aid as described in Article 44 could be illustrated and the obligation to guarantee free legal aid for child support cases, unless manifestly unfounded, presented.

- Reference could also be made to Articles 14 to 17 of the 2007 Hague Convention, which also provide for effective access to procedures and free legal assistance.

Objectives of the sub-session:

- Describe the system of cooperation between national Central Authorities and ensure that participants are aware of the functions they perform.
- Ensure that participants are in the position of using the standardised forms annexed to the Maintenance Regulation.
- Illustrate the possible use of databases and online tools in making use of the Central Authorities cooperation mechanism.
- Raise awareness of the provision of a system for legal aid in cross-border maintenance procedures.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	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
b.	Hague Convention of 23 November 2007 – convention on the international recovery of child support and other forms of family maintenance
c.	Hague Protocol of 23 November 2007 – protocol on the law applicable to maintenance obligations
j.	Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
d.	European Judicial Atlas in civil and commercial matters – maintenance obligations
e.	European Judicial Network in civil and commercial matters – maintenance claims
f.	E-justice portal – maintenance claims
g.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Hague Conference on Private International Law website
b.	Bonomi, Explanatory Report on the 2007 Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations
c.	E-learning course: Thematic Unit III, dealing with jurisdiction in cross-border divorce cases
d.	National sections: questions B.1, B.3, D.4 and D.5, national jurisprudence and national bibliography on the Maintenance Regulation

Methodology

1. Time frame

An hour could be allocated for presenting these two further aspects of cross-border maintenance that should be covered in this sub-session. Approximately 30 minutes would suffice for providing an overview of the system of cross-border cooperation and another 15-20 for discussing access to justice. Another 15 minutes should be dedicated to discussion with the end users. As always, questions could be raised either at the end or throughout the presentation, depending on the trainer's assessment.

2. Trainer's profile

Experience is the key for identifying the right trainer for this sub-session. A sound knowledge of the functions of central authorities and the ability to provide training on the tools and the use of the forms aiming at facilitating maintenance recovery are elements to be considered. As this session should also be conducted in an interactive way, requiring close cooperation with participants, the selected trainer's communication skills is one of the key elements to take into account.

Judicial trainers, public officials employed e.g. in a central authority or practitioners with experience in cross-border cases would thus constitute potential trainers.

3. Teaching method

This sub-session is divided into two different parts – the first considering the system of cooperation between central authorities and the second dealing with access to justice and the provision of legal aid in cross-border maintenance cases.

Here as well, IT-supported learning would be the best approach, particularly regarding the illustration of how the cooperation between central authorities functions. Information on the national central authorities and all standardised forms are available on the previously presented EU online databases, so end users should be encouraged to refer to them again.

This way, they can familiarise themselves further with online sources, consolidate their knowledge on how to effectively make use of the available material and acquire experience on completing applications for central authorities.

➤ The inclusion of practical examples involving applications to be submitted to a central authority in the sub-session would make the training more effective, as it would enable participants to employ the different online sources in a more structured way.

In this sub-session as well, participants should be able to use computers and the internet in order to profit from the training. Depending on the available resources, a group structure could thus be considered.

➤ Given the much broader scope of the first presentation on maintenance, the possibility to review certain aspects of the applicable legal framework when presenting the role of the central authorities could be considered.

K. Exercise III: Case Study on a cross-border maintenance case

On the subject of maintenance as well, once the legislative framework has been presented, this should be followed by an opportunity to explore its application in practice. On the basis of a case study, a number of aspects of EU maintenance legislation will be explored. Once again, by discussing the case, the possibility to further clarify complex issues and identify any shortcomings in the explanations provided in the previous sessions will be available.

The case study, devised by Dr. Ian Curry-Sumner from Voorts Legal Services, includes questions of international jurisdiction, applicable law, recognition, enforcement and modification proceedings on the basis of a very clear and accessible case scenario. The facts of the case have sometimes been slightly modified to encompass a greater number of arising issues and there are a total of 10 questions for discussion during the exercise.

More concretely, regarding **jurisdiction**, the questions cover:

1. The sources of law defining international jurisdiction in a cross-border maintenance case and the way of identifying the applicable provisions.
2. The determination of the courts having international jurisdiction in the case of spousal maintenance and child support.
3. The choice of forum and related conditions and limitations.
4. The application of the lis pendens rule.

Dealing with **applicable law**, the issues raised encompass:

5. The available sources of law and the way to determine which should apply.
6. Choice of law: which laws are eligible, when is the agreement valid, what limitations are there.
7. The designation of applicable law where there is lack of agreement between the parties.

In the area of **recognition and enforcement**:

8. The rules applicable in case of decisions from a member state bound by the protocol.
9. The rules applicable in case of decisions from a member state not bound by the protocol.

Concerning the **modification of a maintenance decision**:

10. The identification of the courts competent to modify a maintenance order.

➤ Both the questions and the suggested solutions are available in Annex 3.3. of the present guide.

Objectives of the sub-session:

- Consolidate the information provided on EU maintenance Regulation in the previous sub-sessions.
- Provide end users with some experience of the application of the legal framework on maintenance.
- Identify any remaining unclear points and address them during the sub-session.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	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
b.	Hague Convention of 23 November 2007 – convention on the international recovery of child support and other forms of family maintenance
c.	Hague Protocol of 23 November 2007 – protocol on the law applicable to maintenance obligations
d.	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, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
e.	European Judicial Atlas in civil and commercial matters – maintenance obligations
f.	European Judicial Network in civil and commercial matters – maintenance claims
g.	National sections: questions B.1, B.2, D.3, D.4 and D.5 of the Dutch, French, German and Greek national section
h.	Workshop exercise III: case study on cross-border maintenance

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
b.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
c.	Brussels Convention of 27 September 1968 – convention on jurisdiction and the enforcement of judgments in civil and commercial matters
d.	Hague Convention of 24 October 1956 – convention on the law applicable to maintenance obligations towards children
e.	Hague Convention of 2 October 1973 – convention on the recognition and enforcement of decisions relating to maintenance obligations
f.	Judgement of the Court Case of 27 February 1997, Case C-220/95, <i>Antonius van den Boogaard and Paula Laumen</i>
g.	National sections: questions B.1, B.2, D.3, D.4 and D.5, national jurisprudence and national bibliography on the Maintenance Regulation

Methodology

1. Time frame

For this last workshop exercise, approximately 2 hours should be allocated. The facts of the case are fairly clear, so a brief introduction should suffice and participants should then be offered the opportunity to work together in smaller teams.

➤ Here as well, creating new working groups with participants who did not work with each other in the previous exercises is recommended.

The groups would then have approximately 75 minutes to address the different questions and 40 minutes should be dedicated to the de-briefing session.

2. Trainer's profile

Communication skills, a good knowledge of the subject matter and the possibility to interact well with participants would be the most important skills for the right trainer for this workshop. A judicial trainer, a judge or a lawyer with experience with international maintenance cases would be ideal. The possibility to interact well with the group and stimulate them to work on the case would bring further added value to the exercise.

3. Teaching method

Also in this interactive sub-session and in order to offer participants the possibility to effectively interact and discuss the various aspects of the EU Maintenance Regulation, working in smaller groups would be the method suggested. As always, identifying a person to report back on the group's conclusions and exploring the possibility of using a different room for the preparation of the case are recommended.

- IT-support could be provided during this session as well, particularly in the context of the seventh question requiring some research into domestic rules on maintenance.
- Questions B.1, B.2, D.3, D.4 and D.5 of the national sections relevant to the case (Dutch, French, German and Greek) could also be useful in this context.

Any questions arising or clarifications requested should be dealt with by the trainer during the discussion time in the groups. In this way, participants will be able to overcome any unclear issue and move forward to the next aspects of the case. Advice on how to make use of the different websites, national sections and other available material should also be provided, in order to help end users to solve the case.

In the debriefing session, all groups should present their conclusions and any differences in the approaches they followed or their proposed solution to the case could be identified and discussed. The trainer should use the opportunity to establish whether any aspects of the EU legal framework on maintenance remain unclear and return to them, providing additional information. A general overview of how to address the different problems raised in the exercise could be provided by the trainer, consolidating the discussions. The solution to the case study suggested by Dr. Curry-Sumner could constitute a basis for this.

- As this case study is more extensive and contains several questions, the possibility to distribute it in advance to workshop participants, allowing them to go through the facts and perhaps reflect on possible solutions could be considered. Including the case study in material provided before the workshop or simply making it available a day earlier would be an option.
- Alternatively, allocating some questions to each of the working groups would be a way to go through the entire case scenario within the available time: end users having discussed the questions on jurisdiction for example would have the possibility to hear the analysis of their colleagues having dealt with the questions on applicable law and have a full overview of the discussed issues.

L. The proposed legislation on property effects of marriage and registered partnership

1. Current legislative framework

This last sub-session aims at providing an overview of recent developments in the effects on property of marriage and registered partnerships.

The analysis could start with a presentation of the current situation and the application of national law when dividing joint property after death, divorce or separation.

- Question C.1. of the national sections presenting matrimonial property regime systems and question C.3. on the property consequences of registered partnerships in the different member states could be referred to.
- In international workshops, input could be sought from participants on how their domestic system is structured.
- In the framework of workshops addressed to end users from a single or few jurisdictions, greater focus could be given to the applicable legal framework in the respective member states.

Reference could also be made here to the Hague Convention on the law applicable to matrimonial property of 14 March 1978.

- Question D.3. of the national sections provides information on which member states are contracting parties to that convention.

2. Legislative activity at EU level

Following this, there could be a brief illustration of the key elements included in the European Commission's proposals on property regimes. The aim of this legislative initiative, namely to provide greater flexibility, clarity and legal certainty on which courts have jurisdiction, which laws apply and how decisions on property can be recognised and enforced in other EU countries, should be mentioned. Proposals COM(2011) 126 and COM(2011) 127 of 16 March 2011 on jurisdiction, the applicable law and the recognition and enforcement of decisions in matrimonial property regimes and relating to the property consequences of registered partnerships should be referred to and any further developments described.

- Question C.2. of the national sections could be included here, as it indicates which conflict of law rules apply in matrimonial property disputes in the member states.

The main legislative choices on jurisdiction, designation of the law governing the case and recognition and enforcement contained in the two proposals could be discussed as well.

- Information on how participants can follow the development of the legislative procedure could also be provided in this sub-session.
- Online databases, such as Pre-Lex, OEIL and the Public Register of the Council could therefore also be interesting to present.

Objectives of the sub-session:

- Raise awareness of ongoing EU legislative activity in the area of property regimes.

- Illustrate the main elements of the proposal on simplifying property regimes in a cross-border context.
- Ensure that participants are in a position to follow the development of an EU legislative initiative.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, Brussels 16.3.2011, COM(2011) 126 final
b.	Proposal 127: Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, Brussels 16.3.2011, COM(2011) 127 final
c.	Pre-lex – Monitoring of the decision-making process between institutions
d.	OEIL – Legislative Observatory
e.	Public Register of the Council of the European Union
f.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Hague Convention of 14 March 1978 – convention on the law applicable to matrimonial property regimes
b.	E-learning course: Thematic Unit IV, dealing with jurisdiction in cross-border divorce cases
c.	National sections: questions C.1, C.2, C.3 and D.3 and national bibliography on matrimonial property regimes and the property consequences of registered partnerships

Methodology

1. Time frame

This could be a fairly concise presentation aiming at providing a general overview of the state of play on property regimes in the EU. For this reason, 45 minutes should be sufficient for setting the scene and allowing some time for discussion.

2. Trainer's profile

A trainer with a specialisation in European law should be selected for this sub-session, as it is particularly important in this presentation to be aware of the latest developments and familiar with the different databases and online tools providing information on the development of the EU legislative procedure. Good communication skills for motivating participants and inviting them to contribute to the exchange are equally important.

3. Teaching method

This sub-session could start as a discussion, by inviting participants to provide information on how spouses' and registered partners' relationships are regulated in their jurisdiction. Subsequently, the two legislative proposals could be presented and, using IT-supported learning, information on how to follow up on them provided.

Practical exercises on the basis of case scenarios devised by the trainer could be used to better illustrate the framework currently applicable and the changes the proposed legislation aims to bring. End users could be invited on the basis of such an exercise to reflect on how they would identify the court having jurisdiction, the applicable law or deal with the recognition and enforcement of a decision on matrimonial property regimes under the current legal framework and then repeat the exercise in the light of the proposed Regulation.

Offering participants the possibility to use computers and have internet access would bring added value to this sub-session. Also of interest could be some references to the last section of the E-learning course, providing an overview of the proposal on matrimonial property regimes.

➤ Given the nature of this topic and the fact that it covers a developing area of law, it is particularly important for the trainer undertaking this sub-session to update his knowledge, ensuring that recent development are covered during the workshop.

M. Closing sub-session

The closing sub-session aims at summarising the conclusions of the event and attempting an immediate evaluation of its flow and impact. It can also be an opportunity to refer again to the possible use of the training material in future occasions.

1. Conclusions of the workshop

The workshop leader will be responsible for recalling the main elements that were covered during the programme and for identifying some of the most interesting features of the discussions and the exchange of experience between end users. Participants' input on what they found most interesting during the workshop and what they will retain from the discussions with their colleagues and the trainers could also be sought.

2. Evaluation of the workshop

A first discussion as to whether the workshop met end users' training needs could also take place here. Participants should in any case be asked to provide their feedback in writing by completing the initial assessment questionnaire, engaging however in a dialogue with their colleagues and the trainers could be a further means to present their impressions in a more informal way.

- Depending on the structure of the opening sub-session, this part of the workshop could mirror some of the discussions which took place then. If, for example, participants were invited to raise specific questions to be addressed during the workshop, it would be interesting to see if this did indeed take place.

During this de-briefing sub-session, attempts could be made to identify what participants appreciated most during the seminar, which working methods they found more efficient and which of the discussed topics were most and least relevant for their work. It would also be useful to address whether they consider that further elements could have been included for the training to be more comprehensive or better adjusted to their learning priorities and interests. Feedback on the training material provided and its usefulness and accessibility could also be sought.

In addition to the discussion, the workshop leader should use the opportunity to refer to the evaluation of the workshop and measures to ensure the quality control of the work. Reference to the initial assessment and mid-term evaluation procedure could be made, in order to raise participants' awareness, explain the objectives of this procedure and encourage them to contribute by providing their genuine input on how future workshops could be improved.

- Some time during this sub-session could be dedicated to presenting the initial assessment questionnaires and indicating which concrete elements the workshop organisers wish to evaluate in each question.

3. End of the workshop

Before closing the workshop, a reminder could be given of how the material provided during the workshop (background material, electronic documentation, e-learning course) may also be used in the future. Information on any follow-up training programmes could also be provided and the event should close with the workshop leader thanking and saying a few farewell words to participants and trainers.

Objectives of the sub-session:

- Revisiting the key points of the workshop discussions.
- An initial evaluation of the course.
- Ensure effective use of the training material (user's pack).
- End the workshop.

Training material

Necessary material

(to be made available in hardcopy during the sub-session)

- | | |
|----|---------------------------|
| a. | Immediate evaluation form |
|----|---------------------------|

Methodology

1. Timeframe

Approximately 30 minutes should suffice for a brief summary of the workshop's main conclusions and an initial discussion on participants' feedback.

2. Trainers' profiles

The closing sub-session should in principle be coordinated by the workshop leader. A further added value would be provided if this role is assigned to the workshop organiser, as he or she would then have the possibility to acquire direct feedback on the various choices made when structuring the course.

3. Teaching method

This sub-session should be held in plenary with the contribution of all participants and, as far as possible, of the trainers.

After the launch of the discussion by the workshop leader, the floor should be given to participants and trainers who should be encouraged to openly share their thoughts and ideas on the training.

- Drawing end users' attention to the importance of evaluation is crucial for its success. Involving them and ensuring that they provide genuine and constructive feedback not only immediately after the seminar but also later, in the framework of the mid-term evaluation, is necessary for an effective assessment of the workshop's impact.

Annex 1 - Template indicative workshop programme

Content

The workshop will provide end users with an in-depth analysis of EU cross-border divorce and maintenance and enable them to apply the relevant EU legal instruments and international conventions.

Workshop participants will be able to know which court has jurisdiction, which law is applicable and what are the rules for recognition and enforcement of judicial decisions issued in another member state in cases of cross-border divorce or maintenance. The possibility to familiarise with the European procedures in place and online tools facilitating cross-border cooperation in civil justice will be provided.

The workshop will:

- provide expert training on Regulation Brussels II bis, Regulation Rome III and the Maintenance Regulation and their interaction with other EU instruments in the area of Civil Justice
- raise awareness of the interrelation of EU, international and domestic legislation on cross-border divorce and maintenance cases
- remind the preliminary ruling procedure through practical exercises
- provide a practical introduction to the e-justice tools

Trainers

CROSS-BORDER DIVORCE AND MAINTENANCE: JURISDICTION AND APPLICABLE LAW

Location

Venue

Workshop organiser

Language

Annex 1 - Template indicative workshop programme

Day I

08:45 Arrival and registration of participants

I. Cross-border divorce: jurisdiction and procedure

09:15 **Opening Sub-session**

09:45 **Setting the scene: framework and key elements of cross-border cooperation in family matters**

10:30 Coffee break

11:00 **Cross-border divorce within the EU: jurisdiction, recognition and lis pendens**

13:00 Lunch break

14:15 **Interaction of Regulation Brussels II bis with other EU legal instruments and mechanisms:**

- legal aid
- service of documents
- preliminary ruling procedure
- alternative dispute resolution

15:15 Coffee break

15:45 **Exercise I: Case study on cross-border divorce**

17:45 End of the first workshop day

Day II

II. Cross-border divorce: applicable law

09:00 **Cross-border divorce within the EU: applicable law**

10:30 Coffee break

11:00 **The application of foreign law in a cross-border divorce case**

12:00 Lunch break

13:15 **Exercise II: Case study on the identification and application of foreign law in a divorce case**

15:15 Coffee break

III. Cross-border maintenance

15:45 **Jurisdiction, applicable law, recognition and enforcement in cross-border maintenance cases**

17:45 End of the second workshop day

Day III

09:00 **Cooperation between Central Authorities and access to justice in cross-border maintenance cases**

10:00 **Exercise III: Case-study on a cross-border maintenance case**

12:00 Coffee break

IV. EU initiatives on property regimes

12:30 **The proposed legislation on property effects of marriage and registered partnership**

13:00 **Closing session**

13:30 Lunch and end of the workshop

Annex 2.1.

Background material - User's pack

To be provided electronically

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. E-learning course

[E-learning course on cross-border divorce and maintenance](#)

(http://www.era-comm.eu/e-learning/family_law_module_1/)

3. Trainers' contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

4. Legislation

	Primary legislation
1.	Articles 7, 9, 21 24, 33 of the Charter of Fundamental Rights of the European Union
2.	Article 2, 3, 6, 20 of the Treaty on European Union (TEU)
3.	Articles 26, 45, 67, 81, 267, 326-334 of the Treaty on the Functioning of the European Union (consolidated version)
4.	Article 8 of the European Convention on Human Rights
	Secondary legislation
5.	Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and the enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses

6.	<u>Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters</u>
7.	<u>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</u>
8.	<u>Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters</u>
9.	<u>Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes</u>
10.	<u>Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II bis)</u>
11.	<u>Information relating to courts and redress procedures pursuant to Article 68 of 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, repealing Regulation (EC) No 1347/2000 – consolidated version</u>
12.	<u>Certificate referred to in Article 39 of Council Regulation No 2201/2003 of 27 November 2003 concerning judgments in matrimonial matters</u>
13.	<u>Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims</u>
14.	<u>Practice Guide for the application of the new Brussels II Regulation, European Commission, updated version, October 2005</u>
15.	<u>Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the Service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000</u>
16.	<u>Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters</u>
17.	<u>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</u>
18.	<u>Information communicated by member states in accordance with Article 71 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in</u>

	matters relating to maintenance obligations (consolidated version)
19.	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)
	Proposed legislation
20.	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, Brussels 16.3.2011, COM(2011) 126 final
21.	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, Brussels 16.3.2011, COM(2011) 127 final
	Documents from the European Commission
22.	Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
23.	Commission Decision of 8 June 2009 on the intention of the United Kingdom to accept Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
	Council Decisions
24.	Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters
25.	Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligation
26.	Council Decision of 12 July 2010 authorising enhanced cooperation in the area of law applicable to divorce and legal separation
27.	Council Decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

5. International Conventions

1.	Hague Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage <i>(document available only in French language)</i>
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2.	<u>UN Convention on the recovery abroad of maintenance, done at New York on of 20 June 1956</u>
3.	<u>Hague Convention of 24 October 1956 - Convention on the law applicable to maintenance obligations towards children</u>
4.	<u>Convention on the service abroad of judicial and extrajudicial documents in civil and commercial matters, Convention on the service abroad of judicial and extrajudicial documents in civil and commercial matters, 15 November 1965, Hague Conference on Private International Law</u>
5.	<u>Brussels Convention of 27 September 1968 – Convention on jurisdiction and the enforcement of judgments in civil and commercial matters</u>
6.	<u>Hague Convention of 2 October 1973 - Convention on the recognition and enforcement of decisions relating to maintenance obligations</u>
7.	<u>Hague Convention of 2 October 1973 - Convention on the law applicable to maintenance obligations</u>
8.	<u>Hague Convention of 14 March 1978 - Convention on the law applicable to matrimonial property regimes</u>
9.	<u>Convention on jurisdiction and the enforcement of judgments in civil and commercial matters - Done at Lugano on 16 September 1988</u>
10.	<u>Lugano Convention of 30 October 2007 - Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters - Protocol 1 on certain questions of jurisdiction, procedure and enforcement</u>
11.	<u>Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance</u>
12.	<u>Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations</u>

6. ECJ case law

1.	<u>Judgement of the Court Case of 27 February 1997, Case C-220/95, <i>Antonius van den Boogaard and Paula Laumen</i></u>
2.	<u>Judgment of the Court of 29 November 2007, Case C-68/07, <i>Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo</i></u>
3.	<u>Judgment of the Court of 2 April 2009, Case C-523/07, reference for a preliminary ruling under Articles 68 EC and 234 EC from the Korkein hallinto-oikeus (Finland), in the proceedings brought by A</u>
4.	<u>Judgement of the Court of 16 July 2009, Case C-168/08, reference for a preliminary ruling from the Cour de cassation (France), <i>Laszlo Hadadi (Hadady)</i></u>

	v Csilla Marta Mesko, married name Hadadi (Hadady)
5.	Judgement of the Court of 9 November 2010, Case C-296/10, Bianca Purrucker v Guillermo Vallés Pérez
6.	Judgement of the Court of 22 December 2010, Case C-497/10 PPU, Barbara Mercredi v Richard Chaffe

7. Other documents

1.	Explanatory Report on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (approved by the Council on 28 May 1998) prepared by Dr Alegría Borrás Professor of Private International Law University of Barcelona
2.	Explanatory Report on the 2007 Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, prepared by Andrea Bonomi, October 2009
3.	Notes for the guidance of Counsel Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities <i>(most relevant for workshops addressed to legal practitioners)</i>
4.	Information note Information note on references from national courts for a preliminary ruling <i>(most relevant for workshops addressed to members of the judiciary)</i>

8. Useful links

1.	Consilium register website
2.	Curia website
3.	DEC.NAT, National decisions database of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.
4.	European Commission, Civil Justice website
5.	European E-justice portal
6.	E-justice portal – Divorce
7.	E-justice portal - Legal aid
8.	E-justice portal – Maintenance claims
9.	E-justice portal – Mediation

10.	E-Justice portal – Member state law
11.	E-Justice portal – Service of documents
12.	Eur-lex website
13.	European Judicial Atlas in civil and commercial matters
14.	European Judicial Atlas in civil and commercial matters – Matrimonial matters and matters of parental responsibility
15.	European Judicial Atlas in civil and commercial matters – Maintenance obligations
16.	European Judicial Network in civil and commercial matters
17.	European Judicial Network in civil and commercial matters - Applicable Law
18.	European Judicial Network in civil and commercial matters - Divorce
19.	European Judicial Network in civil and commercial matters - Maintenance claims- General information
20.	Hague Conference on Private International Law website
21.	Jurisdiction Recognition Enforcement Database
22.	N-Lex Database
23.	Oeil website
24.	Pre-lex website

9. National sections

1.	National section of Austria, developed by Sabine Längle
2.	National section of Belgium, developed by Hakim Boularbah
3.	National section of Bulgaria, developed by Bilyana Gyaurova-Wegertseder
4.	National section of Cyprus, developed by George A. Serghides
5.	National section of the Czech Republic, developed by Zuzana Fišerova
6.	National section of Estonia, developed by Liis Arrak
7.	National section of Finland, developed by Markku Helin
8.	National section of France, developed by Beatrice Weiss-Gout,

	Isabelle Rein- Lescastereyres, Laurie Dimitrov, Marie-Laure Niboyet, Alexandre Boiche, Charlotte Butrille-Cardew and Veronique Chauveau
9.	National section of Germany, developed by Ulrike Janzen
10.	National section of Greece, developed by Dimitra Papadopoulou – Klamari, Chrysafo Tsouka and Nikos Davrados
11.	National section of Hungary, developed by Orsolya Szeibert
12.	National section of Ireland, developed by Elaine O'Callaghan
13.	National section of Italy, developed by Maria Giuliana Civinini
14.	National section of Latvia, developed by Irena Kucina
15.	National section of Lithuania, developed by Ruta Bucinskaitė
16.	National section of Luxembourg, developed by Jean-Claude Wiwinius
17.	National section of Malta, developed by Lorraine Schembri Orland
18.	National section of the Netherlands, developed by Katharina Boele-Woelki
19.	National section of Poland, developed by Jacek Golaczynski
20.	National section of Portugal, developed by Carlos Manuel Gonçalves de Melo Marinho
21.	National section of Romania, developed by Simona Bacsin
22.	National section of Slovakia, developed by Katarina Mikulova
23.	National section of Slovenia, developed by Bojana Jovin Hrastnik
24.	National section of Spain, developed by Carmen Azcárraga Monzonis
25.	National section of Sweden, developed by Michael Hellner
26.	National section of the United Kingdom: part on England and Wales, developed by Eugenia Caracciolo di Torella
27.	National section of the United Kingdom: part on Scotland, developed by Janeen Carruthers

10. General bibliography

Compiled general bibliography
(on the basis of the information contained in the national sections)

Annex 2.2.

Background material

Necessary material to be made available in hardcopy during the workshop

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. Trainers' contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

3. EU Legislation

	Primary legislation
1.	Article 267 , Treaty on the Functioning of the European Union (consolidated version)
	Secondary legislation
2.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters
3.	Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
4.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II bis)
5.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the Service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) , and repealing Council Regulation (EC) No 1348/2000

6.	Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
7.	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
8.	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)
9.	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, Brussels 16.3.2011, COM(2011) 126 final
10.	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, Brussels 16.3.2011, COM(2011) 127 final

4. International Conventions

1.	Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance
2.	Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations

5. Workshop exercises

1.	Workshop exercise I: Case studies 1 - 5 on cross-border divorce: jurisdiction and procedure
2.	Workshop exercise II: Case studies 1 - 5 on cross-border divorce: applicable law
3.	Workshop exercise III: Case study on cross-border maintenance

6. Links

1.	Consilium register website
2.	European E-justice portal
3.	E-justice portal – Divorce
4.	E-justice portal – Maintenance claims

5.	E-Justice portal – member state law
6.	European Judicial Atlas in civil and commercial matters
7.	European Judicial Atlas in civil and commercial matters – Maintenance obligations
8.	European Judicial Atlas in civil and commercial matters - Matrimonial matters and matters of parental responsibility
9.	European Judicial Network in civil and commercial matters
10.	European Judicial Network in civil and commercial matters - Applicable Law
11.	European Judicial Network in civil and commercial matters - Divorce – General Information
12.	European Judicial Network in civil and commercial matters, Divorce, Germany
13.	European Judicial Network in civil and commercial matters - Maintenance claims
14.	Hague Conference on Private International Law website
15.	Jurisdiction Recognition Enforcement Database
16.	N-Lex Database
17.	DEC.NAT, National decisions database of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.
18.	Oeil website
19.	Pre-lex website

7. National Sections

1.	Questions D.4 and D.5
2.	Question A.4 of the German and Austrian national sections
3.	Questions B.1, B.2 and D.3 of the Dutch, French, German and Greek national sections

Annex 3.1. – Workshop exercise I

Case studies and suggested solutions on 'Cross-border divorce: jurisdiction and procedure'¹

Case 1

Adam, a Swiss national, married his German wife Eve in 2002. During their honeymoon in Bregenz (Austria), they fell in love with Lake Constance and decided to settle down there. Both found an interesting job in Bregenz, and lived there happily together in a nice apartment with a magnificent view of the lake. After several years, however, they started to quarrel more and more and their marriage fell apart. Eve finally requests divorce in Bregenz.

- Does the court seised have international jurisdiction?

Suggested solution:

Before referring to national law, it has to be examined whether overriding EU rules apply. The case concerns divorce and therefore falls into the scope of application of the 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, repealing Regulation (EC) No 1347/2000 (so-called Brussels IIa-Regulation),² Art. 1 para. 1 lit. a. For divorce, international jurisdiction has therefore to be determined according to Artt. 3 et seq. Brussels IIa. Here, Artt. 3 para. 1 lit. a ind. 1 (state of habitual residence of both spouses), ind. 3 (state of habitual residence of respondent) as well as ind. 5 (state of habitual residence of applicant) Brussels IIa are fulfilled, consequently establishing international jurisdiction for the Austrian court. The court seised is thus internationally competent to decide the case.

Case 2

Same as Case 1, but:

After their marriage has broken down, Eve wants to gain some distance from Adam and therefore leaves Bregenz. Since she is still in love with the lake, however, she moves to the nearby Lindau, just behind the German border. After taking a few quiet days off, she requests divorce there.

- Does the court seised have international jurisdiction?

¹ Developed by Professor Wolfgang Hau, Vice-President and Chair for Private Law, Civil Procedure and International Private Law at the University of Passau.

² [2003] O.J. L 338/1, 23.12.2003.

Suggested solution:

In this case, Art. 3 Brussels Ia does not establish international jurisdiction in Germany: Eve has not yet resided in Germany for six months, which would be required by Art. 3 para. 1 lit. a ind. 6 Brussels Ia; any other ground of jurisdiction is not available either.³

Since Adam, on the other hand, still remains habitually resident in Austria, Art. 6 lit. a Brussels Ia has to be taken into account. According to this privilege, the respondent can only be sued in another Member State than the state of his habitual residence (i.e. Austria) in accordance with Art. 3-5 Brussels Ia. Here, Art. 3 Brussels Ia would only be fulfilled for Austria as a forum state (lit. a ind. 2, ind. 3). Consequently, the German court seised does not have international jurisdiction; Eve can request divorce in Austria only.

Case 3

Same as Case 1, but:

Adam and Eve spent their honeymoon at Lake Constance in Thal (Switzerland) and settled down there. When their marriage fell apart after several years, Eve moved to Bregenz (Austria) and found a new job there. She quickly settled in but took some time to come to terms with the break-up. After two years, she finally wants a divorce. As her brother is a German lawyer, she decides to bring divorce proceedings in Germany.

➤ Does the German court seised have international jurisdiction?

Suggested solution:

Once again, Art. 3 Brussels Ia does not establish international jurisdiction in Germany. Since Adam still lives in Switzerland and is a Swiss national, Art. 6 Brussels Ia does not apply either. It must however be taken into account that courts in Austria have jurisdiction on this matter under Art. 3 para. 1 lit. a ind. 5 Brussels Ia. This means that the Regulation provides a forum in another Member State than the one chosen by Eve. Therefore, the German court seised cannot fall back on its national rules on jurisdiction according to Art. 7 para. 1 Brussels Ia either; instead Eve has to sue before the competent Austrian court. This was confirmed by the ECJ in Case C-68/07 Sundelind Lopez (2007) ECR I-10403.

The summary of this judgment reads:

“Articles 6 and 7 of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on

³

For a more detailed analysis of this situation cf. Case 5.

their national law, if the courts of another Member State have jurisdiction under Article 3 of that regulation.

According to the clear wording of Article 7(1) of Regulation No 2201/2003, it is only where no court of a Member State has jurisdiction pursuant to Articles 3 to 5 of the regulation that jurisdiction is to be governed, in each Member State, by the laws of that State. Moreover, according to Article 17 of Regulation No 2201/2003, where a court of one Member State is seised of a case over which it has no jurisdiction under that regulation and a court of another Member State has jurisdiction pursuant to that regulation, it is to declare of its own motion that it has no jurisdiction.

That interpretation is not affected by Article 6 of Regulation No 2201/2003, since the application of Articles 7(1) and 17 of that regulation depends not upon the position of the respondent, but solely on the question whether the court of a Member State has jurisdiction pursuant to Articles 3 to 5 of the regulation, the objective of which is to lay down uniform conflict of law rules for divorce in order to ensure a free movement of persons which is as wide as possible. Consequently, Regulation No 2201/2003 applies also to nationals of non-Member States whose links with the territory of a Member State are sufficiently close, in keeping with the grounds of jurisdiction laid down in that regulation, grounds which are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction.”

In conclusion, the German court seised does not have international jurisdiction.

Case 4:

Same as Case 3, but:

After splitting up, Adam and Eve both remained in Switzerland. Eve nevertheless requests divorce in Germany.

➤ Does the court seised have international jurisdiction?

Section 98 FamFG (German Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction):

(1) German courts have jurisdiction in marital matters if

1. one of the spouses is German or was German at the time of the marriage;

[...].

Suggested solution:

Since Art. 3 Brussels Ila-Regulation does not establish jurisdiction of any Member State and none of the jurisdictional privileges mentioned in Art. 6 Brussels Ila apply, Art. 7 Brussels Ila

provides that the court seised may fall back on national grounds for jurisdiction. The German court seised will therefore apply the German rules on jurisdiction.

According to Section 98 para. 1 no. 1 FamFG German courts are internationally competent in marital matters if one of the spouses is German or has been German at the time of the marriage. In conclusion, the German court seised is internationally competent on the mere basis of Eve's German nationality.

Case 5:

Romeo is Swiss, Juliet is German. For professional reasons Romeo moved to Bregenz (Austria) where he met Juliet from Lindau (Germany) who started working in Bregenz at the same time. Head over heels, they got married in 2008 and bought a house at the lakeside in Bregenz. Relatively soon, Juliet discovered Romeo's real character. On February 14th 2012, she decides to leave him for good and returns back to her family in Lindau. Four months later, Juliet requests divorce in Lindau.

The court seised finds out that legal doctrine is divided over the question what time is crucial for the applicability of Art. 3 para. 1 lit. a ind. 6 Brussels IIa: Most scholars believe that in order to establish jurisdiction under this rule, the applicant must have resided in the forum state for at least six months at the time of the seising of the court, whereas others regard it as sufficient that six months have passed at the moment the court renders its decision. Therefore, the Lindau court decides to ask the ECJ for a preliminary ruling.

➤ Please formulate the question to be referred and outline how an appropriate answer by the ECJ could read.

Suggested solution:

The Lindau court could refer the following question to the ECJ for a preliminary ruling:⁴

"Must the applicant in the case of Art. 3 para. 1 lit. a ind. 6 Brussels IIa-Regulation have resided in the forum state for at least six months at time of the seising of the court or is it sufficient that six months have passed at the moment the court renders its decision?"

First of all, the ECJ would check the admissibility of the preliminary ruling proceedings. The ECJ's jurisdiction follows from Art. 267 TFEU. The German local court of Lindau is a court of a Member State within the sense of Art. 267 para. 2 TFEU to which the referral procedure is available. Although the local court as a court of first instance does not

⁴ Another question that could be referred to the ECJ in this case is whether Art. 3 para. 1 lit. a Brussels IIa is in accordance with Art. 18 para. 1 TFEU ("Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.") in so far as it provides for different rules depending on whether the applicant is a national of the forum state (ind. 6: six months are sufficient) or not (ind. 5: a year is required).

have any obligation to refer the question (cf. Art. 267 para. 3 TFEU), it nevertheless has the right to do so.

The question referred must regard the interpretation of the Treaties or the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union; questions on the interpretation or validity of national provisions cannot be raised. Here, the local court of Lindau asks for the interpretation of the preconditions of a rule on international jurisdiction as provided by an act of European secondary law, namely the Brussels IIa-Regulation. Its question is also formulated in an abstract way relating to EU law and therefore admissible.

Additionally, the national court needs to consider the ECJ's decision on the question to be necessary to enable it to give judgment, Art. 267 para. 2 TFEU. From the perspective of the referring German court, the answer to the question is necessary in order to enable it to establish or decline its international jurisdiction.

In consequence, the ECJ would accept the reference for a preliminary ruling as admissible.

On the merits of the issue, the ECJ could point out:

“Habitual residence” is a term not explicitly defined by European legislation. By looking at the judicature of the ECJ, however, its core elements can be ascertained: As the ECJ summarises its case-law in ECJ Case C-452/93 P Magdalena Fernández v. Commission (1994) ECR I-4295, “the place of habitual residence is that in which the [person] concerned has established, with the intention that it should be of a lasting character, the permanent or habitual centre of his interests. However, for the purposes of determining habitual residence, all the factual circumstances which constitute such residence must be taken into account.” In other words, in order to identify this centre of interests, the respective person's intention as a subjective criterion on the one hand and a certain duration as an objective one on the other hand have to be considered. It is not necessary, however, that both elements always have to be present at the same time, which means that, depending of the circumstances of the case, habitual residence can be established within very short time or maybe even immediately after arrival.

The wording of Art. 3 para. 1 lit. a ind. 6 Brussels IIa, however, does not only require that the applicant be habitually resident in the forum state but in addition that “he or she resided there for at least six months immediately before the application was made”. This wording clearly suggests that the seising of the court is crucial and that the six months must already have elapsed then.

This view finds support in the purpose of Art. 3 para. 1 lit. a ind. 6 Brussels IIa. By referring to the habitual residence of the applicant, an additional basis of jurisdiction is provided in her favour. At the same time, the supplementary temporal requirement mentioned is imposed on her. This is necessary because, to the disadvantage of the respondent, indent 6 departs from the general principle of actor sequitur forum rei. The fact that the adequate protection of the defendant is an aim inherent in the Brussels IIa-Regulation can also be seen in Art. 6.

Adequate protection cannot be guaranteed, however, if the applicant could more or less choose a forum by establishing a new habitual residence too quickly. Therefore the time frame stipulated in indent 6 has to be seen as an absolute temporal minimum to determine habitual residence of the applicant. In this way, the interest of the applicant to gain an additional forum at the place of her habitual residence can be balanced against the respondent's need for protection.

In consequence, an applicant who institutes proceedings too early in her new state of habitual residence runs the risk that the court declines jurisdiction and that she has to re-approach the court later (which could give the other spouse the opportunity to meanwhile initiate proceedings in another Member State, e.g. on the basis of Art. 3 para. 1 lit. a ind. 2 Brussels IIa, and that these proceedings could block the later proceedings in accordance with Art. 19 Brussels IIa).

As an answer to the question referred, it can be summarised: In the case of Art. 3 para. 1 lit. a ind. 6 Brussels IIa-Regulation the applicant must have resided in the forum state for at least six months at time of the seising of the court; it is not sufficient that six months have passed at the moment the court renders its decision.

Useful websites:

European Judicial Network in civil and commercial matters:

http://ec.europa.eu/civiljustice/homepage/homepage_ger_en.htm

European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

Information Note on references from national courts for a preliminary ruling (2009/C 297/01):

<http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:297:0001:0006:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:297:0001:0006:EN:PDF)

Annex 3.2. – Workshop exercise II

Case studies and suggested solutions on 'Cross-border divorce: applicable law'¹

Case 1

Adam, a Swiss national, married his German wife Eve in 2002. During their honeymoon in Bregenz (Austria), they fell in love with Lake Constance and decided to settle down there. Both found an interesting job in Bregenz, and lived there happily together in a nice apartment with a magnificent view of the lake. After several years, however, they started to quarrel more and more and their marriage fell apart. Eve finally requests divorce in Bregenz.

➤ Which law shall the court seised apply, if Eve institutes proceedings in July 2012?

Suggested solution:

The case concerns divorce in a cross-border constellation and therefore falls into the scope of application of the 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-Regulation),² Art. 1 para. 1. Austria is a participating Member State within the meaning of Art. 3 no. 1 Rome III-Regulation. Since Eve institutes legal proceedings in July 2012, the Regulation also applies *ratione temporis*, Art. 18 para. 1 Rome III.

In this case, the parties did not agree to designate the applicable law pursuant to Art. 5 Rome III. Therefore, the applicable law has to be determined according to Art. 8 Rome III. The provision contains different connecting factors which are arranged in a hierarchy; their priority descends from lit. a to d. The order of the list shows that Rome III favours habitual residence over nationality and – lowest in rank – *lex fori*. Here, Adam and Eve are both habitually resident in Austria at the time the court is seised; the latter is to be determined by Art. 16 Brussels Ila (cf. recital 13 Rome III). Thus Art. 8 lit. a Rome III provides for the application of Austrian law.

In consequence, in this case the application of the Brussels Ila-Regulation regarding jurisdiction and the Rome III-Regulation regarding applicable law leads to an Austrian court being competent and having to apply its own family law.

¹ Developed by Professor Wolfgang Hau, Vice-President and Chair for Private Law, Civil Procedure and International Private Law at the University of Passau.

² .[2010] O.J. L 343/10, 29.12.2010. Cf. Council Decision 2010/405/EU of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, [2010] O.J. L 189/12, 22.7.2010.

Case 2

Same as Case 1, but:

After their marriage has broken down, Eve wants to gain some distance from Adam and therefore leaves Bregenz. Since she is still in love with the lake, however, she moves to the nearby Lindau, just behind the German border. After taking a few quiet days off, she requests divorce there.

➤ Which law shall the court seised apply, if Eve institutes proceedings in July 2012?

Suggested solution:

The solution of the jurisdictional issue of Case 2 has shown that Eve could not bring divorce proceedings in Germany but in Austria. Supposing that Eve institutes proceedings in Austria, the court³ will determine the applicable law in accordance with Art. 8 [Rome III](#). Since Eve does not live in Austria anymore, it is not lit. a but lit. b which becomes relevant: At the time the court is seised, Adam is still habitually resident in Austria as the place of their former common habitual residence. Furthermore, the period of common residence did not end more than one year before the seising of the court pursuant to lit. b. Therefore Austrian law applies. Once again, the fact that an Austrian court has to apply Austrian substantive law shows the parallelism between the two regulations concerning international divorce cases.

Case 3

Same as Case 1, but:

Adam and Eve spent their honeymoon at Lake Constance in Thal (Switzerland) and settled down there. When their marriage fell apart after several years, Eve moved to Bregenz (Austria) and found a new job there. She quickly settled in but took some time to come to terms with the break-up. After two years, she finally wants a divorce. As her brother is a German lawyer, she decides to bring divorce proceedings in Germany.

➤ Which law shall the court seised apply, if Eve institutes proceedings in July 2012?

Suggested solution:

The solution of the jurisdictional issue of Case 3 has shown that Eve could not bring divorce proceedings in Germany but in Austria. Supposing that Eve institutes proceedings in Austria, the court will determine the applicable law in accordance with Art. 8 [Rome III](#). Adam and Eve are not habitually resident in the same country at the time the court is seised, thus lit. a is not fulfilled. Furthermore, their common habitual residence ended more than a year ago, which means that lit. b does not apply either. As they have different

³ Germany, where Eve originally wanted to sue but which was not internationally competent, would be a Member State as well for that matter.

nationalities (lit. c), the court will fall back on lit. d which provides for the applicability of the lex fori of the court seised. Therefore Austrian law has to be applied.

Case 4:

Same as Case 3, but:

After splitting up, Adam and Eve both remained in Switzerland. Eve nevertheless requests divorce in Germany.

➤ Which law shall the court seised apply, if Eve institutes proceedings in July 2012?

Suggested solution:

Referring to the solution in Part I, Eve can bring proceedings in Germany which is a participating Member State in the sense of Art. 3 no. 1 [Rome III-Regulation](#). The German court will determine the applicable law in accordance with Art. 8 Rome III. Since both spouses are habitually resident in Switzerland at the time the court is seised, lit. a leads to the application of Swiss law. Although Switzerland is not a participating Member State, its law can nevertheless be relevant, as is emphasised by Art. 4 Rome III (universal application). This time, the German court seised actually has to apply foreign law, which shows that the aforementioned parallelism of international jurisdiction (Brussels IIa) and applicable law (Rome III) is not without exception.

Case 5:

Romeo has both Swiss and German nationality, Juliet is German. They met in 2008 and, head over heels, decided to marry. They chose Venice (Italy) as a romantic location and the 8th of August 2008 as their special day, easy to remember forever. Romance was disturbed, however, by the news that Juliet's grandmother in Germany suddenly was on her deathbed. Immediately, Juliet left for Germany in order to stay with her beloved Grandmother in her last hours. Both, Romeo and Juliet, agreed on keeping up their wedding plans nevertheless because they definitely did not want to wait until 9th of September 2009, and it would also meet Juliet's grandmother's desire to see her granddaughter married.

Italian law (as opposed to Swiss, German, and Austrian law) provides for the so-called *matrimonio per procura* (proxy marriage): If there are important reasons that one of the engaged stays outside of Italy at the time of the marriage, it can take place by proxy, one of the requirements being that the proxy document names the absent future spouse. Juliet therefore in Germany arranged for an appropriate document pursuant to Art. 111 of the Italian Codice Civile authorising her best friend to take the vows for her in Venice. Without further difficulties, the marriage ceremony took place in Venice.

Afterwards, Romeo and Juliet bought a house in Bregenz (Austria) where they lived since then. On February 14th 2011, Juliet decided to leave Romeo for good and returned back to

her family in Lindau (Germany). In July 2012, Juliet requests divorce in Lindau. Romeo consents.

Suggested solution:

Since Germany as Member State participates according to Art. 3 no. 1 [Rome III-Regulation](#) and [Decision 2010/405/EU](#), the German court will apply Rome III in order to determine the applicable law for the divorce. In the absence of an agreement by the parties pursuant to Art. 5 Rome III, the applicable law has to be determined according to Art. 8 Rome III.

Romeo and Juliet are not habitually resident in the same country at the time the court is seised, thus lit. a is not fulfilled. Furthermore, their common habitual residence ended more than a year ago (February 2011), consequently lit. b does not apply either. Lit. c is relevant, if both spouses have the same nationality at the time the court is seised. Both are German, but Romeo also has the Swiss nationality which leads to the question if this is enough for a common nationality within the meaning of lit. c. Recital 22 of Rome III specifies “Where this Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be left to national law [...]”. Thus, the question has to be answered by regarding German law as the *lex fori*.

Useful links:

European Judicial Network in civil and commercial matters:

http://ec.europa.eu/civiljustice/homepage/homepage_ger_en.htm

Applicable law:

http://ec.europa.eu/civiljustice/applicable_law/applicable_law_ger_en.htm

National rules: EGBGB – Introductory Act to the Civil Code

Centre for German Legal Information:

<http://www.cgerli.org/>

Table of Legislation:

<http://www.cgerli.org/index.php?id=152>

EGBGB – Introductory Act to the Civil Code

http://www.gesetze-im-internet.de/englisch_bgbeg/index.html

Art. 5 para. 1 s. 1 of the German Introductory Act to the Civil Code (EGBGB) which deals with applicable law in case of bi- or multi-nationality stipulates that the law applicable shall be that of the country with which the person has the closest connection, especially through his or her habitual residence. In the context of our case, regarding Romeo this does not lead to a clear solution since he has been habitually resident in Austria for years and the facts given do not reveal any additional connection neither with Switzerland nor Germany. Art. 5 para. 1 s. 2 EGBGB, however, declares that the German nationality has to prevail in any case. In consequence, Romeo and Juliet can be regarded as having a common German nationality within the meaning of Art. 8 lit. c Rome III and the court will therefore apply German divorce law.

Useful websites

European Judicial Network in civil and commercial matters:

http://ec.europa.eu/civiljustice/homepage/homepage_ger_en.htm

divorce:

http://ec.europa.eu/civiljustice/divorce/divorce_ger_en.htm

conditions: BGB – German Civil Code (Sections 1564 et seq.)

Centre for German Legal Information:

<http://www.cgerli.org/>

Table of Legislation:

<http://www.cgerli.org/index.php?id=152>

BGB – German Civil Code:

http://www.gesetze-im-internet.de/englisch_bgb/index.html#gl_p0021

According to Section 1564 BGB, a marriage may be dissolved by divorce only by judicial decision on the petition of one or both spouses (s. 1) and under the conditions mentioned in the following provisions (s. 3). Juliet requested divorce before the local court in Lindau so that compliance with the further requirements has to be tested.

This only becomes relevant however, if – in a first step – a valid marriage existed at all. This is problematic because Juliet did not attend her own marriage ceremony. Once again, the question of applicable law arises. Art. 1 para. 2 lit. b Rome III explicitly excludes questions of validity of a marriage from its scope. Therefore the *lex fori* has to be consulted in order to assess the applicable law. German national law, however, also comprises the law of applicable international conventions which even have priority according to Art. 3 para. 1 no. 2 EGBGB. In the case at hand, the Hague Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage applies because both Italy, where the marriage ceremony took place, and Germany, as the forum state, are Contracting States of this Convention.

Useful websites

Hague Conference on Private International Law:

www.hcch.net

Conventions → The “old” Conventions:

http://www.hcch.net/index_en.php?act=text.display&tid=12

Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage:

http://www.hcch.net/index_en.php?act=text.display&tid=13 (French only)

The possibility of a proxy marriage has to be qualified as a matter of form if the authorised person merely transmits the pre-formulated declaration of the absent future spouse without having any influence on this person’s internal process of deciding to marry. For such matters of form, Art. 5 para. 1 of the Convention provides for the validity of a marriage if it complies with the law of the country where it has been contracted (*lex loci celebrationis*). The subsidiary rule in Art. 1 of the Convention thus does not apply. Since a proxy marriage is possible in Italy and all necessary conditions of Art. 111 Codice Civile have

been met in the case at hand, falling back on Art. 7 of the Convention regarding formal invalidity is not necessary. In summary, Romeo and Juliet are validly married. Thus there is a valid marriage which can be subject to divorce proceedings.

In German law, a marriage may only be dissolved if it has broken down, cf. Section 1565 para. 1 s. 1 BGB, as defined in s. 2. This is irrebuttably presumed if the spouses have lived apart for three years, Section 1566 para. 2 BGB. Here, Romeo and Juliet definitely have not lived apart for three years yet. Another irrebuttable presumption of breakdown can be found in Section 1566 para. 1 BGB, if the spouses have lived apart for a year and the respondent consents to divorce. The latter prerequisite is met when Romeo consented. Living apart is defined in Section 1567 para. 1 BGB as the non-existence of a domestic community between the spouses and the lack of intention to create conjugal community of at least one spouse. By moving abroad Juliet has ended their domestic community and no intention to recreate it can be inferred from the behaviour of the spouses. Consequently, the breakdown of their marriage is irrebuttably presumed, Sections 1566 para. 1, 1565 para. 1 BGB.

Therefore, the local court in Lindau will dissolve their marriage by judicial decision, Section 1564 s. 1 BGB.

Useful websites:

European Judicial Network in civil and commercial matters:

http://ec.europa.eu/civiljustice/homepage/homepage_ger_en.htm

European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

Centre for German Legal Information:

<http://www.cgerli.org/>

Hague Conference on Private International Law:

www.hcch.net

Annex 3.3. – Workshop exercise III

Case study on 'Cross-border maintenance: Jurisdiction and applicable law'¹

Case study

Alexander and Barbara are currently married and have one child, Caroline. Alexander is a French national, whilst Barbara has both French and German nationality. From the moment of her birth, Caroline is both a French and German national.

Prior to their marriage, Alexander lived in a small apartment in the Bastille area of Paris. Barbara, on the other hand, lived on the outskirts of Munich. They met in 1999 through their work during a conference in London. After a number of years of a long-distance relationship, they decided to settle down and get married. They were both offered jobs at the European Patent Office in The Hague and moved in 2001 to The Netherlands. They were married in 2003.

Alexander travelled a lot within the context of his work and whilst on a business trip to Athens, he fell in love with a Greek colleague, Dimitra. Alexander and Dimitra fall madly in love with each other and engage in a secret affair. After six months of tempestuous secrecy, Alexander decides to tell Barbara of his clandestine activities. Barbara is mortified and tells Alexander to leave. On the 15th December 2011, Alexander packs his bags and within two weeks he is on a plane to Athens. Alexander and Dimitra move in together and Alexander decides to file for divorce at the beginning of the new year. He informs Barbara over the telephone of his intentions. Barbara decides not to contest the divorce, but does seek legal advice. She is informed that it may be in her best interests to file for divorce first, and simultaneously request spousal maintenance and child support.

Section I: International jurisdiction

Question 1

Which instrument is applicable to the question which court or courts are competent to hear the maintenance case?

1. Sources

There are a number of different instruments applicable in this field:

- European Maintenance Regulation, Nr. 4/2009
- European Enforcement Order Regulation, Nr. 805/2004
- Brussels I Regulation, Nr. 44/2001
- Brussels Convention 1968

The first step in any private international question is to determine the hierarchy of the sources. International sources always supersede national sources (normally on the basis of national statutory provisions, for example art. 93 and 94 of the Dutch Constitution). The four instruments identified are all international instruments and in theory all should be applied prior to examining national legislation. When dealing with international

¹ Developed by Dr Ian Curry-Sumner, Voorts Legal Services

instruments, it is important to determine whether the instrument is applicable, prior to a discussion of the rules of jurisdiction. Although normally all these individual instruments would need to be examined to determine the exact applicability of the various instruments, in this case study it is not necessary. Instead, reference will only be made to the European Maintenance Regulation (NB: if participants wish to know why only the European Maintenance Regulation is applicable, then this information obviously may also be provided).

To determine whether an international instrument is applicable, three preliminary questions must be answered, namely:

- (i) whether the facts fall within the *subject matter scope* of the instrument
- (ii) whether the facts fall within the *geographical scope* of the instrument
- (iii) whether the facts fall within the temporal scope of the instrument

2. Scope of the European Maintenance Regulation

2.1 Subject Matter Scope

On the basis of Article 1, the Regulation applies to all maintenance claims with their origins in family law. In the case at hand, the maintenance obligations arise as a result of the marriage in the case of spousal maintenance and as a result of parentage in the case of child support. The case, therefore, falls squarely within the subject matter scope of the Regulation.

Furthermore, the case does not raise any special issues with respect to the maintenance obligation as such. Certain lump sum payments may fall outside the scope of the Maintenance Regulation if their aim is not directed towards the support of the former spouse and instead is intended to constitute a one-off property redistribution (see further C-220/95 *van den Boogaard v. Laumen* [1997] ECR I-1147).

2.2 Geographical Scope

This condition can be somewhat difficult. However, many instruments are restricted on the basis of the reciprocity principle. See, for example, the Brussels I Regulation that was restricted in principle to a defendant who resided in the territory of a Member State. The Maintenance Regulation is, however, not restricted in this way. According to Chapter 2 of the Regulation, the rules of jurisdiction are universally applicable. Therefore, no reference may be made to the national rules of jurisdiction.

2.3 Temporal Scope

According to Article 76, the Regulation is applicable to all petitions submitted on or after the 18th June 2011. From the facts of the case we know that the petition will be filed after the 15th December 2011. Therefore, the case also falls within the temporal scope of the Regulation.

3. Conflict with other international instruments

As already stated, normally reference would need to be made to all the other possible applicable instruments to determine which instrument is applicable in the given factual case. However, on the basis of Article 68(1) and 68(2) it is clear that the European Maintenance Regulation replaces the equivalent provisions of the Brussels I Regulation and the European Enforcement Order Regulation. With respect to the Brussels Convention 1968, Article 69(2) determines that the Regulation prevails above international conventions concluded between the Member States (e.g. the Brussels Convention 1968). As a result, the European Maintenance Regulation is the applicable instrument in this case.

Question 2

Are the courts in the following jurisdictions competent:

- a. The Netherlands?
- b. Greece?
- c. France?
- d. Germany?

1. Introduction

The question is whether the courts in the various jurisdictions are competent in this case. It is essential at this stage to make a distinction between the petition for ex-spousal maintenance (§2) and the petition for child support (§3).

2. Ex-spousal maintenance

2.1 The Netherlands

On the basis of Article 3(b), the maintenance creditor has her habitual residence in the Netherlands, and therefore the Dutch courts are competent.

2.2 Greece

On the basis of Article 3(a), the defendant (Alexander) has his habitual residence in Greece, and therefore the Greek courts are also competent.

2.3 France

The French judge is also competent in this case. However, this conclusion cannot be drawn without reference to another instrument. According to Article 3(c) of the Maintenance Regulation, the court that has jurisdiction to entertain proceedings concerning the status of the person is also competent with respect to the ancillary proceedings in the context of the maintenance petition. The question, therefore, arises whether the French courts are competent to entertain proceedings with respect to divorce.

For this reference must be made to the Brussels II-bis Regulation. This European Regulation regulates the issues of jurisdiction and recognition and enforcement with respect to *inter alia* divorce proceedings. This Regulation is applicable in this case and so reference should be made to Article 3.² According to Article 3(1)(b) the courts of the Member States of which both parties possess the nationality are competent to hear the divorce proceedings. Both parties possess the French nationality, and therefore on the basis of Article 3(1)(b), the French courts are competent to entertain the divorce proceedings. The fact that Barbara also possesses the German nationality is not relevant, since no subjective test is imposed on the nationality connection; the formal possession of a nationality is sufficient.

Since the French courts are competent to entertain divorce proceedings on the basis of Article 3(1)(b) Brussels II-bis, the French courts are also competent on the basis of Article 3(c) Maintenance Regulation to entertain proceedings with respect to the maintenance obligations between the parties. The restriction contained in Article 3(c) is not applicable here, since the competence of the French courts with respect to the divorce is based on the parties' joint nationality and not the nationality of one of the parties.

² Subject matter applicability on the basis of Article 1(1)(a) since the Regulation covers all issues of jurisdiction. The fact pattern also falls within the geographical scope of the Regulation, since the defendant is habitually resident in the territory of a Member State (Article 6). The divorce petition has also been submitted after the entry into force of the Regulation, namely after the 1st March 2005 (Article 72). Therefore, the Brussels II-bis regulation is applicable in this case.

2.4 Germany

In principle, the German courts are not competent. There are no objective jurisdictional criteria in Article 3 according to which the German courts could regard themselves as competent. Furthermore, in this situation the parties have not made a choice of forum clause that satisfies the conditions laid down by Article 4. However, if the defendant appears before the court and does not contest the jurisdictional competence of the court, then the court will be deemed competent on the basis of Article 5.

Since the courts of other Member States are competent on the basis of Article 3, reference to Articles 6 and 7 is excluded. Both Articles provide for subsidiary jurisdictional grounds if, and only if, no court of a Member State is competent on the basis of other provisions of the Maintenance Regulation.

2.5 Conclusion

On the basis of the Regulation, the courts in the Netherlands, Greece and France would all be competent to hear proceedings. Moreover, depending on the steps taken by the defendant the German courts may also be competent to entertain maintenance proceedings.

3. Child Maintenance or Child Support

Although it is important to always separate the different requests for maintenance so as to ensure that each individual factual petition is firmly founded on the correct jurisdictional grounds, in this particular case, the grounds are identical as those applicable with respect to the spousal maintenance.

It can happen, although seldom does, that the child does not have the same habitual residence as the petitioning parent. This could, for example, be the case if the child lives temporarily with grandparents or other relatives. In these rare cases, since the habitual residence of the child and the non-paying parent differ, therefore the jurisdictional rules laid down in Article 3(b) could lead to different courts being competent to entertain proceedings for the ex-spousal maintenance and the child maintenance. *In casu* is this not the case, and therefore the courts that are competent to entertain proceedings with respect to the ex-spousal maintenance, are also competent with respect to the claims for child support.

Question 3

Would your answer to the question 2 be different if the parties had included a choice of forum clause in the pre-nuptial agreement and determined that the courts in Germany would be competent?

1. Introduction

According to the Maintenance Regulation, the parties are permitted to conclude a choice of forum clause prior to their dispute. A number of different questions must be posed with respect to a choice of court clause. Firstly, which courts may be chosen (§2)? Secondly, which further conditions are applied to a choice of court clause (§3)? Thirdly and finally, are there any restrictions on this choice (§4)?

2. Jurisdictions that may be chosen

Unlike the similar rules with respect to choice of court clauses in civil and commercial matters (Article 24 Brussels I Regulation), according to Article 4(1) Maintenance

Regulation the parties are not entitled to an unfettered choice. A number of limited options are provided, namely:

- (a) a court or courts of a Member State in which one of the parties is habitually resident
- (b) a court or courts of a Member State in which one of the parties has the nationality
- (c) in the case of maintenance obligations between spouses or former spouses:
 - a. the court which has jurisdiction to settle their dispute in matrimonial matters; or
 - b. a court or the courts that of the Member States which was the Member State of the spouses' last habitual residence for a period of at least one year.

According to the case study and on the basis of the options provided by Article 4(1), the parties would be able to choose from the courts of Greece or the Netherlands as the country in which one of the parties is habitually resident at the time the court is seised. Furthermore, the courts of France or Germany would also be competent as the courts of a Member State in which one of the parties has the nationality.

3. Further conditions

Firstly, conditions apply with respect to the time at which the conditions mentioned in §2 must be fulfilled, namely either (a) at the time the agreement is concluded, or (b) at the time the court is seised (in accordance with the definition provided in Article 9) (Article 4(1) penultimate sentence). Secondly, unless the parties have determined otherwise, the jurisdiction conferred by a choice of court clause is exclusive (Article 4(1), final sentence). Thirdly, the agreement must be made in writing (Article 4(2)). This provision is equivalent to Article 23 of the Brussels I Regulation.

4. Restrictions

According to Article 4(3), parties are not permitted to conclude choice of court clauses with respect to child support issues. Therefore, any choice of court clause between Alexander and Barbara with respect to child support or child maintenance payments will be regarded as null and void.

5. Conclusion

As long as the choice of court clause satisfies the conditions laid down in Article 4(1) and 4(2), there would be no foreseeable issues with regard to the enforcement of the clause with respect to the ex-spousal maintenance claim. This would, therefore, mean that the parties would be required to proceed before the German courts. All other courts would be required to declare of its own motion that it has no jurisdiction (in accordance with Article 10).

Question 4

What would happen if Alexander filed for divorce in Greece on the 2nd January 2012 and Barbara filed for divorce in the Netherlands on the 3rd January 2012?

1. Introduction

This question centres on the issue of *lis pendens* and therefore requires Article 12 to be consulted.

2. Lis pendens

According to Article 12, where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court

other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. *In casu* this would mean that the Greek courts would be determined to have been first seised providing the conditions of Article 9 are satisfied. If this indeed would be the case then the courts in the Netherlands would be required to stay its proceedings (Article 12(1)). As soon as the jurisdiction of the Greek courts would be established, then the Dutch courts would need to decline jurisdiction altogether.

Section II: Applicable Law

Question 1

Which international instruments could be used to determine the law applicable to the maintenance obligations in this case?

1. Sources

There are a number of different instruments applicable in this field:

- Hague Applicable Law Maintenance Convention 1956
- Hague Applicable Law Maintenance Convention 1973
- Hague Maintenance Protocol 2007

The first step in any private international question is to determine the hierarchy of the sources. International sources always supersede national courses. The three instruments identified are all international instruments and in theory all should be applied prior to examining national legislation. When dealing with international instruments, it is important to determine whether the instrument is applicable, prior to a discussion of the rules of applicable law. To determine whether an international instrument is applicable, three preliminary questions must be answered, namely:

- (i) whether the facts fall within the *subject matter scope* of the instrument
- (ii) whether the facts fall within the *geographical scope* of the instrument
- (iii) whether the facts fall within the *temporal scope* of the instrument

2. Scope of the international instruments

2.1 Hague Maintenance Convention 1956

- (a) *Subject matter scope*: The Convention determines which law is applicable to maintenance obligations with respect to children. This therefore automatically rules out the application of this Convention to the ex-spousal maintenance claim in issue. According to Article 1(1) of the Convention, the child maintenance petition would fall within the subject matter scope of the Convention.
- (b) *Geographical scope*: The Convention has a very limited geographical scope and is only applicable if the child concerned has his or her habitual residence in the Contracting State. In the case at hand, the child has her habitual residence in the Netherlands, which is a contracting state. Therefore, the case falls within the geographical scope of the Convention.
- (c) *Temporal scope*: The Convention was opened for signature on the 24th October 1956. It has currently been ratified by Austria (1 January 1962), Belgium (24th October 1970), France (1st July 1963), Germany (1st January 1962), Italy (1st January 1962), Japan (19th September 1977), Liechtenstein (18th February 1973), Luxembourg (1st January 1962), the Netherlands (14th November 1962), Portugal

(3rd February 1969), Spain (25th May 1974), Switzerland (17th January 1965) and Turkey (27th April 1972).

2.2 Hague Maintenance Convention 1973

- (a) *Subject matter scope:* The Convention has a broad scope according to Article 1. The Convention covers both ex-spousal and child maintenance. Therefore in the case at hand, both maintenance obligations fall within the scope of the Convention.
- (b) *Geographical scope:* On the basis of Article 2, the Convention has an unlimited geographical scope and therefore applies regardless of where the child lives or which law is applicable to the maintenance obligation.
- (c) *Temporal scope:* The Convention was opened for signature on the 2nd October 1973. It has currently been ratified by Albania (1st November 2011), Estonia (1st January 2002), France (1st October 1977), Germany (1st September 2003), Italy (1st January 1982), Japan (1st September 1986), Lithuania (1st September 2001), Luxembourg (1st January 1982), the Netherlands (1st March 1981), Poland (1st May 1996), Portugal (1st October 1977), Spain (1st October 1986), Switzerland (1st October 1977) and Turkey (1st November 1983).

2.3 Hague Maintenance Protocol 2007

- (a) *Subject matter scope:* The Protocol has a broad scope according to Article 1(1). The Convention covers both ex-spousal and child maintenance. Therefore in the case at hand, both maintenance obligations fall within the scope of the Convention.
- (b) *Geographical scope:* On the basis of Article 2, the Protocol has an unlimited geographical scope and therefore applies regardless of where the child lives or which law is applicable to the maintenance obligation.
- (c) *Temporal scope:* The Convention was opened for signature on the 23rd November 2007. There are currently no ratifications to the Protocol, although two signatories have been deposited: European Union (8th April 2010) and Serbia (18th April 2012). The European Union has also declared that it will apply the provisions of the Protocol as from the 18th June 2011 (the date upon which the European Maintenance Regulation enters into force). Furthermore, the European Union has also declared that it will apply the rules of the Protocol to periods of maintenance that lie prior to this date (See Article 5, Decision 2009/941/EC on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations).

2.4 Conclusion

With respect to the ex-spousal maintenance obligation both the Hague Maintenance (Applicable Law) Convention 1973 and the Hague Maintenance Protocol 2007 are applicable. According to Article 18 of the Hague Maintenance Protocol 2007, the 2007 Protocol replaces the 1973 Convention.

With respect to the child maintenance obligation, all three instruments are applicable. Nonetheless, once again in accordance with Article 18 Hague Maintenance Protocol, reference should be made to the rules laid down in the Hague Maintenance Protocol 2007.

Within the context of the European Union, Article 15 of the Maintenance Regulation states that the Hague Maintenance Protocol will apply within the EU. This, however, does not solve the issues of dual applicability of the various conventions.

Question 2

If the parties had included a choice of law clause in their pre-nuptial agreements, the law of which member countries would they have been permitted to include?

1. Introduction

Assuming that the Hague Maintenance Protocol 2007 would be applicable in this case (see answer to question 1), Articles 7 and 8 regulate the possibility for a couple to opt to choose the applicable law to their maintenance obligations. Here a distinction once again needs to be made between the choice of the applicable law to the ex-spousal maintenance claim (§2) and the choice of the applicable law to the child maintenance claim (§3).

2. Ex-spousal maintenance

2.1 Choice of legal systems

For ex-spouses, the rules of the Protocol provide a large selection of possible systems from which to choose from. In any given proceedings, the divorcing spouses may choose to apply the law of the forum (Article 7(1)). This choice must, however, be made explicitly by both spouses and is only valid for the specifically designated proceedings at hand. It would therefore appear that since the case mentions that the spouses had drafted pre-nuptial agreements, reference should instead be made to Article 8.

On the basis of Article 8, the spouses would be permitted to choose the law of any State of which either party is a national at the time of the designation (Article 8(1)(a)). This would therefore allow for a choice of French or German law. Secondly, the Protocol permits for the spouses to choose for the law of either party's habitual residence. This would, therefore, permit the parties to choose for French, German or Dutch law depending upon the time at which the pre-nuptial agreements were drafted. Since the couple already moved to the Netherlands two years prior to their marriage, the chances are likely that they will already have acquired their habitual residence in the Netherlands prior to the marriage and that they will only have drafted their pre-nuptial agreements shortly prior to the marriage. Therefore, Article 8(1)(b) probably will only provide the parties in this case with the option of Dutch law.

According to Article 8(1)(c) or 8(1)(d), the Protocol provides the parties with the option of also opting for the law applicable to their divorce or matrimonial property regime to also be applicable to their ex-spousal maintenance claims. This would require reference into many different scenarios. More than likely the possibilities presented to the parties would not be that much different than those provided on the basis of Article 8(1)(a) or 8(1)(b). Therefore, these options will not be developed further in this answer. Moreover, outside the scope of the Rome III Regulation, these rules are currently not yet unified within Europe and are therefore difficult to oversee.

2.2 Further conditions

Any choice made by the parties also needs to satisfy the further conditions laid down by Article 8, namely:

- (a) it must be in writing or recorded in any medium whereby the information contained therein is accessible at a later date (Article 8(2)).
- (b) the agreement must be signed by both parties (Article 8(2)).
- (c) the agreement is restricted when it comes to the ability for the creditor to renounce his or her rights to maintenance. The choice of applicable law does not govern this question. Instead, the law of the habitual residence of the creditor always governs this question (Article 8(4) and 8(5)).

3. Child Maintenance Claim

According to Article 8(3), the parties are not permitted to make a choice of applicable law clause with respect to the child maintenance. The parties are permitted to make a choice of law to be applied during the specific proceedings, but this takes place within the context of Article 7 (during specific proceedings) and cannot be done in the pre-nuptial agreements years prior to a possible divorce.

Question 3

Assuming that the parties have not included a choice of law clause in their pre-nuptial agreement, which law would apply to the maintenance obligations? How does the court in which proceedings are initiated affect your answer?

1. Introduction

If the parties had not made a choice for the applicable law, then the competent authorities would need to determine the applicable law according to the objective criteria contained in the protocol.

2. Main rule

According to Article 3 maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor. Since both the ex-spouse and the child live in the Netherlands at the time proceedings are initiated, this therefore means that Dutch law will in principle be applicable to the maintenance obligations.

3. Exceptions: Child Maintenance

With respect to maintenance obligations of parents towards their children, Article 4 provides for extra connecting factors. Child maintenance obligations fall namely within the scope of Article 4, thus being granted the extra protection afforded by this Article. According to Article 4(2) if the creditor is unable, by virtue of the law referred to in Article 3, to obtain maintenance from the debtor, the law of the forum shall apply. Therefore, *in concreto* this would mean that if Dutch law would not provide for a maintenance obligation, the law of the forum would apply.

Furthermore, according to Article 4(3) if the maintenance creditor has seised the court where the debtor has his habitual residence then the law of the forum will need to be consulted first. *In concreto* this means that if the child (more than likely via an *ad hoc* guardian) would initiate proceedings before the Greek courts, then the Greek courts would first be required to apply Greek law. If Greek law does not provide for a maintenance obligation in this context, then and only then would the law of the habitual residence of the maintenance creditor (i.e. Dutch law) apply.

As a last resort (which in this case would probably not be applicable), the maintenance creditor would be able to apply the law of the common nationality (i.e. French law) if neither Greek nor Dutch law provided for a maintenance obligation.

In conclusion, since virtually all legal systems recognise some form of child maintenance obligation in some form or another, the main relevant factor in this scenario is where the proceedings are initiated. If they were to be initiated in the Netherlands, then on the basis of Article 3, Dutch law would apply. If, on the other hand, the proceedings were to be initiated in Greece, then Greek law would apply on the basis of Article 4(3).

4. Exceptions: Ex-spousal maintenance

Ex-spouses are not able to benefit from the extra connecting factors provided by Article 4. Nonetheless, spouses are able to benefit from the provisions of Article 5. In the case of maintenance obligations between spouses, ex-spouses or parties to a marriage which has been annulled, Article 3 shall not apply if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case the law of that other State shall apply. In this case, since the maintenance creditor lives in the Netherlands, Dutch law (which is also the last common habitual residence of the parties) will already be applicable. The maintenance debtor would have a difficult task proving that a law other than Dutch law would be applicable in this scenario.

Section III: Recognition and enforcement

Continuation of the case study

In 2012, Barbara files for divorce in the Netherlands. On the 3rd February 2012 the District Court in The Hague grants her divorce, applying Dutch law. The court furthermore orders Alexander to pay €200 per month in spousal maintenance to Barbara and €300 per month in child support to Caroline. Although Alexander pays the first three periodical payments, he subsequently defaults and Barbara ceases to receive any payments. Barbara wishes to force Alexander to meet his obligations.

Alexander, on the other hand, objects to having to pay these maintenance amounts. Since Alexander and Dimitra now have a child of their own, Alexander's monthly expenses have increased dramatically. He argues that he is no longer able to afford €500 per month in maintenance, and instead wishes to modify the original decision.

Question 1

What steps should Barbara undertake to ensure payment of her maintenance payments?

1. Sources

There are a number of different instruments applicable in this field:

- European Maintenance Regulation, Nr. 4/2009
- European Enforcement Order Regulation, Nr. 805/2004
- Brussels I Regulation, Nr. 44/2001
- Brussels Convention 1968

The first step in any private international question is to determine the hierarchy of the sources. International sources always supersede national courses (normally on the basis of national statutory provisions, for example art. 93 and 94 of the Dutch Constitution). The four instruments identified are all international instruments and in theory all should be applied prior to examining national legislation. When dealing with international instruments, it is important to determine whether the instrument is applicable, prior to a discussion of the rules of recognition and enforcement. Although normally all these individual instruments would need to be examined to determine the exact applicability of the various instruments, in this case study it is not necessary. Instead, reference will only be made to the European Maintenance Regulation (NB: if participants wish to know why only the European Maintenance Regulation is applicable, then this information obviously may also be provided).

To determine whether an international instrument is applicable, three preliminary questions must be answered, namely:

- (i) whether the facts fall within the *subject matter scope* of the instrument
- (ii) whether the facts fall within the *geographical scope* of the instrument
- (iii) whether the facts fall within the *temporal scope* of the instrument

2. Scope of the European Maintenance Regulation

2.1 Subject Matter Scope

The same rules apply with respect to the subject matter scope with respect to the recognition and enforcement of decisions as applied with respect to jurisdiction (i.e. Article 1).

2.2 Geographical Scope

On the basis of Article 16(1), Maintenance Regulation, Chapter IV of the Regulation shall apply to all decisions regarding falling within the scope of the Regulation. Although at this point it is important to realise that a distinction must be drawn between Member States that have ratified the Hague Maintenance Protocol and those that have not, with respect to the delineation of the geographical scope of the Regulation, this distinction is less important. At this point it is important to note that the Regulation applies to decisions given in a Member State. This includes decisions from Ireland, the UK and Denmark. On the 15th of January 2009, the UK announced its desire to opt into the Regulation. By decision of the Commission on the 8th June 2009 the Regulation is also applicable in the UK (OJ L 149/73). In accordance with Article 3(2) of the agreement between the EU and Denmark on the jurisdiction and the recognition and enforcement of decision in civil and commercial matters (OJ L 299/62 of 16th November 2005) Denmark has notified the European Commission of its decision to implement the contents of the Maintenance Regulation to the extent that this Regulations amends Brussels I (OJ L 149/80 of 12th June 2009). This therefore means that Chapter IV also applies in Denmark.

2.3 Temporal Scope

According to Article 76, the Regulation is applicable to all petitions submitted on or after the 18th June 2011. From the facts of the case we know that the petition will be filed after the 15th December 2011. Therefore, the case also falls within the temporal scope of the Regulation.

Although not relevant for the case at hand, it is important to note that according to Article 75(2) Maintenance Regulation, Sections 2 and 3 of Chapter IV will apply to

decision given in Member States before the date of application of the Regulation for which recognition and the declaration of enforceability are requested after that date.

3. Recognition procedure

Having established that the Maintenance Regulation is applicable in this case, it is now essential to determine which recognition procedure needs to be followed. According to Article 16, a distinction must be drawn between decisions given in Member States that have ratified the Hague Maintenance Protocol and those Member States that have not. In practice this means that all decisions from all Member States will be governed by Article Section 1, Chapter IV (See Article 16(2)), except for those decisions given in the United Kingdom and Denmark, which will be governed by Section 2, Chapter IV (Article 16(3)).

Since the decision *in casu* has been given in the Netherlands, reference must be made to Section 1, Chapter IV. According to Article 17(1), a decision given in a Member State bound by the Hague Protocol shall be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.

4. Enforcement procedure

4.1 Competent Authority

Having established that no procedure for the recognition of the decision is required, it is now necessary to determine the enforcement procedure. According to Article 17(2), a decision given in a Member State bound by the Hague Protocol which is enforceable in that State shall be enforceable in another Member State without the need for a declaration of enforceability. This therefore means that Barbara is able to proceed directly to the direct enforcement of the Dutch decision in Greece, the habitual residence of the maintenance debtor. In accordance with the information currently provided by the Member States in accordance with Article 71(1)(f), Greece has indicated that the competent authorities for the enforcement are the district courts at first instance.

4.2 Rights for the defendant

In accordance with Article 19, a defendant who did not appear in the Member State of origin is provided with the right to apply for a review of the decision before the competent authority. However, in this case Alexander has already paid three periodical monthly payments. Therefore, even if he had not entered an appearance in the proceedings in the Netherlands, the time limit set in Article 19(2) has already passed (i.e. within 45 days). Therefore, Alexander no longer has any possibility to apply for review of the decision. The only possibility open to Alexander lies in Article 21. He is able to apply to have the enforcement of the decision refused or suspended. However, the grounds upon which this can occur are extremely limited and more than likely not applicable in this case.

4.3 Required documents

To ensure enforcement of her Dutch maintenance decision in Greece, Barbara will have to ensure that she provides the documents listed in Article 20.

Question 2

In what ways would your answer to question 1 be different if the original decision had been granted by an English judge?

1. Introduction

If the original decision had been given in England, then the procedure would have been different. This stems from the fact that instead of referring to Section 1, Chapter IV, reference would have to be made to Section 2, Chapter IV. As a result a number of differences need to be noted.

2. Differences between Section 1 and Section 2, Chapter IV

Although both sections prescribe the abolition of the recognition procedure (compare Article 17(1) with Article 23(1)), for decisions falling within the ambit of Section 2, the declaration of enforceability is still required prior to enforcement of the decision in another Member State (Article 26). This procedure is for all intents and purposes the same as that under the EEX (Brussels I Regulation). For this reason, an extensive explanation of the recognition procedure will not be given here. Instead, a brief synopsis of the essential elements will be listed:

- declaration of enforceability (exequatur) is required (Article 26);
- the application shall be submitted to the competent authority notified to the Commission by virtue of Article 71 (Article 27(1));
- the local jurisdiction shall be determined according to the place of the habitual residence of the party against whom enforcement is sought (Article 27(2));
- the documents listed in Article 28 must be submitted; and
- the person against whom enforcement is sought is not heard at this stage of the proceedings (Article 30).

Section IV: Modification

Question 1

Alexander wishes to modify the original maintenance order. Which court is competent to hear the case?

In general, jurisdictional questions within the context of a modification of original decisions must be examined anew. This means that the rules on jurisdiction apply in their entirety. However, this rule is subject to one important exception: where a decision is given in a Member State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given. This, therefore, means that since the original decision was granted by a Dutch judge, and Barbara still lives in the Netherlands, Alexander must apply to the Dutch judge to have the original decision modified. The exceptions listed in Article 8(2) do not apply in this case since the Dutch judge *in casu* was competent on the basis of Article 3 and not Article 4 or 5.

Annex 4

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	Rejent 2005, nr 9, p. 351 - 367
Zupančič, K. et al	Reforma družinskega prava: predlog novih predpisov s komentarjem. Ljubljana: Uradni list Republike Slovenije, 2009

CROSS-BORDER DIVORCE AND MAINTENANCE: JURISDICTION AND APPLICABLE LAW

Setting the Scene: framework and key elements of cross- border cooperation in family matters

Dr Geoffrey Shannon

Brussels, 26 – 28 September 2012

Brussels

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- Evolution and main objectives of judicial cooperation in family matters
- Changing of the legal basis



Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Developments from Brussels II Convention**
 - **Amsterdam Treaty**



Setting the Scene: framework and key elements of cross-border cooperation in family matters

- Main legislative choices



Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Variety of Legal Sources**
 - **Articles 3 and 6 of the Lisbon Treaty**
 - **Articles 26, 67, 81 Treaty on the Functioning of the European Union (consolidated version)**
 - **Articles 7, 9, 24, 33 of the Charter of Fundamental Rights of the European Union**
 - **Article 8 of the European Convention on Human Rights**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Key concepts**
 - **Jurisdiction**
 - **Habitual residence – Fernández v Commission (1994)**
 - ❖ the person's intention; and
 - ❖ certain duration
 - **Domicile**
 - **Nationality**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Relying on the parties agreement**
- **Factual or legal proximity to another case**
- **Protecting the weaker party**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

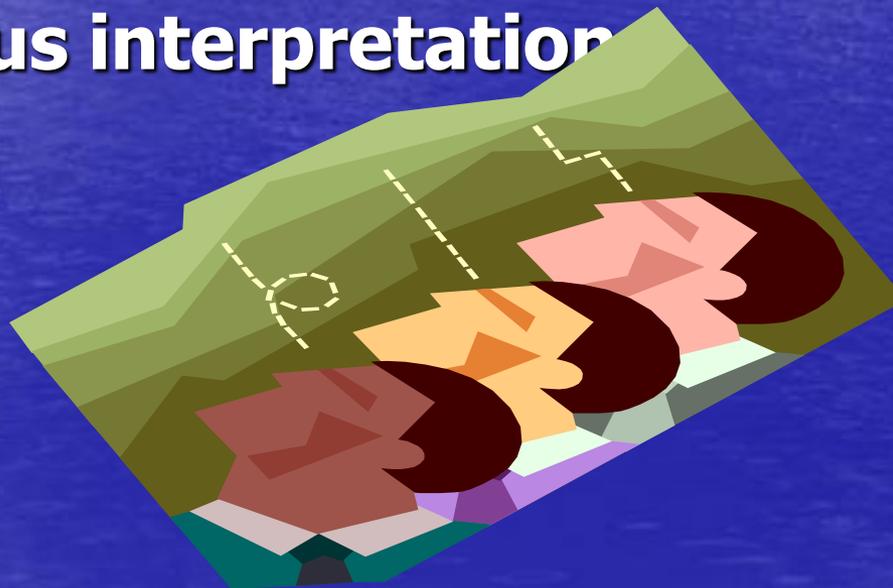
- **Principal objectives**
 - Same cause of action
 - Where two or more States satisfy the jurisdiction requirements
 - Competent Court
 - Forum shopping

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Recognition and enforcement of foreign judgments**
- **Non recognition**
 - **Jurisdiction**
 - **Public policy**
 - **Natural justice**
 - **Irreconcilable judgments**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Interpretation tools**
 - Regulations' aims and development
 - Ex aequo et bono principle
 - Autonomous interpretation



Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Legal Aid Directive No. 2003/81 EC**
- **Brussels II bis – Council Regulation EC No. 2201/2003 of 27 November 2003**
 - October 2005 Practice Guide
- **Service of Documents – Council Regulation EC No. 1393/2007 of 13 November 2007**
- **Rome III – Council Regulation EU No. 1259/2010 of 20 December 2010**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Mediation – Directive No 2008/52/EC**



Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Maintenance regulation – Council Regulation (EC) No 4/2009**
 - **comprehensive mechanism to recover and enforce maintenance**
 - **abolish the need for an enforcement order in respect of foreign maintenance order**
 - **law applied determined by Protocol**
 - **applicable law regime determines what maintenance law applies**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Maintenance regulation – Council Regulation (EC) No 4/2009 (contd.)**
 - practical application
 - UK orders
 - legal aid and child

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Cross-border succession – Regulation (EU) No 650/2012**
 - **17 August 2015**
 - **Single criterion**
 - **Deceased's habitual place of residence**
 - **Option living abroad**
 - **European Certificate of Succession**
 - **Ireland, Denmark and Britain**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **Proposal on matrimonial property regime**
- **Measures for the protection of vulnerable adults or the rights of children**
- **Initiative on Europe-wide civil status documents**

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **The European Judicial Network:**

http://ec.europa.eu/civiljustice/index_en.htm

– **Information on divorce:**

http://ec.europa.eu/civiljustice/divorce/divorce_sco_en.htm

– **Information on maintenance obligations:**

http://ec.europa.eu/civiljustice/maintenance_claim/maintenance_claim_sco_en.htm

– **Information on parental responsibility:**

http://ec.europa.eu/civiljustice/parental_resp/parental_resp_sco_en.htm

Setting the Scene: framework and key elements of cross-border cooperation in family matters

- **The European Judicial Atlas in Civil and Commercial Matters**

- Parental responsibility

http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jmm_information_en.htm

- Maintenance obligations

http://ec.europa.eu/justice_home/judicialatlascivil/html/mo_information_en.htm

Cross-border divorce in the EU: jurisdiction 'litis pendens'

Martina Erb-Klünemann

Brussels, September 26, 2012

Workshop organisers:

**Academy of European Law (ERA) on behalf of
the European Commission**

Overview

- Introduction
- Basic elements of Regulation Brussels II bis
- International jurisdiction
- Recognition (part2)

Introduction

1. Do the facts of the matrimonial case have points of contact with a foreign country?
2. What is the relevant question?
 - a) Has the court of the forum the power to resolve the dispute? procedural question of international jurisdiction
 - b) Which material law is applicable?
3. Which conflict of laws rules are applicable?
 - a) Supranational regulations? Law of nations? EU directives?
 - b) National conflict of laws rules? Lex fori?

Basic elements of Brussels II bis/

The history of Brussels II bis

https://www.era-comm.eu/e-learning/Family_Law_Unit_1/index.html

European instruments in matters of jurisdiction, recognition and enforcement of judgments in matrimonial matters		
	Temporal scope	Material scope
Convention of 28 May 1998	Never entered into force	Jurisdiction, recognition and enforcement in matrimonial matters
Regulation No 1347/2000 (Brussels II)	<ul style="list-style-type: none"> Entered into force on 1 March 2001 (Article 46) was repealed by Brussels II bis Regulation 	<ul style="list-style-type: none"> Jurisdiction, recognition and enforcement in matrimonial matters Parental responsibility when connected to divorce proceedings
Regulation No 2201/2003 (Brussels II bis)	<ul style="list-style-type: none"> Entered into force on 1 August 2004 is applicable from 1 March 2005 (Article 72) 	<ul style="list-style-type: none"> Jurisdiction, recognition and enforcement in matrimonial matters Matters of parental responsibility

Explanations

- **Explanatory Report on Brussels II** prepared by Dr **Alegría Borrás** (16th July 1998)
Official Journal 1998 C221, P. 0027-0064
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1998:221:0027:0064:EN:PDF>
- **Practical Guide for the application of the new Brussels II Regulation**

European Courts

- **Court of Justice of the European Union (CJEU)**
- highest court in the EU in matters of European Union law
- interprets EU law and ensures its equal application across all EU member states
- based in Luxemburg
- www.curia.europa.eu
- **European Court of Human Rights (ECtHR)**
- Court of the Council of Europe, is not part of the EU
- hears complaints that a contracting state has violated the European Convention of Human Rights
- based in Strasbourg
- www.echr.coe.int

Court of Justice of the European Union (CJEU)

- Limited number of judgements on matrimonial matters
- Relevance of decisions in parental responsibility cases on matrimonial cases?
- General position:

„Brussels II bis is to contribute to creating an area of freedom, security and justice, in which free movement of persons is ensured. It follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community having regard to the context of the provision and the objective pursued by the legislation in question.“

Brussels II bis

Brussels II bis: contents	
Preamble	
Chapter I – Scope and definitions	Articles 1 - 2
Chapter II - Jurisdiction	Articles 3 - 20
Chapter III – Recognition and enforcement	Articles 21 - 52
Chapter III – Cooperation between the central authorities in matters of parental responsibility	Articles 53 - 58
Chapter III – Relation with other instruments	Articles 59 - 63
Chapter III – Transitional provisions	Article 64
Chapter III – Final provisions	Articles 65 - 77
Annexes I - VI	

Scope of Brussels II bis/ Territorial scope

- Self-executing law, Art. 249.2 Treaty establishing the European Economic Community
- All states belonging to the EU when Brussels II bis was issued
- Acceding states
- Special rule - United Kingdom und Ireland: opt-in and acceptance

Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community

- Special rule - Denmark: no participation

Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community

Scope of Brussels II bis/ Universal application

General rule:

If Brussels II bis applies in a member state it does not only regulate cases involving other member states (points of contact with member states), but also with non-EU countries.

Exception: the specific regulation asks for reference to a member state.

Scope of Brussels II bis/ Temporal scope

- Entry into force: August 1, 2004, Art. 72.1 Brussels II bis
- Applicability:
 - > matrimonial rules:
March 1, 2005, Art. 72.2 Brussels II bis
transitional provisions, Art. 64 Brussels II bis
 - > Art. 67-70 Brussels II bis:
August 1, 2004

Scope of Brussels II bis/ Material scope

Art. 1.1 Brussels II bis:

civil matters relating to

- a) divorce, separation, marriage annulment**
- b) parental responsibility**

Material scope/ 'Civil matters'

- Need for interpretation together with Art. 2.1: 'court'
- Marriage dissolutions by administrative bodies fall into the scope
- Reason: significant differences in the systems of marriage dissolution in the member states
- ECJ cases C-435/06 and C-400/10 PPU:
even decisions adopted under public law rules are covered

Material scope/ 'Marriage'

- Marriage dissolution with an effect from now on/
no ex post facto because of defects in the
partnership
- Same sex marriages?
- Other judicial life forms?
- Civil unions?

Material scope/

‘Legal separation’/‘Marriage annulment’

- Not known in all European legal systems
- ‘Legal separation’: procedure that does not eliminate, but releases the marital status
- ‘Marriage annulment’: procedure that cancels – from now on or ex post facto – the marriage, because of defects in the moment of marriage

Material scope

- Religious decisions?
 - Private decisions?
 - Entry into register?
- Result: a distinction has to be made on whether a public body participated with a constitutive effect
- Decisions to be at fault?

Material scope/ Not covered issues

- Not ancillary measures such as:
matrimonial property, maintenance, trusts, succession issues,
adoption,
issues related to the parties' personal status,
name of the spouses
(but parental responsibility)
- Not preliminary issues relating to the marriage such as
capacity to marry and validity of the marriage

Material scope/

Definitions in Art. 2 Brussels II bis

- **‘Court’**: all authorities with jurisdiction in the matters falling within the scope of Brussels II bis
- **‘Judge’**: judge or official having power in matters falling within the scope
- **‘Member state’**: all EU member states with the exception of Denmark
- **‘Judgment’**: effective decision of a ‘court’, whatever it may be called

Relation to other instruments

- Art. 59.1.: Brussels II bis supersedes **conventions between member states**.
- Art. 59.2: option for Finland and Sweden concerning the Convention of 6 February 1931
- Art. 60: Brussels II bis takes precedence over **certain multilateral conventions** in so far as they concern matters under the scope of Brussels II bis.
- In matters under its scope Brussels II bis takes precedence over **national law**. The different provisions of Brussels II bis regulate whether national law is applicable or not.

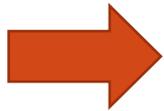
International Jurisdiction

- Difference between international jurisdiction and local jurisdiction
- **‘Ex officio’**, Art. 17 Brussels II bis
 - ‘No jurisdiction under this Regulation’: Art. 3- 7 Brussels II bis plus national law if applicable
 - ‘Over which a court of another Member State has jurisdiction by virtue of this Regulation’: only jurisdiction under Art. 3-7 Brussels II bis
 - ‘Ex officio’: examination or also fact-finding?

 Declaration to have no jurisdiction

International Jurisdiction/ Exclusive nature, Art. 6 Brussels II bis

- The spouse who is sued
 - is habitually resident in the territory of a Member State
 - or is a national of a Member State
 - or, in the case of the United Kingdom and Ireland, has 'domicile' in the territory of the UK or Ireland
- Proceedings in another Member State

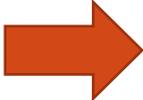


Jurisdiction exclusively regulated by Articles 3, 4 and 5
Brussel II bis, no lex fori

International Jurisdiction/ Exclusive nature, Art. 6 Brussels II bis

- **Nationality of the EU:** not UK and Ireland
- **Multiple nationalities?**
- **Bindings to more than one member state?**
- **‘Another’:** not applicable for proceedings in the home country and country of habitual residence
- **Changes during the proceeding?** perpetuatio fori
- **Third country nationals?**

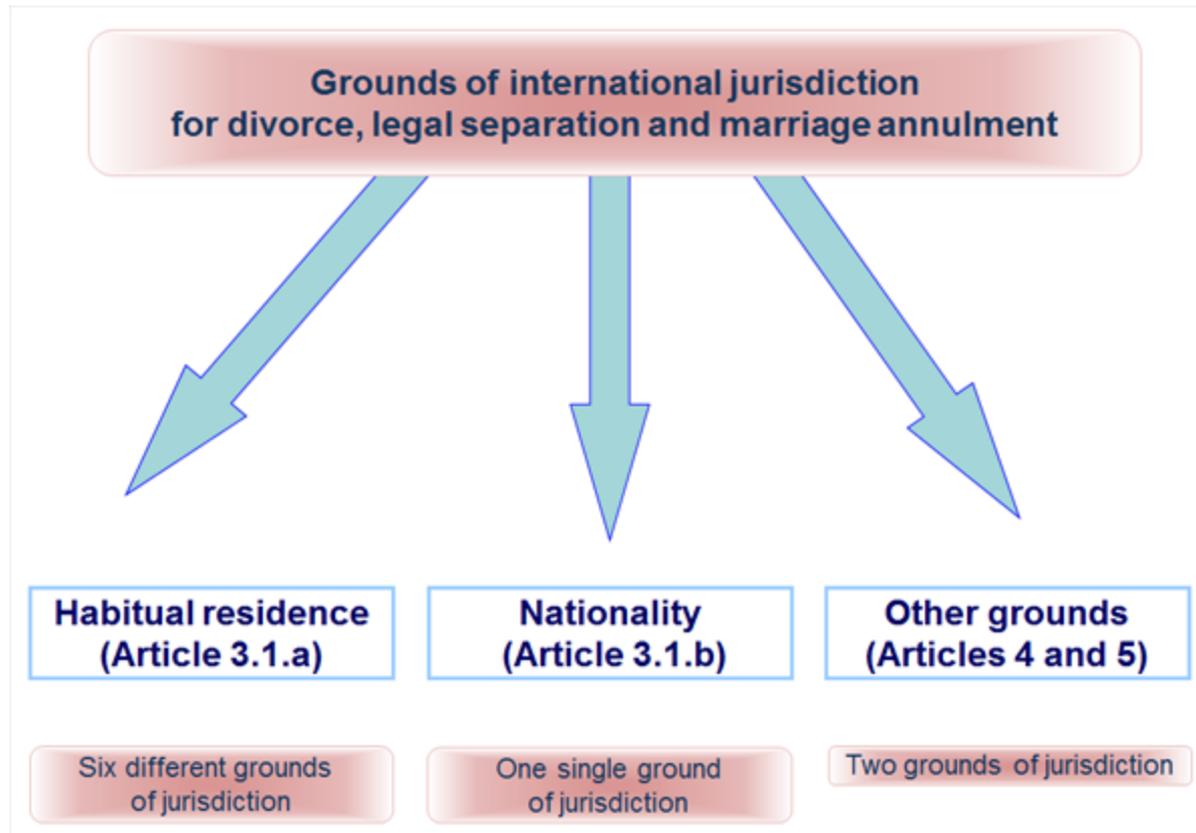
International jurisdiction/ Residual jurisdiction, Art. 7 Br II bis

- Meaning of Art. 7.1.?
 - Art. 7.2.:
 - > Respondent is not habitually resident in a Member State
 - > and is not a national of a Member State
 - > or, in the case of the United Kingdom and Ireland, does not have 'domicile' within the UK/Ireland
 - > Applicant is a national of a Member State
 - > Applicant is habitually resident within the territory of another Member State
-  The applicant may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.
- ECJ judgement C-68/07 :interaction between Art. 6 and Art. 7

International jurisdiction/ Habitual residence

- Must be interpreted autonomously in line with the interpretation given by the ECJ
- ECJ cases C-523/07, C 68/07 and C 497/10:
 - Habitual residence is the place which reflects some degree of integration in a social and family environment
 - Task of the national court to establish the habitual residence, taking into account all specific circumstances of the individual case
 - Factors:
 - concerning the stay: duration, regularity, conditions , reasons
 - nationality
 - working place and conditions
 - linguistic knowledge
 - family and social relationship
 - other factors

International jurisdiction/ Grounds



International jurisdiction/ Art. 3 Brussels II bis

- Art. 3.1.a), 1st indent: habitual residence of the spouses, 'forum matrimonii'
- Art. 3.1.a), 2nd indent: the last habitual residence of the spouses insofar as one of them still resides there
- Art. 3.1.a), 3rd indent: the habitual residence of the respondent, 'forum rei'
- Art. 3.1.a), 4th indent: in the event of a joint application the habitual residence of either spouse
- Art. 3.1.a), 5th indent: the habitual residence of the applicant if he or she resided there for at least a year immediately before the application was made, 'forum actoris'
- Art. 3.1.a), 6th indent: the habitual residence of the applicant if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there
- Art. 3.1.b): nationality of both spouses, or, in the case of UK and Ireland, domicile of both spouses

multiple nationalities: Hadadi case, C-168/08

International jurisdiction/ Art. 3 Brussels II bis

The grounds of Art. 3 Brussels II bis are alternative, not hierarchically set.

Courts in different Member States might have jurisdiction.

The applicant can choose ('forum shopping').

International jurisdiction/ Additional grounds of jurisdiction

- **Art. 4 Brussels II bis:** jurisdiction for **counterclaims** raised in the middle of already ongoing proceedings
 - Proceedings are pending on the basis of Article 3 Br II bis
 - Counterclaim within the scope of Brussels II bis
 - ➔ International and local jurisdiction for counterclaims

Art. 5 Brussels II bis: jurisdiction for **conversion** of legal separation into divorce

➔ International and local jurisdiction for conversion

International jurisdiction Relation

1. Is one of the alternative grounds of jurisdiction of Art.3,4,5 applicable?
2. Is Art. 6 applicable?

only Art.3,4,5

(+)

(-)

Art. 3,4,5 and
additionally national
law,
Art. 7 ?

‘Lis pendens’ rule in matrimonial cases, Art. 19.1 Brussels II bis

- Proceedings in different member states
- Proceedings relating to divorce, legal separation or marriage annulment
- Proceedings between the same parties

 Court second seized (Art. 16 Brussel II bis) must stay the proceedings until the court first seized decides whether it has jurisdiction;
ex officio

Lis pendens

Different phases:

Court 2nd seized exposes the proceedings

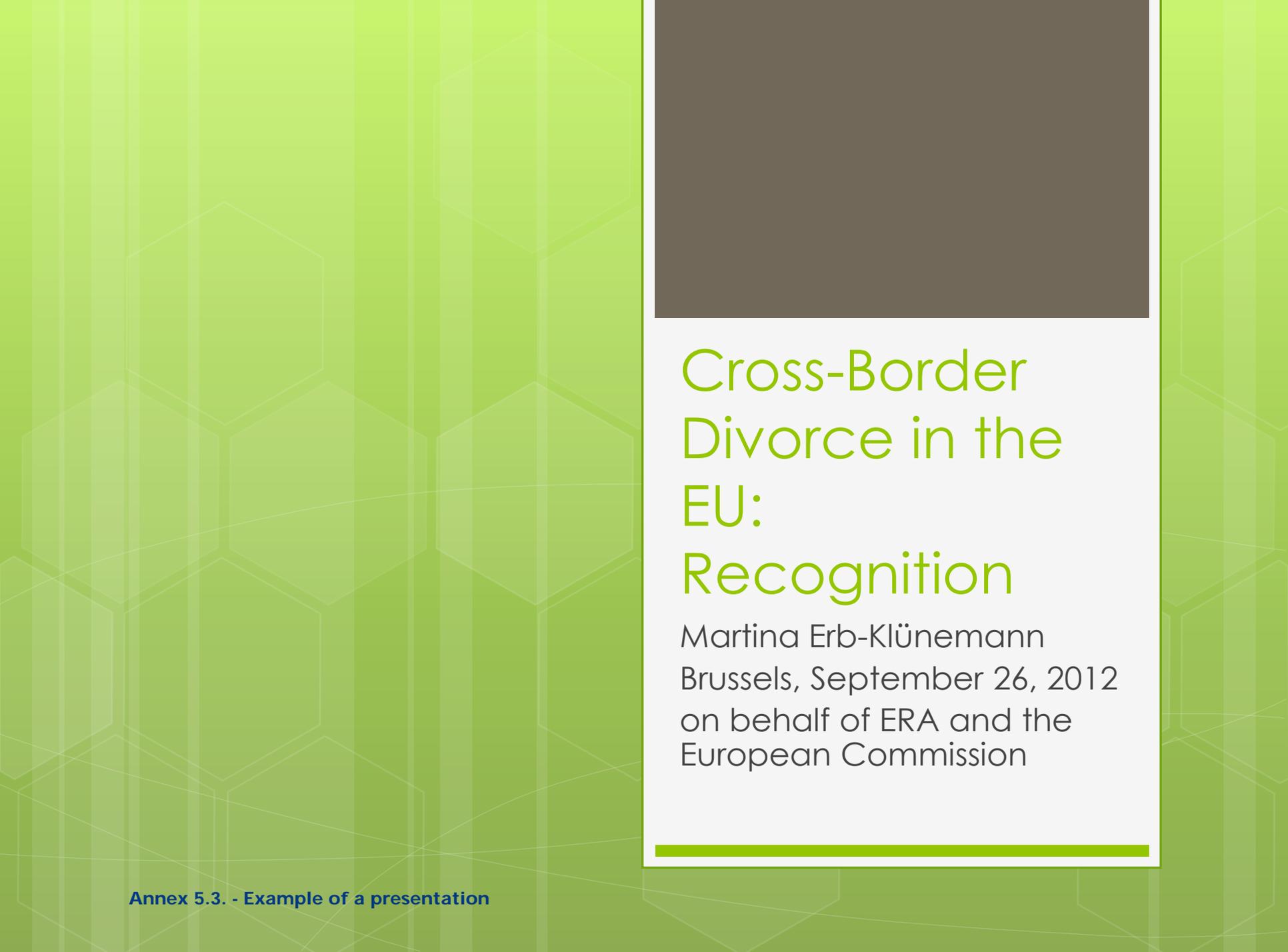
Court 1st seized decides on its jurisdiction

if (+)

court 2nd seized declines
jurisdiction and finishes
its proceeding

if (-)

court 2nd seized continues
its proceedings



Cross-Border Divorce in the EU: Recognition

Martina Erb-Klünemann
Brussels, September 26, 2012
on behalf of ERA and the
European Commission

Recognition of Foreign Judgments on Matrimonial Matters

- Art. 21-27, 37-39, 46, 49, 50 Brussels II bis
- Art. 59, 60 Brussels II bis: Brussels II bis prevails
 - a) certain multilateral Conventions as regulated in Art. 60
 - b) national law.
- Principle of automatic recognition, Art. 21.1
- Recognition: Extension of the effects that a judgment has in the state of origin to the recognising state

The Principle of Automatic Recognition

- The automatic recognition is the principle.
- Non-recognition is the exception. Grounds of non-recognition should be limited to the minimum.
- Art. 21.3: possible application for a decision on recognition or non-recognition
- Art. 21.4: recognition as an incidental question, including Art.21.2

Recognition/ Material Scope of Application

- **‘Judgment’** (Art. 2.4) by a ‘court’ (Art. 2.1) in matrimonial matters (Art. 1.1.a)
- Decision to be at fault?
- Refusing judgments?
- Ancillary measure parental responsibility (+) Art.1.1.b
- Other ancillary measures (-)
- Determination of costs and expenses, Art. 49

Recognition/ Material Scope of Application

- **Enforceable agreements** between parties changing individual's civil status, Art. 46
- **Enforceable, formally drawn up or registered documents**, Art. 46
- No non-appealability, exception: Art. 21.2
- Possibility of stay of proceedings in case of appeal against judgment, Art. 27

Recognition/ Territorial Scope of Application

‘Judgment given in a Member State’, Art. 21.1, Art. 2.3

Others: lex fori

No judgment given in third countries even if they are recognised (no double exequatur)

Recognition/ Temporal Scope

- Art. 64, 72
- Also important for acceding states who become member states with their accession, no retroactive effect

How to actively seek the recognition of a judgment in a different state?

Identification of the competent authority with the help of the **Judicial Atlas**:

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

JUDICIAL ATLAS IN CIVIL MATTERS

...as > Home

Filling in Forms

...s' Courts
...ective 2003/8/EC)
...ective 2008/52/EC)
...ments (Regulation 1393/2007)
...ss-border Procedures
...n Payment Order (Regulation 1896/2006)
...aims (Regulation 861/2007)
...ce (Regulation 1206/2001)
...nd Enforcing Judgements
...nts in civil and commercial matters (Regulation 44/2001)
...n Enforcement Order (Regulation 805/2004)
...ial matters and matters of parental responsibility (Regulation 2201/2003)
...nce obligations (Regulation 4/2009)
...to Crime Victims (Directive 2004/80/EC)

EUROPEAN JUDICIAL ATLAS IN CIVIL M...

Welcome to the European Judicial Atlas in Civil

This Atlas provides you with a user-friendly access to information relevant to civil matters. With the Atlas you can easily identify the competent courts that may apply for certain purposes. Furthermore, you can fill in on-line the forms for these purposes, change the language of the form once you have filled it in, so that the person receiving the form can read it in his own language electronically.

Annex 5.3. - Example of a presentation



JUDICIAL ATLAS IN CIVIL MATTERS

as > Matrimonial matters and matters of parental responsibility

Filling in Forms | LI

- Mediation
- Serving Documents
- European Cross-border Procedures
- Taking Evidence
- Recognising and Enforcing Judgements
- Family law

of parental responsibility >>> **Information**

INFORMATION

Regulation 2201/2003

The Regulation applies between all Member States of the European Union with the exception of Denmark.

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

A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it is enforceable there. An application for a declaration of enforceability shall be submitted to the court appearing in [Finding a court for an application](#). The appeal against a declaration of enforceability shall be lodged with the court appearing in the list [Finding a court for an appeal](#).

Judgments on access rights and judgments concerning the return of the child are recognised and enforceable in other Member States, without the need for a declaration of enforceability, provided they are accompanied by [a certificate](#).

The Regulation provides for four standard forms.

Each Member State shall designate at least one central authority to assist with the application of the Regulation.

The Atlas provides you with information concerning the application of the Regulations and a user-friendly tool for filling in the forms.

NAVIGATION

Scadplus

Annex 5.3 - Example of a presentation

- [Council Regulation \(EC\) No. 2201/2003](#)



JUDICIAL ATLAS IN CIVIL MATTERS

as > ... > Application

Filling in Forms

Mediation | Serving Documents | **European Cross-border Procedures** | Taking Evidence | Recognising and Enforcing Judgements | Family law

of parental responsibility >>> **Finding a court for an application**

FINDING A COURT FOR AN APPLICATION



Country:
Germany

Postal Code:
59069

Municipality:



Annex 5.3. - Example of a presentation

Selected Country: **Germany**

**CLICK ON THE MAP TO SELECT
ANOTHER COUNTRY:**



FINDING A COURT FOR AN APPLICATION

Postal Code:

59069

Municipality:



MUNICIPALITY (SEARCH RESULTS)

Hamm (59063, ...)

TERRITORIALLY COMPETENT COURTS FOR POSTAL CODE : 59069

Amtsgericht Hamm - Familiengericht

Administrative Address: Borbergstr. 1; 59065 Hamm

Tel.: 49-2381/909-0

E-Mail: poststelle@ag-hamm.nrw.de

Fax: 49-2381/909-222



Four Grounds of Non-Recognition, Art. 22

- Art. 22.a: breach of *ordre public*
- Art.22.b: no service of document in case of default of appearance unless acceptance
- Art.22.c: irreconcilability with a judgment given in the state in which recognition is sought
- Art. 22.d: irreconcilability with an earlier judgment given in another Member State or another state

No Grounds of Non-Recognition

- No control over jurisdiction, Art. 24
- No substantial review of the judgment, Art. 26
- No review whether the institution of divorce, separation, marriage annulment is allowed in the state in which recognition is sought, Art. 27

Control by the Court

- 1. **Jurisdiction:** lex fori, Art. 21.3.2
- 2. **Judgment in matrimonial matters,** Art. 21.3, Art. 2.4
- 3. **Interested party,** Art. 21.3
- 4. **Necessary documents,** Art. 37, Art. 52
 - a) Copy of the judgment
 - b) Certificate Art. 39, Annex 1

Control by the Court (2)

If documents are missing: Art. 38 with 3 possibilities

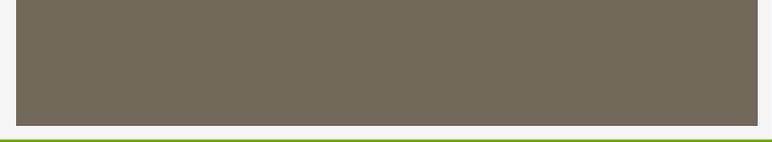
- **5. Translations only** if the court so requires, Art. 38.2

Control by the Court/ Procedure

- Articles 21.3.2, 31.3, 28-36
- Local jurisdiction: lex fori, Art. 21.3.2
- File of an application: lex fori, Art. 30.1
- Address for service, Art. 30.2
- Decision without delay and **without hearing the respondent**, Art. 31
- Pronounce and effectiveness: lex fori
- Notice of the decision, Art. 32

Appeal Against the Decision, Art. 33

- Jurisdiction: lex fori, list Art. 68
- Period for appeal, Art. 33.5.: 1 or 2 months
- File of an appeal: lex fori
- **Contradictory proceedings**, Art. 33.3



Thanks for your attention!

Martina Erb-Klünemann

CROSS-BORDER DIVORCE AND MAINTENANCE: JURISDICTION AND APPLICABLE LAW

Interaction of Regulation Brussels II bis with other EU legal instruments and mechanisms

**Dr Geoffrey Shannon
Brussels, 26 – 28 September 2012
Brussels**

Legal Aid

- **Funding and access to justice**
- **Article 47 Charter**
- **Article 6 ECHR**



Legal Aid

- **Directive 2003/8/EC**
 - Legal aid
 - Common rules relating to legal aid for cross-border disputes
 - Rules on processing of applications



Legal Aid

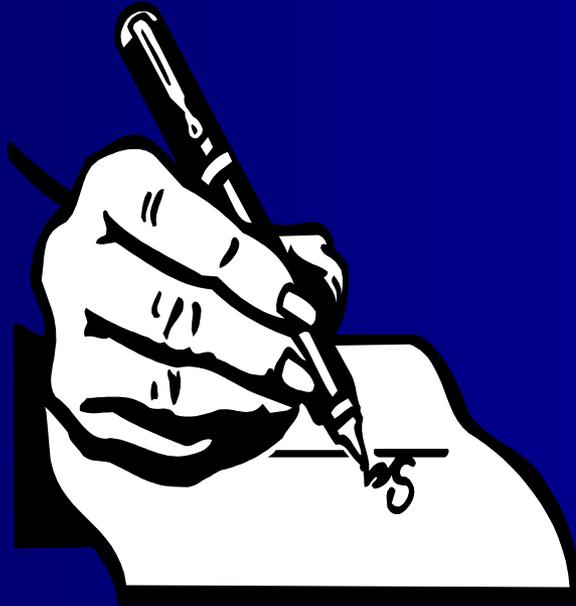
- **Article 3 and right to legal aid**
- **Article 4 and non-discrimination**
- **Article 5 and financial resources**
- **Article 6 - merits test and manifestly unfounded actions**

Legal Aid

- **Article 7** – cross border nature of dispute
- **Article 10** – extrajudicial procedures
- **Article 13** and transmission of legal aid applications
- **Article 16** – form and manner of legal aid

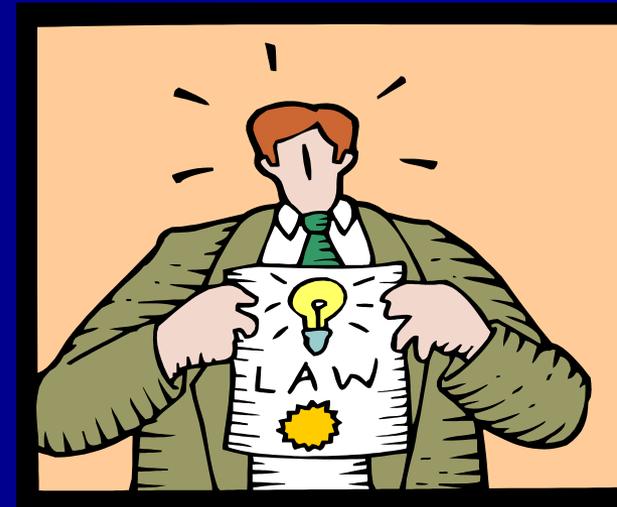
Legal Aid

- **Article 50 Brussels II bis**



Service of Documents

- Intermediaries
- Regulation 1348/2000
- Denmark
- Standard form
- Addressees receive – language understand



Service of Documents

- **Regulation 1393/2007**
- **November 2008**
- **Transmitting and receiving agencies (Arts. 2 and 3)**
- **Central body and supply information**
- **Receiving agency and one month rule**
- **New standard form addressee and right to refuse or return 1 week**

Service of Documents

- **Costs judicial officer and single fixed fee**
- **Uniform conditions - service by post (Art. 14)**
- **Exception consular or diplomatic channels (Art. 13)**

Service of Documents

- ***Gotz Leffer v Berlin Chemie A.G.***
and translation
- ***Plummex*** and no hierarchy of service
- **Delay in compliance with service requirements and jurisdictional advantage**

Service of Documents

- **The Hague Service Convention 1965**
- **Service Regulation prevails**



Access to evidence

- **Voluntarily**
- **Regulation 1206/2001**
- **Compel taking evidence witness in EU State**
- **Direct and rapid transmission and execution of requests**
- **Guide**

Preliminary Ruling Procedure

- **Interpretation or validity of EU law**
- **Admissibility**
- **Art. 267**
- **Lisbon Treaty and extension of jurisdiction**

Preliminary Ruling Procedure

- **Nature of question referred**
- **Interpretation of national provisions**
- **Art. 267 para 2**
- **Admissible**

Preliminary Ruling Procedure

- **Art. 104(3)**
- **National court discretion**
- **Timing**



Preliminary Ruling Procedure

- **Art. 104b**

“[T]he national court or tribunal shall set out, in its request, the matters of fact and law which establish the urgency and justify the application of that exceptional procedure and shall, in so far as possible, indicate the answer to the questions referred.”

- **Form and content of references**

- **Art. 104(5)**

Preliminary Ruling Procedure

- Practice and draft question
- Note on References from National Courts for a Preliminary Ruling [2009] OJ C 297/1



Preliminary Ruling Procedure

- Procedure before the court
- 2nd reference
- Developments



Alternative Dispute Resolution

- **EU instruments available**
- **Mediation**
 - **Directive 2008/52/EC**
 - **20 May 2011**
 - **mediations relating to cross-border disputes**

Alternative Dispute Resolution and Directive 2008/52/EC

- **Art. 2 and the definition of cross-border disputes**
- **Art. 3 and mediation**
- **Art. 6 and enforceability of agreements from mediation**



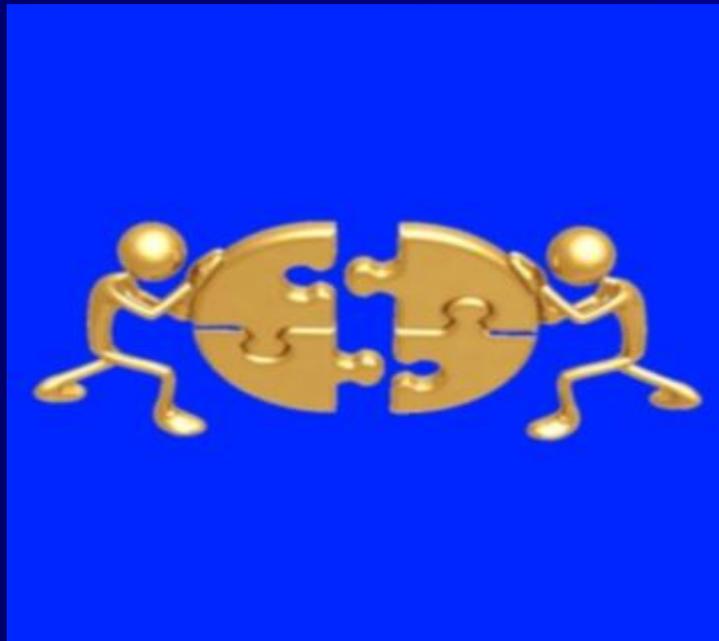
Alternative Dispute Resolution and Directive 2008/52/EC

- **Art. 7 and confidentiality of mediation**
 - mediator in a relevant cross-border dispute not compelled to give evidence or produce anything

 - exception
 - * where parties agree
 - or
 - * public policy considerations
 - or
 - * necessary to implement the terms of the agreement

Alternative Dispute Resolution and Directive 2008/52/EC

- **Article 8 – limitation period**
- **Article 11 – review**



Rome III

- Divorce



Other Instruments

- **Child abduction**



ERA workshop

Cross-border divorce and maintenance: jurisdiction and applicable law

Brussels, 27 September 2012

Cross-border divorce in the EU: Applicable law Maria Giuliana Civinini

GENERAL OVERVIEW

I - Private International Law

II - 1. The EU and the family law

II - 2. The EU and the family law in the Charter of Fundamental Rights

III. The normative power of the EU in family matters

IV - 1. Regulation no. 1259 of 2010 (so called Rome III)

IV - 2. Finality

IV - 3. Scope

IV - 4. Exclusions

IV - 4.1. Exclusions

V - 1. The agreement of the parties

V - 2. Agreement. Choice of law

V - 3. Agreement. Consent and validity

V - 4. Agreement. Form

VI - Applicable law in case of absence of agreement

VII - Limits

PRIVATE INTERNATIONAL LAW

National principles and legislation on:

- ✓ The jurisdiction
- ✓ The substantive applicable law
- ✓ The recognition and enforcement of foreign judgments/decisions

Principle of subsidiarity: the prevalence of

- ✓ International treaties and conventions
- ✓ European Law

II - 1. The EU and the family law

- ❑ EU: regulatory powers to carry out the Internal Market (Art. 26 and 67 TFEU)
- ❑ internal market as a place of exercise of fundamental freedoms
- ❑ connection between the lives of individuals and families and the area of freedom, security and justice

II - 2. The EU and the family law in the Charter of Fundamental Rights

- Article 7: “Everyone has the right to respect for his or her private and family life”
- Article 9: the EU has the duty to grant the right to marry and the right to found a family and ...
- Article 33: to grant legal, economic and social protection to the family

III. The normative power of the EU in family matters

Art 81, par 3 TFEU:

- ❑ measures concerning family law with cross-border implications
 - ✓ Proposal from the Commission
 - ✓ Consultation of the European Parliament
 - ✓ Unanimous decision of the Council
 - ✓ Notification of the decision to the national Parliaments.
 - ✓ Opposition of a national Parliament > the decision shall not be adopted
 - ✓ enhanced cooperation is possible (article 326 TFEU)

IV - 1. Regulation no. 1259 of 2010 (so called Rome III)

- ✓ Result of **enhanced cooperation** between Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia, in whose territories it applies
- ✓ Entered into force: 21 June 2012 (see Article 17)

IV - 2. Finality

9° **whereas**

“This Regulation should create a clear, comprehensive legal framework in the area of **the law applicable to divorce and legal separation** in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.”

IV - 3. Scope

- ◆ Article 1: The Regulation applies, in situations involving a conflict of laws, to divorce and legal separation.
- ◆ Jurisdiction is determined based on Regulation Brussels II (CE) n. 2201/2003

IV - 4. Exclusions

Exclusions: legal capacity of natural persons; existence, validity or recognition of a marriage; annulment ; name of the spouses; property; parental responsibility; maintenance obligations; trusts or successions.

Maintenance obligations: Reg. (EC) no. 4/2009

IV - 4.1. Exclusions

- **Validity: article 13** > the question of validity can be examined for the purpose of rejecting the application for divorce:
“Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.”
- **Article 25 Reg (CE) n. 2201/2003**: “The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.”

> Problem of homosexual marriage

V - 1. The agreement of the parties

ARTICLE 5: innovative choice

the spouses have the right to determine, by mutual agreement, the law applicable to separation and divorce. > Legal certainty

V - 2. Agreement. Choice of the law

Article 5: Choice of applicable law by the parties

The spouses may agree to designate:

- (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded;
- (b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded;
- (c) the law of the State of nationality of either spouse at the time the agreement is concluded;
- (d) the law of the forum.

Article 4: universal character

The applicable law can be the law of a not participating to the enhanced cooperation Country or an non-EU Country

V - 3. Agreement. Consent and validity

Article 6: “informed” consent and validity

Existence and formal validity: are evaluated on the basis of the designated law

Substantive validity: the spouse can prove that the choice is not reasonable (and the consent invalid) taking into account in particular the law of the country of habitual residence

V - 4. Agreement. Form

Article 7: formal requirements

Written (including electronic communication),
dated and signed by both spouses.

Possibility of additional formal requirements laid
down by a Member State

VI - Applicable law in case of absence of agreement

Article 8: applicable will be the law of the Country (in the following order)

- (a) where the spouses are habitually resident at the time the court is seized;
- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized;
- (c) of which both spouses are nationals at the time the court is seized;
- (d) where the court is seized.

VII - Limits

Article 12: designated law manifestly incompatible with the public policy of the forum > article 8

Article 10: law (ex art. 5 or 8) not granting one of the spouses equal access to divorce or legal separation on grounds of their sex > *lex fori*

LEARNING PRIORITIES IN EUROPEAN FAMILY LAW: DIVORCE

CROSS-BORDER DIVORCE AND
MAINTENANCE:
JURISDICTION AND APPLICABLE LAW

Brussels 25 Oct 2012
©Aude Fiorini, University of Dundee

POINTERS REGARDING THE DEFINITION OF THE LEARNING PRIORITIES

Learning priorities in divorce - the need to provide a clear overview

- Background to the Regulation of divorce at EU level and form of the instrument
 - Diversity in divorce
 - Need for EU legislation
 - Questions raised by cross-border divorces
- Extent to which cross-border divorces are regulated at EU level and historical development of these instruments
 - Reg (EC) 2201/2003 (Brussels IIa)
 - Reg (EU) 1259/2010 (Rome III)
 - Reg (EC) 1/2009 (Maintenance)

Learning priorities in divorce - the need to adapt the training

- Brief received from the training institute:
 - Introductory approach?
 - Follow-up/advanced event?
 - Specific focus (general overview of structure and context or aspects of particular practical relevance, interest or difficulty)?
- Profile of the trainees:
 - Function (eg judges, prosecutors etc)?
 - Experience of family law cases?
 - Experience of cross-border cases?
 - Awareness of EU/comparative/private international law?

LEARNING PRIORITIES IN EUROPEAN DIVORCE LAW

BACKGROUND

Illustration

- Mr & Mrs Massa live in Copenhagen.
 - Mr Massa is an Italian national. Mrs Massa is a British citizen domiciled in England.
 - Mrs Massa decides to leave her husband on 1 October 2012 and returns to live in London the next day.
- Mr & Mrs Massa will want to know:
- Where she or he could issue divorce proceedings?
 - Which law would apply (in partic., what grounds of divorce, if any, will she need to establish)?
 - What consequences the divorce would have?
 - To what extent would the judgment then be recognised in the States to which the spouses were/are/will be connected?

BACKGROUND

Diversity in divorce

Historical, sociological, religious reasons explain why divorce is so diversely regulated in legal systems.

- Types of divorces
civil or religious
egalitarian or not (eg Talaq only open to men)
- Ease of divorce (availability of divorce, grounds of divorce; available procedure(s); cost and time)
Eg: some countries still do not allow divorce at all (Philippines), or only comparatively restrictively (Ireland, Malta), others might allow it quite easily but as a result of a lengthy and potentially onerous process (France until 2005) or make it very easy (Sweden)
- Financial & other consequences also very diverse
Eg: some countries are more generous than others for the wives or will draw particular consequences if the divorce is based on fault (financial compensation and/or automatic custody for the wronged spouse)

The domestic substantive and procedural diversity is matched by the diversity of the domestic private international law rules governing divorce

BACKGROUND

Need to harmonise European approach to cross-border divorces to avoid consequences of unilateral approach

- PIL rules reflected States's indiv policy objectives
 - Allocation of jurisdiction
 - Eg: DMPA 1973 -Returning domiciliaries could immediately divorce, otherwise 1 year minimum residence to avoid Forum Shopping by foreigners
 - Choice of law rules
 - Eg: Art 310 c civ: extensive application of French law
 - No coherent approach to lis pendens
 - No coherent approach to recognition of foreign decrees
- ... potentially leading to limping situations
- Yet limping marriages impede the free movement of the persons concerned

BACKGROUND

Questions raised by divorce

- Which court/authority has jurisdiction to hear a divorce petition?
 - Brussels IIa
- On the basis of what law will the court grant the divorce (or not)?
 - Rome III
- To what extent is a divorce granted in one EU MS to be recognised and enforced in other EU MS?
 - Brussels IIa

BACKGROUND

Variable geometry

- Brussels IIa currently applies in 26 EU MS (all except Denmark).
 - EU citizens who only have links with some of the 26 EUMS can easily enough predict which court(s) might have jurisdiction.
 - Any divorce judgment made in one of these 26 EU MS circulates in other EU MS on the basis of the Brussels IIa Regulation (even if it was not based on one of the harmonised jurisdiction grounds and even if the court was not bound by the Rome III Regulation).
- Rome III currently applies in 14 EU MS.
 - Only courts in these States apply the harmonised choice of law rules contained in Rome III but these may lead to the application of the divorce law of any jurisdiction in the world, not just of those 14 participating States (universal application).

BRUSSELS IIa:

**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, repealing Regulation (EC) No
1347/2000**

OVERVIEW

Was there a need to harmonise divorce jurisdiction rules in Europe in the 90's?

- **Practical aims/needs**
 - Achieve free movement of divorce jgts
 - Support free movement of persons
 - Respond to Franco-German problem
- **Policy aims**
 - Diversify – European integration should not be just economic
 - Overcome Euroscepticism
 - Raise profile by new achievement

How to achieve uniform and coherent system for the free movement of divorce judgments?

- Parallel with free movement of judgments in civil and commercial matters achieved through Brussels I:
- Free movement of judgments easily achieved if the power of foreign judges to review the judgment of which recognition and enforcement is sought is kept to a minimum
- This in turn is easily achieved if uniform jurisdiction rules are adopted

Historical development

- 1998: Brussels II convention (based on Art K3 of the TEU)
- 2000: Brussels II Regulation (Reg (EC) 1347/2000)
- 2003: Brussels IIa Regulation (Reg (EC) 2201/2003)

Brussels II a Reg: General Features

- Double instrument excludes exorbitant grounds of jurisdiction
- European Principle of certainty applies
- Dichotomy of common law and civil law approaches leads to compromises
- Dichotomy betw Northern European States (more liberal) and Southern European States (more conservative) leads to compromises

Brussels II a Reg : Main provisions

- Arts 1/2: Material scope and definitions
- Art 3: 7 grounds of jurisdiction of equal status
- Arts 6/7 wide geographical scope
- Art 19: *lis alibi pendens* rule solves conflicts of jurisdiction
- Semi-automatic recognition and enforcement of divorce decisions (very limited grounds of non-recognition)

SCOPE

Material Scope

- Article 1 ***Scope***

“1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;”

« Court »?

- *Article 2* **Definitions**

“For the purposes of this Regulation:

1. the term ‘**court**’ shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;
2. the term ‘**judge**’ shall mean the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation”...

“Divorce”?

- Recital (8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation **should apply only to the dissolution of matrimonial ties** and should **not** deal with issues such as the **grounds for divorce, property consequences of the marriage or any other ancillary measures.**

Geographical scope

- What link should the spouses have to the EU for their divorce to fall within the ambit of the Brussels IIa rules?
- Arts 6/7:
 - Habitual residence
 - Nationality of an EU MS or 'domicile' in the UK/Ireland

Connecting Factors in European Family Law

- Traditional Connecting Factors:
 - Nationality – civil law Member States
 - ‘Domicile’ – common law Member States
- Contemporary and now primary connecting factor:
 - Habitual residence

Nationality & Domicile: domestic approaches

- Nationality: each State decides for itself who is national of that State.
- Domicile in UK/Ireland
 - Differs from the notion of domicile as understood in continental legal systems
 - Eg: in England, each baby acquires a domicile at birth (that of father if parents are married, otherwise mother). An adult can change his domicile but only if he intends to make the new place of residence his permanent home

Habitual residence: European approach

- Rich corpus of case law from the European Court interpreting habitual residence and related residence based connecting factors in diverse areas of European law
- The concept is to be given an **autonomous interpretation** (Case C-523/07 *Proceedings brought by A* [2009] E.C.R. I-2805), and regard must always be paid to the **objectives** of the underlying legislative provision (Case C-102/91 *Knoch v Bundesanstalt für Arbeit* [1992] E.C.R. I-4341, 4390; Case F-126/05 *Borbély v Commission*, 16 January 2007, Civil Service Tribunal of the European Union, [66]).
- No ECJ/CJEU decision on HR in Brussels IIa divorce cases but the above case law inspired the drafters of the 1998 Brussels II convention (see Borrás report at para 32) [and almost certainly the Brussels IIa Regulation. – immediate acquisition of a HR necessary for the proper function of Art 9, see Case C-497/10 PPU *Mercredi v Chaffe* (View of Cruz Villalón A.-G.), at [74].]

Case C-90/97 *Swaddling v Adjudication Officer* [1999] E.C.R. I-1075

- Note that this case was not a divorce case.
- Saggio A.-G. explained that the conceptual basis of residence in European legislation is the identification of the Member State to which the person concerned has formed a **social attachment** which is **stronger and more stable than any links he may have with other Member States**

Case C-90/97 *Swaddling v Adjudication Officer* [1999] E.C.R. I-1075

In determining whether a habitual residence has been acquired in a Member State the **European Court** identified as relevant such matters as:

- the person's family situation;
- the reasons for the move;
- the length and continuity of the residence;
- the stability of any employment; and
- the person's intention such as it appears from all the circumstances

Essence of EU HR (as applicable to adults):

- a person is, in general, habitually resident in the country in which he has established a residence which is **his permanent or habitual centre of interests**.
- Emphasis on stability.

Consequences

1. Immediate acquisition:

- In *Swaddling* the European Court accepted that **length of residence was not an intrinsic element of habitual residence**, Case C-90/97 *Swaddling v Adjudication Officer* [1999] E.C.R. I-1075, at [30]. The length of a person's stay may however be used to gauge his intention to make that State the centre of his interests, Opinion of Saggio A.-G., at [19].

Consequences

2. The priority placed on stability by the European Court means that **an established habitual residence, with which connections are maintained, may endure notwithstanding a significant period of time spent working, training or studying in another Member State.** There is however no precise definition as to length of absence .

Examples

- A change in permanent centre of interests and thereby habitual residence did not result when a Finnish employee of a Finnish company on a fixed term contract spent 18 months working in Belgium.
Case T-259/04 Koistinen v Commission 27 September 2006, Court of First Instance.
- Similarly 4 years of vocational training in Germany were not, in the absence of other relevant factors, considered sufficient to move a young Belgian's centre of interests.
Case T-63/91 Benzler v Commission [1992] E.C.R. II-2095.

Habitual Residence and National Courts

- The traditional European Court interpretation of HR has been accepted as applying to adults in the context of jurisdiction in matrimonial actions:
 - *England: Marinos v Marinos* [2007] EWHC 2047 (Fam.), [2007] 2 F.L.R. 1018 (immediate acquisition)
 - *France: Moore v Moore* [2006] I.L.Pr. 29. French Cour de Cassation accepted that 14 months into an 18 month stay in Provence, a British woman had retained her habitual residence in the United Kingdom.

DIVORCE JURISDICTION RULES UNDER BRUSSELS IIa

Jurisdiction Under Brussels Ia

- The Regulation established 7 grounds of jurisdiction.
- There is no hierarchy
- The grounds are exclusive
- Recourse cannot be had to residual rules where the Regulation is applicable
 - Case C-68/07 *Lopez v. Lopez Lizazo*, [2007] E.C.R. I-10403

Jurisdiction grounds: Art 3

The jurisdictional grounds established by the Regulation provide for jurisdiction for the courts of the Member State in whose territory:

- - the **spouses** are **habitually resident**, or
- - the spouses were **last habitually resident**, in so far as **one** of them **still resides** there, or
- - the **respondent** is **habitually resident**, or
- - in the event of a **joint application**, **either** of the spouses is **habitually resident**, or

Jurisdiction grounds cont'd

- the **applicant** is **habitually resident** if he or she resided there for at least **a year** immediately before the application was made, or
- - the **applicant** is **habitually resident** if he or she resided there for at least **six months** immediately before the application was made **and** is either a **national** of the Member State in question or, in the case of the United Kingdom and Ireland, has his "**domicile**" there

Jurisdiction grounds cont'd

- Then the courts of the MS
(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.
 - Case C-168/08 *Hadadi v. Mesko*.

Illustration

- Mr & Mrs Massa live in Brussels.
 - Mr Massa is an Italian national. Mrs Massa is a British citizen domiciled in England.
 - Mrs Massa decides to leave her husband on 1 October 2012 and returns to live in London the next day.
- No joint nationality or domicile so jurisdiction will depend on where Mr and/or Mrs Massa are habitually resident and how soon they want to issue divorce proceedings

Illustration cont'd

Situation 1:

- They have lived in Brussels for 30 years
 - Belgian courts immediately have jurisdiction (Art 3(b))
 - English courts will also have jurisdiction if Mrs Massa continues to reside in England and divorce proceedings are issued after 6 months (Art 3(f))

Situation 2:

- They have lived in Brussels for just 2 months before separating. Before that they lived in Rome for 6 years
 - Had they acquired a HR in Belgium when Mrs Massa left?
 - Has Mr Massa acquired a HR there by the time divorce proceedings are issued?
 - ...

Illustration cont'd

Situation 3:

But what if their residence was not Brussels but Copenhagen and they had lived there for 10 years when Mrs Massa left?

- No HR in an EU MS bound by Brussels IIa
- No joint nationality/domicile
- Conclusion?

Dividing Line between Jurisdiction in Brussels Ia and Residual Jurisdiction Rules

- When do the Regulation jurisdiction rules have to be applied?

Article 7

Residual jurisdiction

- Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.
 - (Article 3 General jurisdiction in divorce
 - Article 4 Counterclaim
 - Article 5 Conversion of legal separation into divorce)

Article 6

Exclusive nature of jurisdiction under Articles 3, 4 and 5

- A spouse who:
- (a) is **habitually resident** in the territory of a Member State; or
- (b) is a **national** of a Member State, or, in the case of the United Kingdom and Ireland, has his or her "**domicile**" in the territory of one of the latter Member States,
- may be sued **in another Member State only** in accordance with Articles 3, 4 and 5.

Illustration 1

- Mr & Mrs Massa lived in Copenhagen for 10 years.
- Mr Massa is an Argentinian national. Mrs Massa is a British citizen domiciled in England.
- Mrs Massa decided to leave her husband on 1 October 2012 and returned to live in London the next day.
- The Brussels IIa Regulation does not apply. Mrs Massa can start proceedings anywhere in the EU (and elsewhere) on the basis of the traditional/residual grounds of jurisdiction.
- E.g., as a returning domiciliary, Mrs Massa could immediately start proceedings in England under the traditional English rules (DMPA 1973)

Illustration 2

- Mr & Mrs Massa have lived in Copenhagen for 10 years.
 - Mr Massa is an Italian national. Mrs Massa is a British citizen domiciled in England.
 - Mrs Massa decides to leave her husband on 1 October 2012 and returns to live in London the next day.
-
- No court in the EU has jurisdiction under the Brussels IIa Regulation BUT Mr Massa is protected by Art 6 and thus cannot be exposed to residual grounds of jurisdiction in any EU MS
 - Mrs Massa will have to wait for 6 months to start proceedings in England.

Article 20

Provisional, including protective, measures

1. In **urgent** cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.
2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

Illustration 3

- Mr & Mrs Martin have lived in Ireland for 2 years.
- Mr & Mrs Martin are French nationals.
- Mrs Martin decides to leave her husband on 1 October 2012 and the next day moves to Spain to live with her lover.
- On 20 October 2012 she starts divorce proceedings in France. On 15 October 2012, Mr Martin had started divorce proceedings in Brussels where they lived previously.

Conflicts of Jurisdiction: Art 19

- 1 Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before **courts of different Member States**, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Illustration 3 cont'd

- The French court, as the court second seized will have to stay its proceedings.
 - If the Brussels court finds that it does not have jurisdiction, then the divorce case will resume its course in France.
 - If the Brussels court finds (however erroneously from the perspective of the French court or indeed the parties) that it has jurisdiction, then the French court will have to decline jurisdiction (art 19(3)) and the case will proceed in Belgium.
- Will the Belgian divorce have to be recognised in France?
- Would it be different if one of the courts seised of the divorce proceedings was a court from a third State?

RECOGNITION AND ENFORCEMENT OF DIVORCES IN EUROPE

Scope of the Brussels IIa rules of recognition and enforcement

- Any judgments of divorce, legal separation & marriage annulment (Art 1)
- Granted by an EU MS (Art 21)
- (Whatever ground of jurisdiction relied upon)

General philosophy

- ***Recital 21***
- The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.

General philosophy cont'd

- Article 24 prohibits any review of the jurisdiction of the Member State of origin.
- Art 25 – recognition cannot be refused just because the State in which recognition is sought would not allow a divorce / separation / nullity on the same facts
- Article 26- under no circumstances may a judgment be reviewed as to its substance

Recognition and Enforcement

- Art 21 provides for the automatic recognition of custody orders in each of the Member States **without** any special procedure being required.

Art 22

Grounds of non-recognition

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

- (a) if such recognition is **manifestly contrary to the public policy** of the Member State in which recognition is sought;
- (b) where it was given in **default** of appearance, if the respondent was **not served** with the document which instituted the proceedings or with an equivalent document **in sufficient time and in such a way as to enable** the respondent to arrange for his or her **defence unless** it is determined that the respondent has **accepted the judgment unequivocally**;
- (c) if it is **irreconcilable** with a judgment given in proceedings between the same parties **in the Member State** in which recognition is sought; or
- (d) if it is **irreconcilable** with an **earlier judgment** given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment **fulfils the conditions necessary for its recognition** in the Member State in which recognition is sought.

Conclusions

- Brussels IIa Regulation successful in that it supports the free movement of people by organising a system of semi-free movement of divorce judgments and thus limits the potential of limping situations

A need to create harmonised choice of law rules in Europe?

- Is the harmonisation of jurisdiction rules through Brussels IIa not sufficient?
 - Multiplicity of J rules – no hierarchy
 - Forum shopping
 - *Lis alibi pendens* rule leads to rush to court
- Variety of choice of law rules so variety of results/outcomes
- Harmonised choice of law rules could enable a certain objectives to be attained (eg: make divorce easy)

Rome III - Choice of law in divorce

**Council Reg (EU) 1259/2010
implementing enhanced cooperation
in the area of the law applicable to
divorce and legal separation**

Background

- Brussels IIa contains rules on jurisdiction in divorce & legal separation as well as rules allowing the free movement of divorce and legal separation judgments in Europe.
- Courts then apply their choice of law rules.
- However the combination of these rules lead to difficulties

Difficulties until Rome III

- an insufficient autonomy afforded to spouses,
- a lack of legal certainty and predictability,
- results which did not necessarily correspond to the legitimate expectations of the of the citizens,
- risks of difficulties for European citizens living in third States and
- risks of rush to court

Initial steps

- 2005: Green Paper identifying the difficulties and proposing various alternative solutions
- 2006: First Rome III proposal
- Form:
 - Amendment to Brussels IIa rather than independent Regulation
- Content:
 - Amendment of jurisdiction rules
 - Introduction of a choice of law chapter

2006 proposal: Jurisdiction aspects

- introduced a limited choice of forum,
- deleted article 6 of the Brussels IIa Regulation and
- replaced article 7 with a provision setting out subsidiary grounds of jurisdiction.

2006 proposal: Choice of law aspects

- provisions allowing spouses (under certain conditions) to choose the law applicable to their divorce,
- provisions containing, in the absence of such choice by the parties, a harmonized choice of law rule.
- In addition the proposal provided rules on the possible role of the EJNI on the application of foreign law, the exclusion of *renvoi* and the public policy exception.

Responses to 2006 proposal

- UK & Ireland decided not to opt-in
- Rest of EU MS were very much split:
 - No great difficulties regarding the jurisdiction rules
 - Main problems related to choice of law chapter
- Problems linked to divergent legal traditions
 - Substantive rules on divorce: some States allow divorce very restrictively (Ireland, Poland, Malta), others do not require ground for divorce (Scandinavian States)
 - Choice of law rules: a lot of differences, in particular a large fraction of States are lex forist.

Responses to 2006 proposal

- Two years of difficult negotiations
- June 2008, the JHA Council noted that the proposal faced insurmountable difficulties which rendered **unanimity impossible** to reach and that the objectives of Rome III ‘could not be attained within a reasonable period by applying the relevant provisions of the Treaties’
- 8 States requested the use of **enhanced cooperation**

2010 Proposal: first implementation of the process of enhanced cooperation

- New Rome III proposal went ahead using the enhanced cooperation mechanism
- 14 EUMS now bound by Rome III:
 - Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia.
 - Further Member States which wish to participate may do so under Article 331(1) of the TFEU.
- Eif: June 2012

Aims:

- a clear, comprehensive legal framework
- provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility,
- and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

Scope of Rome III

- **Art 1**
- 1. This Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation.
 - **Divorce & legal separation only**
 - A court seised on the basis of Brussels IIa of a application for marriage annulment will continue to apply its own choice of law rules
 - **In ‘situations involving a conflict of laws’**
 - Cf Rome I Regulation

Scope of Rome III

- **Art 1**
- 2. This Regulation shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings:
 - (a) the legal capacity of natural persons; (b) the existence, validity or recognition of a marriage; (c) the annulment of a marriage; (d) the name of the spouses; (e) the property consequences of the marriage; (f) parental responsibility; (g) maintenance obligations; (h) trusts or successions.
 - **Preliminary questions** (capacity and the validity of the marriage), and matters such as the **effects** of divorce or legal separation on property, name, parental responsibility, maintenance obligations or any other ancillary measures should be **determined by the conflict-of-laws rules applicable in the participating Member State concerned.**

Universal application

- **Art 4**
- It is possible for the Regulation conflict-of-laws rules to designate the law of a participating Member State, the law of a non-participating Member State or the law of a State which is not a member of the European Union.

Art 5 : Optio juris

The **spouses may agree to designate the law applicable** to divorce and legal separation provided that it is one of the following laws:

- (a) the law of the State where the spouses are **habitually resident** at the time the agreement is concluded; **or**
- (b) the law of the State where the spouses were **last habitually resident, in so far as one of them still resides** there at the time the agreement is concluded; **or**
- (c) the law of the State of **nationality of either spouse** at the time the agreement is concluded; **or**
- (d) the law of the ***forum***.

Rules on formal and material validity

- **Art 7: formal validity**
 - Choice of law shall be expressed in writing, dated and signed by both spouses.
 - There may be additional rules depending on where the parties have their HR
- **Art 6: material validity**
 - The existence and validity of optio juris governed by lex causae
 - But, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Art 8: Law applicable in the absence of choice

- (a) where the spouses are **habitually resident** at the time the court is seized; or, **failing that**
- (b) where the spouses were **last habitually resident**, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, **failing that**
- (c) of which **both spouses are nationals** at the time the court is seized; or, **failing that**
- (d) where the **court is seized**.

Illustration 4

- Mr & Mrs Luig lived for in Luxembourg from 2001-2010. They are both Philippino. In 2010, they moved to Portugal, hoping that the fresh start could save their marriage. This failed and Mr Luig decided to leave his wife. He moved out of the family flat in March 2011. In June 2011 Mr Luig found a job and moved to France. Mrs Luig remains in Porto.
- They now both want a divorce.

Courts potentially with jurisdiction under Brussels IIa are all situated in participating Member States (leaving aside courts in the Philippines which they are unlikely to want to seize as they both want a divorce which is still prohibited in that country).

Illustration 4 cont'd

- Which law could they now **choose**?
- The options under Art 5 are real alternatives (no hierarchy) but they are limited:
 - Portuguese law? Yes as Mrs Luig continues to live there
 - Philippino law? Yes as they are both Philippino
 - French law? Yes but only if proceedings are started in France (which is possible under Brussels IIa)
 - Luxemburgish law? No

Illustration 4 cont'd

- If they cannot agree, which law would apply, assuming that Mr Luig started proceedings before a French court?
- Art 8 contains a scale:
 - The Luigs have no common HR in 2012
 - Although Mrs Luig still resides in Porto, their HR there ended more than 1 year ago
 - They are both Philippino nationals so Philippino law applies under Art 8 (c)
 - The court could thus not apply French law under Art 8 (d).

Question

- The law of the Philippines prohibits divorce.
- Does it mean that the French court will have to refuse to grant a divorce?

Art 10

If law designated under the Reg
makes no provision for divorce or
does not grant one of the spouses equal access to
divorce or legal separation on grounds of their
sex,

the law of the *forum shall apply*.

- The French court will apply French Law to Mr Luig's divorce petition.

Limits to the application of the law designated under Rome III

Art 12 Public policy

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Art 13 Differences in National law

Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.

Illustration 5

- Hans and Eric married in Belgium in 2003 where they then lived. Both are Belgian.
- In 2010 Klaus was posted in Italy. The couple's relationship had by then become difficult. In 2012 Klaus decided to get a divorce. He started proceedings in Rome.
- Belgian Law recognises same-sex marriages.
- Italian Law does not.
- To grant a divorce, the Rome court will first examine whether Eric and Hans are validly married. Art 1(2) applies – the preliminary question of the validity of the marriage is left to the Italian choice of law rules.
- Even if Klaus and Hans' marriage is valid according to the competent rules (law designated by the Italian PIL rules regarding the validity of marriage, in this case Belgian law), Art 13 implies that Italian courts would not be obliged to grant a divorce if they consider Hans and Eric's marriage as invalid under *Italian* law

Application of foreign law

Monika Jagielska

ERA workshop "Cross-border
divorce and maintenance:
Jurisdiction and applicable law",
26–28 September

PART I

▶ A BIT OF THEORY & PRACTICE

Current non-harmonisation

- ▶ Reasons
- ▶ Consequences for European harmonisation
 - Possible resource to lex fori
 - Obstacle in harmonisation
 - Negative influence on internal market

Main approaches

- ▶ Legal nature of foreign law (LN)
- ▶ Factual nature of foreign law (FN)
- ▶ Hybrid approach

Main consequences (I)

- ▶ Legal treatment:
 - ex officio consideration
 - Iura novit curia principle
 - Judicial control
 - Active role of a court

Austria, Belgium, Czech R., Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Poland, Portugal, Slovakia, Slovenia, Sweden

Main consequences (II)

- ▶ Factual nature (FN)
 - Initiative of parties
 - Issue of evidences
 - binding nature
 - Active role of parties

UK, Malta, Cyprus, Ireland, Spain, Luxembourg

Hybrid approach

- ▶ LN if application based on legal provision
 - ▶ FN if application based on parties agreement
- Latvia, Lithuania,
- ▶ the Netherlands (so-called „tertium genus”)

Bases of LN

- ▶ „court shall apply ex officio, regardless whether the application is requested”
- ▶ Austria, Belgium, Czech R., Estonia, Greece, Hungary, Italy, Portugal, Slovakia, Slovenia, Sweden
- ▶ Problems with application in some countries (Belgium, Italy)
- ▶ Situation in other countries (Bulgaria, France, Poland)

Pure fact approach

- ▶ Foreign law = „a fact of a peculiar condition”
- ▶ Assumption foreign law = domestic law
- ▶ Situation of Luxembourg and Spain

Nature of PIL provisions

- ▶ Mandatory

AT, BE, BU, CZ, EST, GER, GRE, HUN, IT, POL,
POR, SP, SLVK, SLVN, NTH,

- ▶ Non-mandatory

LUX, CYP, UK,

- ▶ Mixed approach

FR, DEN, FIN, SWE

Role of judge/parties

- ▶ LN countries

Leading role of the judge

Parties not obliged to plead foreign law

Special situation in mixed approach countries

- ▶ FN countries

Passive role of a court

Active role of parties

– Situation in „hybrid” approach

Iura novit curia

- ▶ Main problems
- ▶ (Non)–application in FN countries
- ▶ Situation in hybrid approach
- ▶ Application in LN countries
- ▶ Role of the parties

How it works

- ▶ Ascertainment of content
- ▶ Proof of content
- ▶ Consequences of non-ascertainment
- ▶ Treatment of foreign law (consequences):
 - As domestic law
 - As foreign law

Refusal of application

- ▶ Public policy clause

AT, BE, BU, CZ, CYP, EST, FR, GER, GRE, LAT, LIT, LUX, MAL, POL, POR, SCAND, SP, SLVK, SLVN, NTH, UK

Possibility of court review

- ▶ Ground of appeal
- ▶ Incorrect / insufficient application of foreign law
- ▶ Incorrect application of PIL rules

PART II

- ▶ PRACTICAL EXERCISE
- ▶ WHERE TO SEARCH?
- ▶ HOW TO SEARCH ?

ERA workshop "Cross-border
divorce and maintenance:
Jurisdiction and applicable law",
26-28 September

ACCESS TO FOREIGN LAW

CROSS-BORDER DIVORCE AND MAINTENANCE JURISDICTION AND APPLICABLE LAW

TRAIN THE TRAINERS WORKSHOP

ERA, Brussels, 25 October 2012

Prof. Dr. Guillermo Palao Moreno
University of Valencia

SUMMARY:

I. THE OBJECTIVES OF REGULATION ROME III

II. MAIN ELEMENTS OF REGULATION ROME III

**III. ACCESSING FOREIGN LAW AND JUDICIAL
COOPERATION IN CIVIL MATTERS IN EUROPE**

IV. ASSESSMENT



I. THE OBJECTIVES OF REGULATION ROME III

■ An enhanced cooperation Regulation aiming at:

General Objectives (Recital 9):

- Creating a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States;
- Providing citizens with legal certainty, predictability and flexibility;
- Preventing *forum shopping*;

Specific objectives :

- Spouses are free to choose the law applicable to their separation / divorce (Recital 16)
- Harmonized conflict-of-laws rules (but not substantive rules) on the basis of a scale of successive connecting factors based on the existence of a *close connection* between the spouses and the law concerned (proximity) (Recital 21)

II. MAIN ELEMENTS OF REGULATION ROME III (1)

■ CHAPTER I

SCOPE, RELATION WITH REGULATION (EC) No 2201/2003, DEFINITIONS AND UNIVERSAL APPLICATION

Article 1. Scope

Article 2. Relation with Regulation (EC) No 2201/2003

Article 3. Definitions

Article 4. Universal application

■ CHAPTER II

UNIFORM RULES ON THE LAW APPLICABLE TO DIVORCE AND LEGAL SEPARATION

Article 5. Choice of applicable law by the parties

Article 6. Consent and material validity

Article 7. Formal validity

II. MAIN ELEMENTS OF REGULATION ROME III (2)

Article 8. Applicable law in the absence of a choice by the parties

Article 9. Conversion of legal separation into divorce

Article 10. Application of the law of the forum

Article 11. Exclusion of renvoi

Article 12. Public policy

Article 13. Differences in national law

Article 14. States with two or more legal systems — territorial conflicts of laws

Article 15. States with two or more legal systems — inter-personal conflicts of laws

Article 16. Non-application of this Regulation to internal conflicts of laws

II. MAIN ELEMENTS OF REGULATION ROME III (3)

■ CHAPTER III OTHER PROVISIONS

Article 17. Information to be provided by participating Member States

Article 18. Transitional provisions

Article 19. Relationship with existing international conventions

Article 20. Review clause

■ CHAPTER IV FINAL PROVISIONS

Article 21. Entry into force and date of application

III. ACCESSING FOREIGN LAW AND JUDICIAL COOPERATION IN CIVIL MATTERS IN EUROPE (1)

■ Rome III Regulation, Recital 17

“Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Council Decision 2001/470/EC”

■ The importance of accessing foreign law in Europe

“Commission Statement on the treatment of foreign law

The Commission, being aware of the different practices followed in the Member States as regards the treatment of foreign law, will publish at the latest four years after the entry into force of the ‘Rome II’ Regulation [1st January 2013] and in any event as soon as it is available a horizontal study on the application of foreign law in civil and commercial matters by the courts of the Member States, having regard to the aims of the Hague Programme. It is also prepared to take appropriate measures if necessary.”

III. ACCESSING FOREIGN LAW AND JUDICIAL COOPERATION IN CIVIL MATTERS IN EUROPE (3)

■ COMPARATIVE ASSESMENT:

- The legal nature of foreign law
- The legal nature of choice of law rules
- Foreign law and the *iura novit curia* principle
- Ascertainment of foreign law
- Means of proof of foreign law
- Proof of foreign law and Legal Aid
- Sufficient proof of foreign law
- The lack of proof of foreign law

III. ACCESSING FOREIGN LAW AND JUDICIAL COOPERATION IN CIVIL MATTERS IN EUROPE (2)

■ Accessing foreign law and judicial cooperation in civil matters in Europe

- The European Judicial Network
- The E-Justice website

■ Academic proposals and future developments

The Madrid Principles 2011

IV. ASSESSMENT

- The Rome III Regulation enables a **certain degree of unification** (1+12 systems within the EU)
- The Rome III Regulation provides for **predictable, clear, simple and efficient solutions** based on the **proximity principle**
- The Rome III Regulation provides for no uniform solution for the **assessment of foreign law**
- The need of **an informed choice of law** by the spouses
- The need of a **uniform European solution** about accessing foreign law
- Judicial cooperation in civil matters in the EU and accessing foreign law
- The pros and cons of the current system and the proposals for the future

THANK YOU!

Guillermo.palao@uv.es



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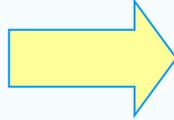
VNIVERSITAT DE VALÈNCIA  Facultat de Dret

**ERA – WORKSHOP
CROSS-BORDER DIVORCE AND
MAINTENANCE: JURISDICTION
AND APPLICABLE LAW**

**INTERNATIONAL RECOVERY
OF MAINTENANCE
The European Maintenance
Regulation and the 2007 Hague
Convention and Protocol**

**Juliane Hirsch, LL.M.
Independent Consultant
on Private International Law and
International Family Law**

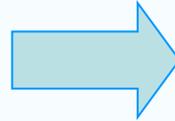
MAINTENANCE REGULATION



Provisions on:

- Jurisdiction
- Applicable law (reference to 2007 Hague Protocol)
- Access to justice / legal aid
- Recognition, enforceability and enforcement
- Central Authority co-operation

2007 HAGUE CONVENTION

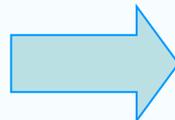


Provisions on:

- Central Authority co-operation
- Access to justice / legal aid
- Recognition, enforceability and enforcement

(No direct rules of jurisdiction - only indirect and negative rules of jurisdiction)

2007 HAGUE PROTOCOL



Provisions on:

- Law applicable to maintenance obligations

	ADOPTED ON	STATUS <i>(August 2012)</i>	APPLICABILITY
2007 HAGUE CONVENTION	23 November 2007	7 Signatures 1 Ratification	not yet entered into force
2007 HAGUE PROTOCOL	23 November 2007	2 Signatures 1 Approval	not yet entered into force <i>but provisionally applied in the European Union - except Denmark and the UK - as of 18 June 2011</i>
MAINTENANCE REGULATION	18 December 2008		applicable as of 18 June 2011 <i>for all EU Member States except Denmark (only partial application)</i>

	APPLICATION AS OF:	TODAY IN FORCE FOR:
<p>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the „Brussels I Regulation“)</p>	<p>1 March 2002</p>	<p>all EU Member States (including Denmark since 2007)</p>
<p>Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (the „European Enforcement Order Regulation“)</p>	<p>21 October 2005</p>	<p>all EU Member States except Denmark</p>
<p>Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Lugano, 30 October 2007 (the „new Lugano Convention“)</p> <p>Replacing the Lugano Convention of 1988</p>	<p>1 January 2010</p>	<p>Iceland, Norway, Switzerland & all EU Member States</p>

	IN FORCE SINCE	STATE PARTIES (August 2012)
United Nations Convention on the Recovery Abroad of Maintenance, New York, 20 June 1956 (the 1956 UN Convention)	25 May 1957	65
Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children (the 1956 Hague Convention)	1 January 1962	14
Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children (the 1958 Hague Convention)	1 January 1962	20
Hague Convention of Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (the 1973 Hague Convention)	1 August 1976	24
Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations (the 1973 Hague Applicable Law Convention)	1 October 1977	15

MAINTENANCE REGULATION

SCOPE

CHILD SUPPORT

Covered
(Art. 1)

SPOUSAL SUPPORT

Covered
(Art. 1)

OTHER MAINTENANCE OBLIGATIONS FROM FAMILY RELATIONSHIP, PARENTAGE, MARRIAGE OR AFFINITY

Covered
(Art. 1)

MAINTENANCE REGULATION - JURISDICTION



Habitual
residence
of defendant

OR

Jurisdiction
reg. status
of person



Habitual
residence
of creditor



Jurisdiction
reg. parental
responsibility

Member State A

General provisions (Art. 3)

- court where defendant or creditor is habitually resident,
or
- court with jurisdiction (according to own law) regarding status of a person or concerning parental responsibility if maintenance matter is ancillary to those proceedings (unless jurisdiction solely based on nationality*)

*Or "domicile" (see Art. 2(3)).

MAINTENANCE REGULATION - JURISDICTION

Member State A

**Jurisdiction
agreed**

**Not for main-
tenance towards
child < 18 years**

Choice of court (Art. 4)

- **agreement of parties on jurisdiction of:**
 - **court(s) of Member State where a party is habitually resident;**
 - **court(s) of Member State of a party's nationality*;**
in case of spousal maintenance (incl. former spouses)
 - **court with jurisdiction to settle matrimonial matters; or**
 - **court(s) of Member State of last spouses' common habitual residence for minimum 1 year**

*Or "domicile" (see Art. 2(3)).

MAINTENANCE REGULATION - JURISDICTION

Member State A

Submission to
jurisdiction

Subsidiary
jurisdiction

Forum
necessitatis

Submission (Art. 5)

- defendant enters an appearance before court not contesting jurisdiction

Subsidiary jurisdiction (Art. 6)

- courts of Member State of parties' common nationality* if no jurisdiction under Arts 3-5 of Member State court & under Lugano Convention for Lugano State court

Forum necessitatis (Art. 7)

- court of Member State with sufficient connection if no Member State has jurisdiction under Arts 3-6 & proceedings not possible in third State

*Or "domicile" (see Art. 2(3)).

MAINTENANCE REGULATION - JURISDICTION



Habitual residence of defendant

Habitual residence of creditor



OR

Jurisdiction reg. status of person

Jurisdiction reg. parental responsibility

Member State A

Jurisdiction agreed

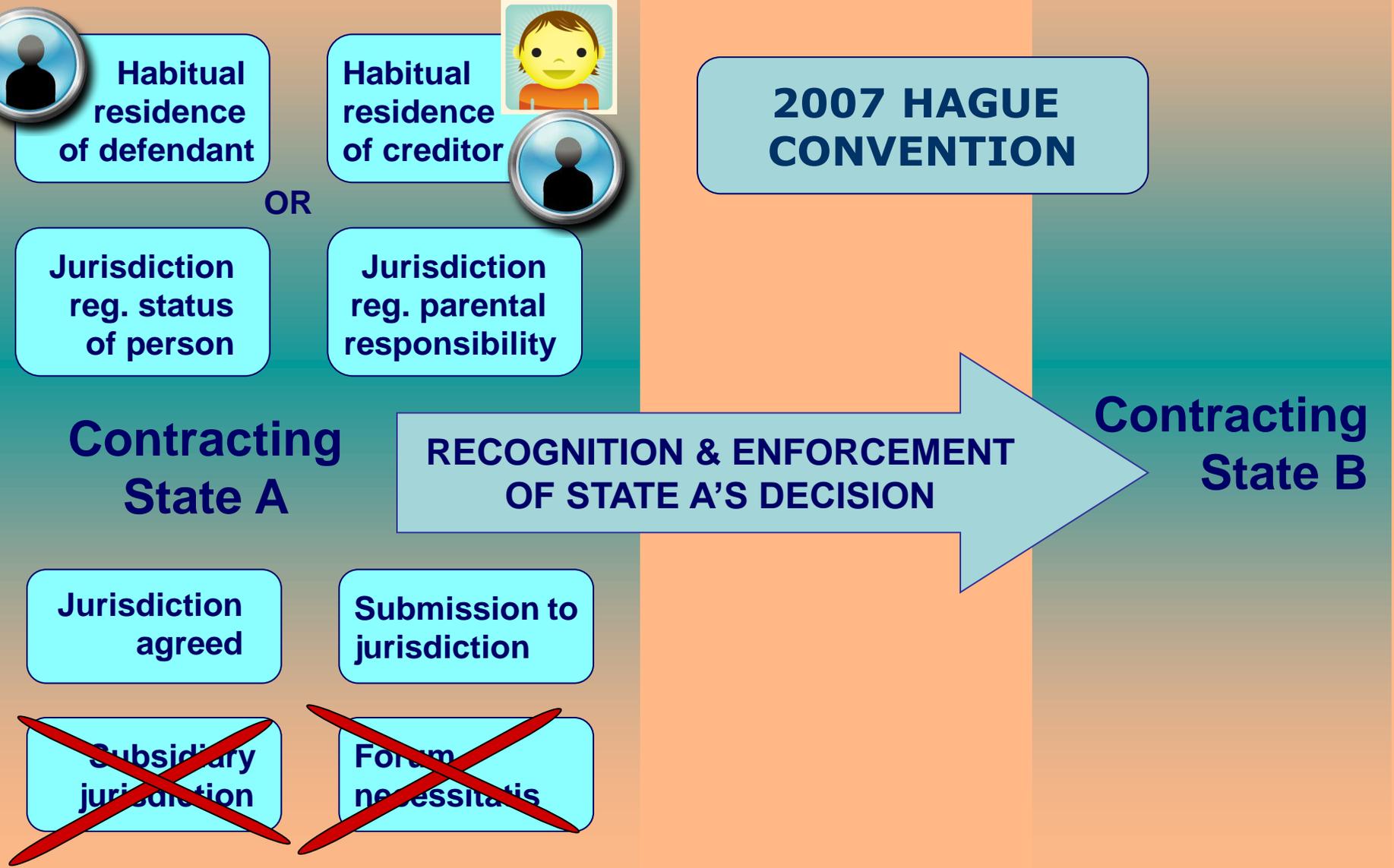
Submission to jurisdiction

Subsidiary jurisdiction

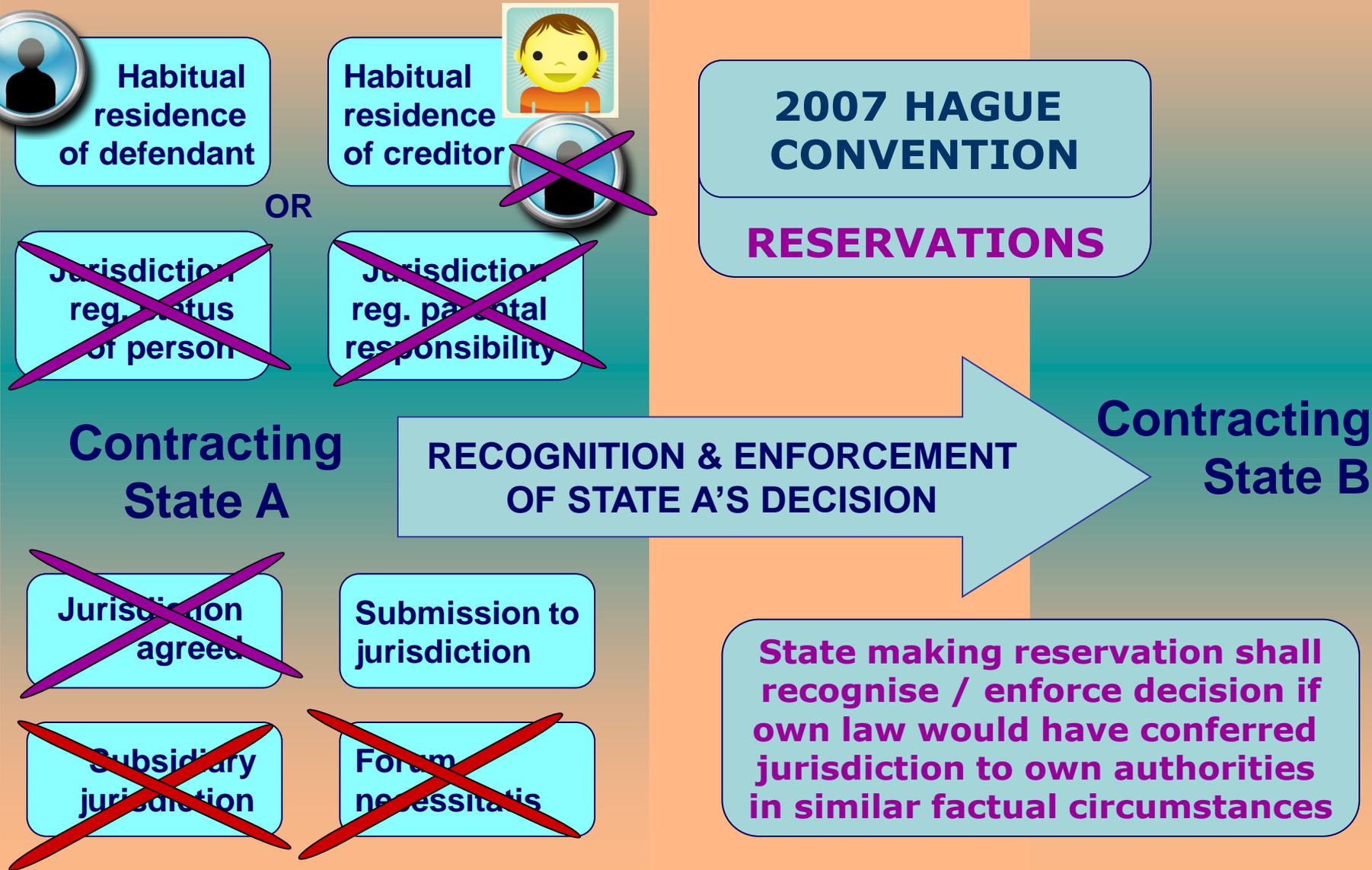
Forum necessitatis

MAINTENANCE REGULATION

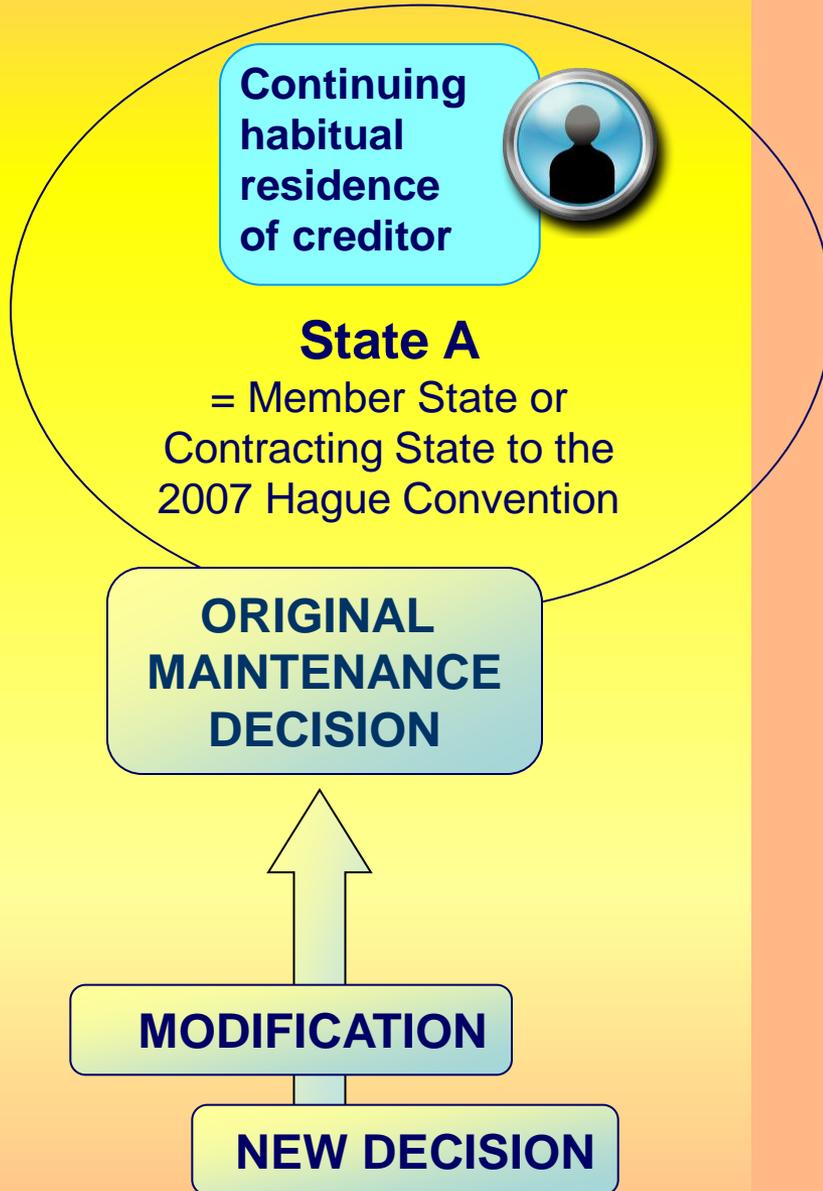
RECOGNITION / ENFORCEMENT - CONTEXT JURISDICTION



RECOGNITION / ENFORCEMENT - CONTEXT JURISDICTION



LIMIT ON PROCEEDINGS – Article 8 Maintenance Regulation



Exceptionally

MODIFICATION

NEW DECISION

in **Member State B** if

Jurisdiction agreed

Submission to jurisdiction

Competent authority in Contracting State A cannot / refuses to exercise jurisdiction

Original decision given in Contracting State A cannot be recognised / declared enforceable in Member State B

When is a court deemed to be seised? Article 9 Maintenance Regulation

At the time when the document instituting the proceedings or an equivalent document is lodged with the court,

provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant

Or

if the document has to be served before being lodged with the court:

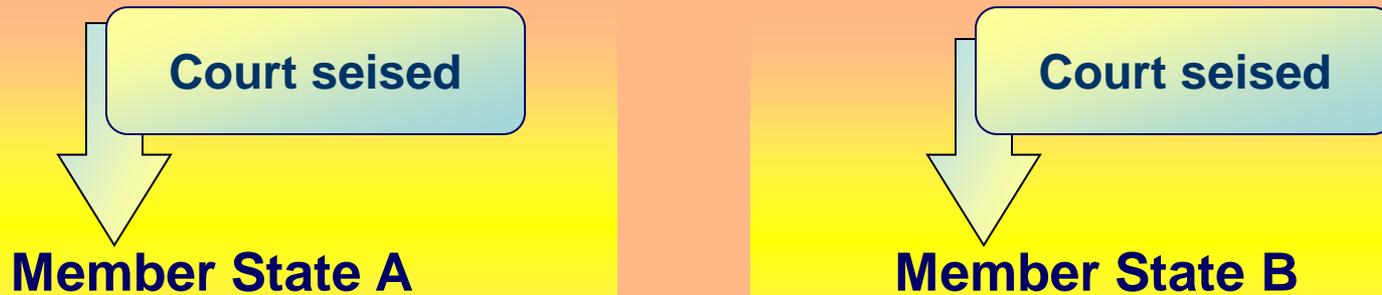
At the time when it is received by the authority responsible for service,

provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court

Court examines jurisdiction on its own motion
Article 10 Maintenance Regulation

Examination of admissibility
Article 11 Maintenance Regulation

LIS PENDENS– Article 12 Maintenance Regulation



Court other than the court first seised stays the proceedings of its own motion until the jurisdiction of the court first seised is established (Article 12(1)) and decline jurisdiction as soon as the jurisdiction of the court first has been established (Article 12 (2))

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

RELATED ACTIONS – Article 13 Maintenance Regulation

PROVISIONAL, INCLUDING PROTECTIVE, MEASURES

Article 14 Maintenance Regulation

**Courts of Member
State A**



Application for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

APPLICABLE LAW

Article 15 Maintenance Regulation

The law applicable to maintenance obligations shall be determined in accordance with the

2007 Hague Protocol

in the Member States bound by that instrument.

2007 HAGUE PROTOCOL

**As of 18 June 2011
applicable in**

**all EU Member
States**

**except
Denmark and
the UK**

2007 HAGUE PROTOCOL

Scope

Article 1:

maintenance obligations from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child regardless of the marital status of the parents

Universal application

Article 2:

Protocol applies even if the applicable law is that of a non-Contracting State

EXCLUSION OF “RENVOI” – Article 12 HP

Any reference to the term “law” in the Protocol is a reference to the law in force in a State other than its choice of law rules.

GENERAL RULE - Article 3 HP - Example

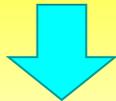
Application of the law of the State of habitual residence of the CREDITOR
(unless the Protocol provides otherwise)

Habitual
residence
of CREDITOR



State A

If authority
seised in State A



Application of
law of State A
(=*lex fori*)

State B

If authority
seised in State B



Application of
law of State A

Repetition:

MAINTENANCE REGULATION - JURISDICTION



Habitual residence of defendant

Habitual residence of creditor



OR

Jurisdiction reg. status of person

Jurisdiction reg. parental responsibility

Member State A

Jurisdiction agreed

Submission to jurisdiction

Subsidiary jurisdiction

Forum necessitatis

MAINTENANCE REGULATION

SPECIAL RULES favouring certain creditors – Article 4 HP

For maintenance obligations of:

Parents towards their children

Other persons towards persons < 21 years of age (except maintenance relationship Article 5)

Children towards their parents

Law applicable



Cascade 2

Creditor seised authority in State of debtor's habitual residence

Lex fori

→ law of debtor's habitual residence State

if not

Cascade 1

In all other cases

General rule

→ law of creditor's habitual residence State

If creditor is unable to obtain maintenance

General rule

→ law of creditor's habitual residence State

Lex fori

→ law of the State whose authority is seised

If creditor is unable to obtain maintenance

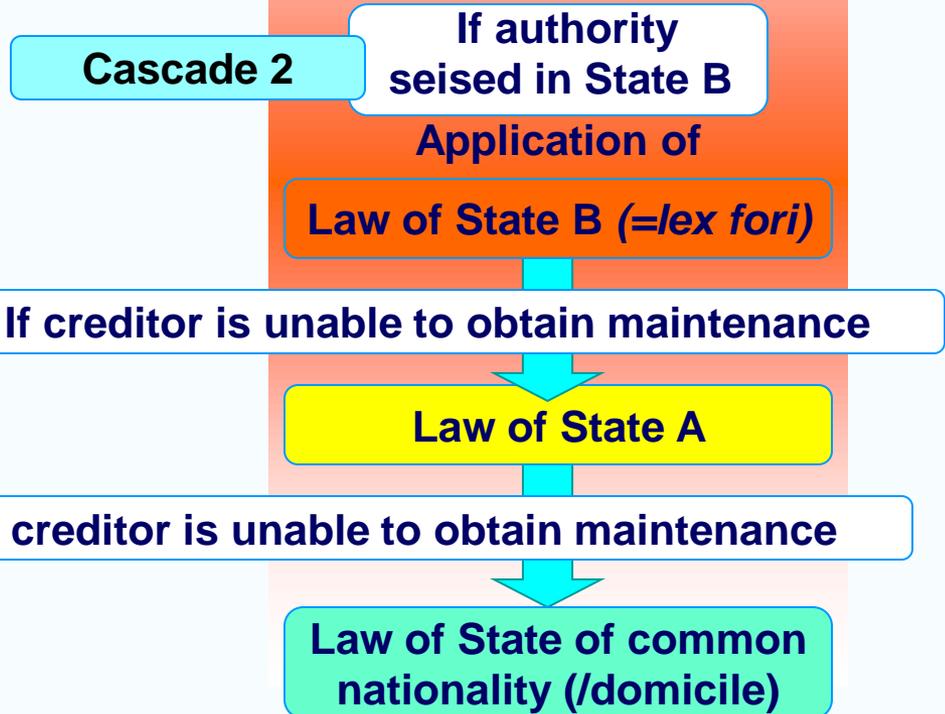
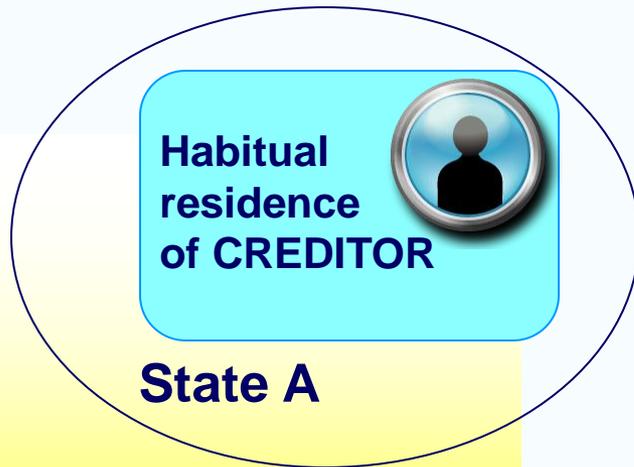
→ law of State of parties' common nationality (or domicile, see Article 9)

1

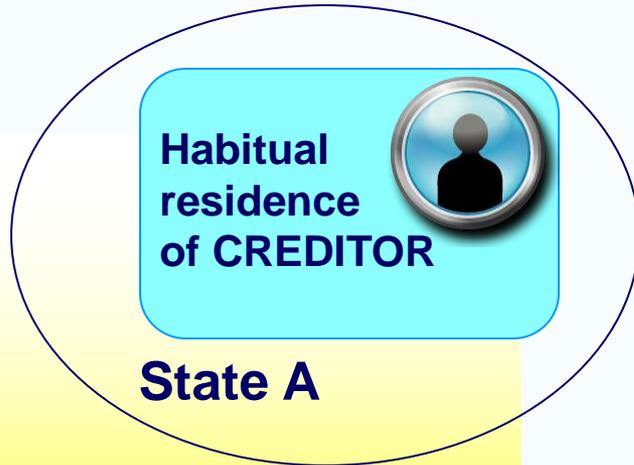
2

3

Article 4 HP – Example



Article 4 HP – Example



If authority
seised in State A

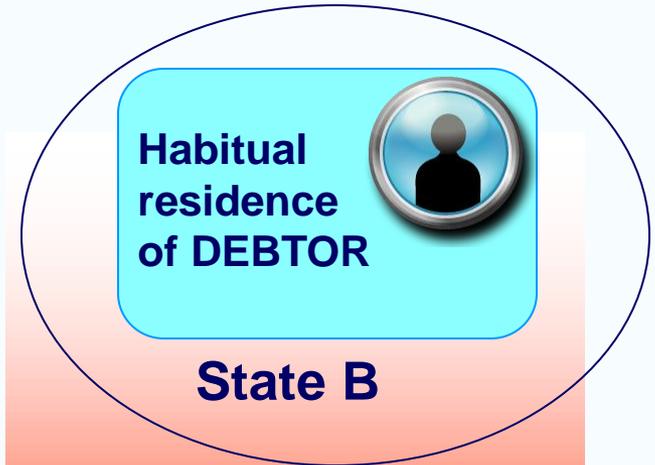
Cascade 1

Application of

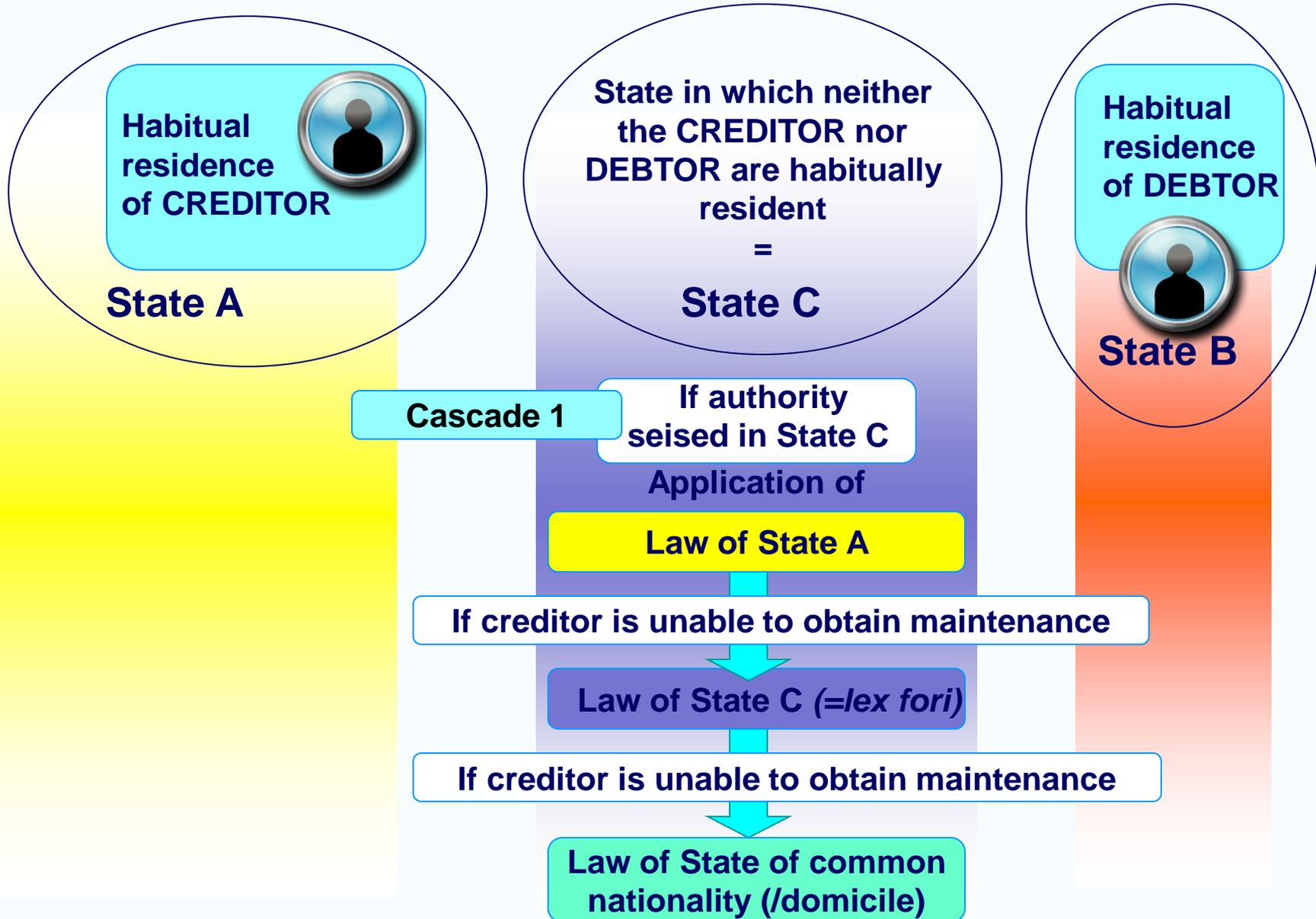
Law of State A (=lex fori)

If creditor is unable to obtain maintenance

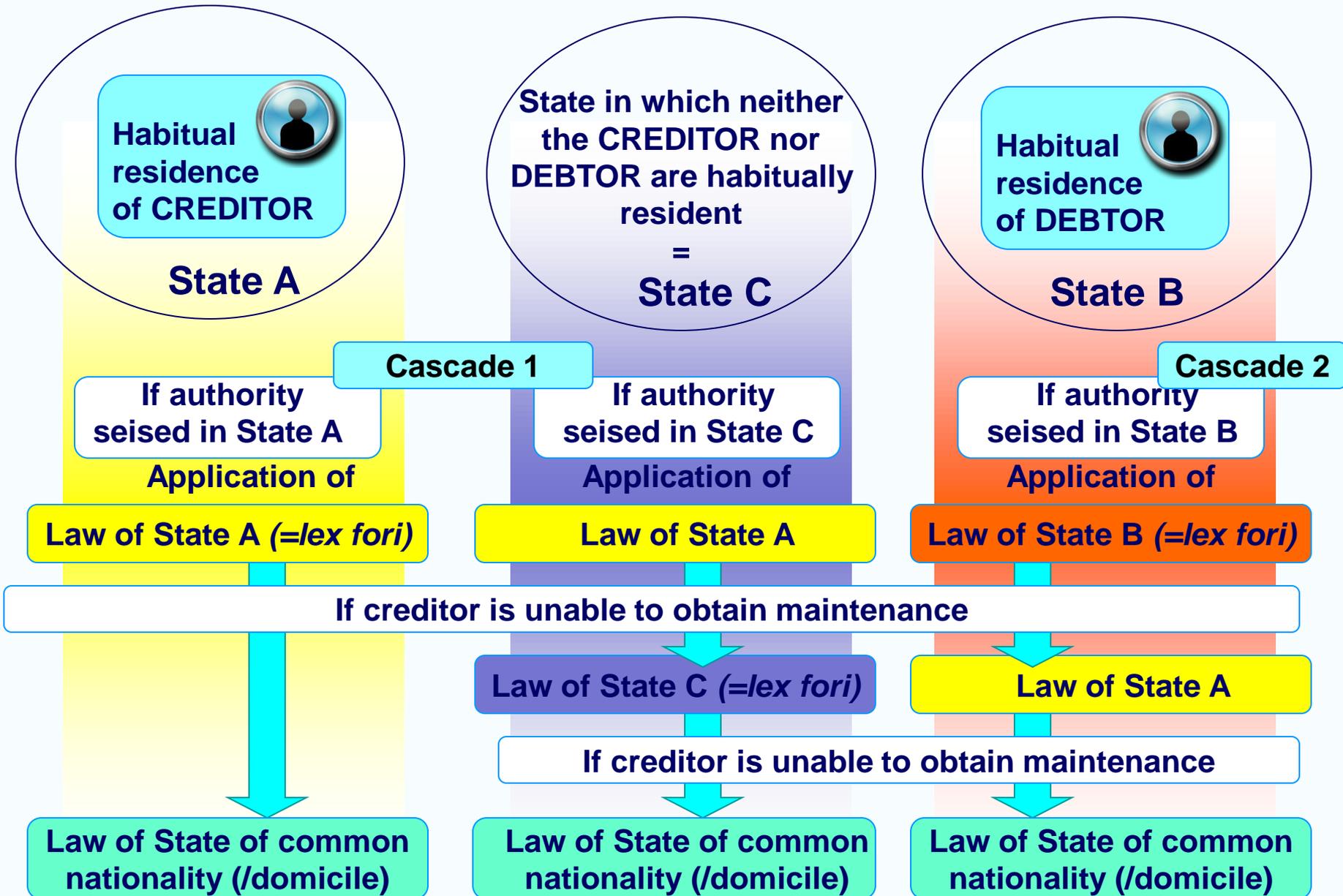
Law of State of common
nationality (/domicile)



Article 4 HP – Example



Article 4 HP – Example



SPECIAL RULE with respect to spouses and ex-spouses – Article 5 HP

For maintenance obligations between:

Spouses

Ex-spouses

Parties to a marriage which has been annulled

the general rule of Article 3 shall not apply if:

- one of the parties objects **and**
- the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage.

SPECIAL RULE ON DEFENCE – Article 6 HP

For maintenance obligations :

Other than those from a parent-child relationship towards a child

Other than those mentioned in Article 5 HP

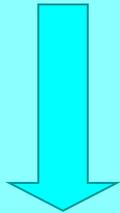
the debtor may contest a claim from the creditor on the ground that there is no such obligation under **both**:

- the law of the State of habitual residence of the debtor **and**
- the law of the State of the common nationality (/domicile) of the parties, if there is one.

DESIGNATION OF APPLICABLE LAW

Article 7 HP

For the purpose of a particular proceeding in a given State

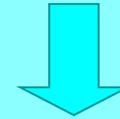


Designation of:

the *lex fori*

Article 8 HP

At any time



Not for maintenance towards child < 18 years or vulnerable adults

Designation of either:

the law of the State of either party's **nationality** (at that time)

the law of the State of either party's **habitual residence** (at that time)

the law designated by the parties as applicable, or law in fact applied, to their **property regime**

the law designated by the parties as applicable, or law in fact applied, to their **divorce or legal separation**

PART II

Central Authority Co-operation and Access to Justice

APPLICATIONS

MAINTENANCE REGULATION (& 2007 HAGUE CONVENTION)

Place of
Residence



➤ **CREDITOR**, *Art. 56(1) Regulation (Art. 10(1) HC)*

- **recognition or recognition & enforcement** of a decision,
- **enforcement** of a decision made or recognised in State B,
- **establishment** of decision in State B where
 - no existing decision or
 - recognition and enforcement of existing decision given in another State is not possible
- **modification** of a decision made in State B or other State.

Central
Authority

State A



➤ **DEBTOR**, *Art. 56(2) Regulation (Art. 10(2) HC)*

- **recognition** of decision / equivalent procedure to suspend / limit enforcement of previous decision in State B,
- **modification** of a decision made in State B or other State.

Place of
residence

CENTRAL AUTHORITY CO-OPERATION

MAINTENANCE REGULATION (& 2007 HAGUE CONVENTION)

➤ General functions, Art. 50 Regulation (Art. 5 HC)

- co-operate,
- promote co-operation amongst their States' competent authorities,
- seek solutions to difficulties in Convention's application

**Central
Authority**

State A

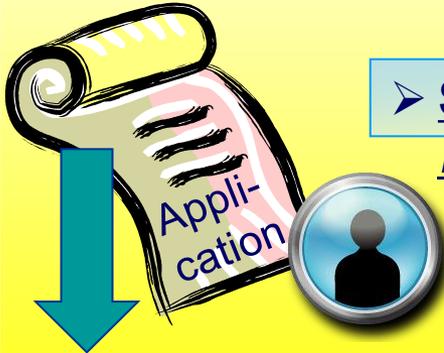
**Central
Authority**

State B

CENTRAL AUTHORITY CO-OPERATION

MAINTENANCE REGULATION (& 2007 HAGUE CONVENTION)

➤ Specific functions, Art. 51 Regulation (Art. 6 HC)



Central Authority

Transmittal of application

Central Authority

Acknowledgement of receipt

Form

State A

State B

**Timelines /
information requirements**
Art. 58 Regulation (Art. 12 HC)

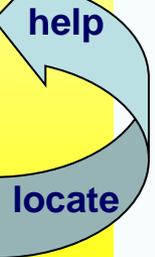
CENTRAL AUTHORITY CO-OPERATION

MAINTENANCE REGULATION (& 2007 HAGUE CONVENTION)

➤ Further specific functions, Art. 51 Regulation
(Art. 6 HC)



Encourage amicable solution



Central Authority

State A

- initiate or facilitate institution of proceedings
- provide or facilitate provision of legal aid (Reg.) / legal assistance (HC),
- facilitate ongoing enforcement of maintenance decisions,
- facilitate collection & expeditious transfer of payment,
- facilitate the obtaining of documentary and other evidence,
- initiate or facilitate institution of proceedings to secure outcome of maintenance application,
- facilitate service of documents,
- provide assistance in establishing parentage

Central Authority

State B

CENTRAL AUTHORITY CO-OPERATION

MAINTENANCE REGULATION (& 2007 HAGUE CONVENTION)



**Central
Authority**

State A

➤ Request for specific measures,
Art. 53 Regulation (Art. 7 HC)

- facilitate the obtaining of documentary and other evidence,
- initiate or facilitate institution proceedings to secure outcome of pending maintenance application,
- facilitate service of documents,
- provide assistance in establishing parentage



**Central
Authority**

State B



help

locate

CENTRAL AUTHORITY CO-OPERATION

MAINTENANCE REGULATION (& 2007 HAGUE CONVENTION)

**Central
Authority**

State A

**Each Central Authority
bears own costs**
Art. 54 Reg. (Art. 8 HC)

**For specific measures
exceptions possible, see**
Art. 54 Reg. (Art. 7 HC)

**Central
Authority**

State B

ACCESS TO JUSTICE / LEGAL AID

Article 44-46 Maintenance Regulation

(Effective access to procedures / legal assistance -
Articles 14-17 of the 2007 Hague Convention)

**Free legal aid for applications
through Central Authority
concerning child support**

Article 46 Maintenance Regulation
(Article 15 HC)

Guaranteed at least for applications reg.

- **recognition or recognition & enforcement** of a decision,
- **enforcement** of a decision made or recognised in the requested State

CONTENT OF LEGAL AID

Article 45 Maintenance Regulation

Legal aid:

assistance necessary to enable parties

- to know and assert their rights and**
- to ensure that their applications,
lodged through the Central Authorities
or directly with the competent authorities,
are fully and effectively dealt with.**

CONTENT OF LEGAL AID

Article 45 Maintenance Regulation

Legal aid covers as necessary:

- **pre-litigation advice** with a view to reaching settlement prior to judicial proceedings;
- **legal assistance in bringing case** before authority / court and court representation;
- **exemption from / assistance with costs of proceedings** and **fees** to persons mandated to perform acts during the proceedings;
- in Member States where unsuccessful party is liable for the costs of opposing party, **if legal aid recipient loses the case, the costs incurred by opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seised;**
- **interpretation;**
- **translation of documents** required by court / competent authority and presented by the legal aid recipient which are necessary for the case's resolution;
- **travel costs** to be borne by legal aid recipient where physical presence of the persons concerned with the presentation of the recipient's case is required by the law / court of the Member State concerned and persons concerned cannot be heard to the court's satisfaction by any other means.

**ERA – WORKSHOP
CROSS-BORDER DIVORCE AND
MAINTENANCE: JURISDICTION
AND APPLICABLE LAW**

Thank you for your attention

**For further details see
the ERA e-learning course**

**Juliane Hirsch, LL.M.
Independent Consultant
julianehirsch.jh@gmail.com**

Annex 6 – Template initial needs assessment questionnaire

INITIAL NEEDS ASSESSMENT QUESTIONNAIRE

The purpose of this questionnaire is to assess your existing knowledge of European legislative instruments for cross-border cooperation in family matters in order to ensure that the training module you will follow corresponds to your training needs.

About you

Your profession:

- Judge Lawyer in private practice
 Other (please specify): _____

What is your age group? Under 30 30-39 40-49
 50-60 Over 60

What is your gender? Female Male

From which EU member state / region do you come from? _____

Which is your preferred workshop language? _____

About your knowledge of European family law

	Yes	No
Do you apply European law in your present function?	<input type="radio"/>	<input type="radio"/>
Do you apply family law in your present function?	<input type="radio"/>	<input type="radio"/>
Do you apply European family law in your present function?	<input type="radio"/>	<input type="radio"/>

What is your knowledge of European family law?

	Very	To some extent	Only to a minor extent	Not at all
I have heard of Regulation Brussels II bis	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have good knowledge of Regulation Brussels II bis	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have practical experience with the application of Reg. Brussels II bis	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have heard of Regulation Rome III	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have good knowledge of Regulation Rome III	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have heard of the EU Maintenance Regulation	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have good knowledge of the EU Maintenance Regulation	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have heard of the preliminary ruling procedure	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4
I have good knowledge of the preliminary ruling procedure	<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4

I have made use of the preliminary ruling procedure

① ② ③ ④

Do you have experience with the use of European Union's websites? If yes, with which?

- curia E-justice Portal European Judicial atlas
 eur-lex European Judicial Network website N-lex

What is most important for you when choosing a conference or training programme?

- Need for training Networking opportunity Practical applicability
 High-level speakers Location International exchange

Why did you register to this programme?

Are you looking for a more general introduction to the subject or a deeper analysis?

- General introduction Mid-level Deeper analysis

On which other matters would you like more training?

Which possibilities do you have to disseminate the information received during this workshop to other members of your profession?

Thank you for your input

Annex 7 – Template list of participants

Workshop organiser

EU cross-border divorce and maintenance: jurisdiction and applicable law

List of participants

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**



Annex 8 - Initial immediate evaluation form

PARTICIPANT EVALUATION (INITIAL)

Your opinion matters to us: for the benefit of future participants, we should be grateful if you would reply briefly to the following questions about the training module you have just followed. We will re-contact you in one month to evaluate the impact of the training on your daily work.

About you

Your profession:

- Judiciary
- Notary
- Lawyer in private practice
- Other (please specify): _____

About this training module

How did you hear about this training module?

- E-Mailing
- EU e-Justice portal
- From my bar association
- Word-of-mouth
- Postal mailing of the programme
- From my Ministry of Justice
- From my national judicial training institution
- Other _____

What particularly met with your approval in this training module?

What did not meet with your approval?

What is your assessment of ...?

Very good
 Good
 Satisfactory
 Adequate
 Poor

the training content:

- Was the subject matter dealt with as you expected? (1) (2) (3) (4) (5)
- Did you gain new insights into the subject matter? (1) (2) (3) (4) (5)
- Did you receive useful advice on application and implementation? (1) (2) (3) (4) (5)

the workshop structure:

- Was information transmitted in a clear and understandable way? (1) (2) (3) (4) (5)
- Was the content of the workshop analysed effectively? (1) (2) (3) (4) (5)
- Was the duration of the workshop satisfactory? (1) (2) (3) (4) (5)

the training methodology:

- Did the training methods employed support the training? (1) (2) (3) (4) (5)
- Which in particular? _____
- Was there sufficient alteration of training methodologies? (1) (2) (3) (4) (5)
- If not, why (too many, too few)? _____



Was the balance between theory and practice effective? (1) (2) (3) (4) (5)

If not, why (too theoretical, too many exercises)? _____

Was the workshop Interactive enough? (1) (2) (3) (4) (5)

If not, why (too much discussion, too little)? _____

the E-learning course:

Did you find the E-learning course useful? (1) (2) (3) (4) (5)

Did the E-learning course help you better follow the workshop? (1) (2) (3) (4) (5)

Was the content of the course explained in a clear manner? (1) (2) (3) (4) (5)

Was the E-learning course easy to use? (1) (2) (3) (4) (5)

Did you go through all thematic units (Yes, No)? _____

If yes, which did you consider best for preparing for the workshop? _____

What do you think of the overall layout? (1) (2) (3) (4) (5)

What do you think of the navigation structure? (1) (2) (3) (4) (5)

How do you evaluate the part on Reg. Brussels IIbis? (1) (2) (3) (4) (5)

Why (e.g. long, complex, basic, difficult to use)? _____

How do you evaluate the part on Reg. Rome III? (1) (2) (3) (4) (5)

Why? _____

How do you evaluate the part on the Maintenance Regulation? (1) (2) (3) (4) (5)

Why? _____

Did the quizzes help you test your knowledge? (1) (2) (3) (4) (5)

If yes, which in particular (initial, Unit I, Unit II, Unit III)? _____

Were the answers to the quiz questions helpful? (1) (2) (3) (4) (5)

the user's pack:

Was the documentation received during the workshop of help? (1) (2) (3) (4) (5)

Was the electronic documentation received on USB of help? (1) (2) (3) (4) (5)

the national sections:

Were national sections a helpful tool? (1) (2) (3) (4) (5)

Did you find the information included of relevance? (1) (2) (3) (4) (5)

Was the material easy to navigate? (1) (2) (3) (4) (5)

the online tools:

Did you gain new information on available online tools? (1) (2) (3) (4) (5)

Were the online tools effectively presented? (1) (2) (3) (4) (5)

Will you be using them in the future (Yes, No, Why)? _____

the organisational aspects:

Preliminary practical information (1) (2) (3) (4) (5)

Execution of the programme (1) (2) (3) (4) (5)

Assistance during the seminar (1) (2) (3) (4) (5)

Training venue (1) (2) (3) (4) (5)



Would you recommend this workshop to colleagues?
Why?

Yes No
○ ○

About the sessions' structure and trainers	Comment
--	---------

	Very good	Good	Satisfactory	Adequate	Poor	
Cross-border divorce:						
Jurisdiction	①	②	③	④	⑤	_____
Geoffrey Shannon	①	②	③	④	⑤	_____
Martina Erb-Klünemann	①	②	③	④	⑤	_____
Cross-border divorce:						
Applicable law	①	②	③	④	⑤	_____
Maria Giuliana Civinini	①	②	③	④	⑤	_____
Monika Jagielska	①	②	③	④	⑤	_____
Cross-border						
maintenance	①	②	③	④	⑤	_____
Juliane Hirsch	①	②	③	④	⑤	_____
Irēna Kucina	①	②	③	④	⑤	_____
Property regimes	①	②	③	④	⑤	_____
Irēna Kucina	①	②	③	④	⑤	_____

Thank you for your feedback



Annex 9 – Template mid-term evaluation questionnaire

PARTICIPANT EVALUATION (MID-TERM)

You recently participated in a training module on European instruments for judicial cooperation in civil matters. We should be grateful if you would reply briefly to the following questions about the impact of that training on your daily work.

About you

Your profession:

- Judiciary Lawyer in private practice
 Notary Other (please specify): _____

About the workshop: To what extent ...?

Very
To some extent
Only to a minor extent
Not at all

has the knowledge acquired during the workshop helped you to better understand the problems you encounter in practice? (1) (2) (3) (4)

was the training on European instruments for cross-border judicial cooperation in family matters useful? (1) (2) (3) (4)

was the training on the preliminary reference procedure useful? (1) (2) (3) (4)

were the case studies useful? (1) (2) (3) (4)

have you dealt with cases of cross-border judicial cooperation in family matters since you attended the training module? Yes No

have you used the user's pack in your work?

have you used the e-learning course in your work?

have you trained other colleagues on cross-border judicial cooperation in civil matters since attending the training?

have you maintained contact with the other workshop participants?

Comments:



Have you made use of European Union's websites since the workshop? If yes, which one?

- curia E-justice Portal European Judicial atlas
 eur-lex European Judicial Network website N-lex

Future training workshops

On which topics should such future training workshops be organised?

- Jurisdiction and recognition & enforcement of judgments in civil and commercial matters ("Brussels I"), service of documents, evidence, European payment order, small claims procedure and other civil justice instruments
- Family law: jurisdiction and the recognition & enforcement in matrimonial and parental responsibility matters ("Brussels II bis") and other family law matters
- Regulations on the law applicable in contractual ("Rome I") and non-contractual ("Rome II") obligations
- Preliminary reference procedure
- Other: _____

Thank you for your feedback