

Cross-border family matters in the EU – setting the scene

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CONTENT

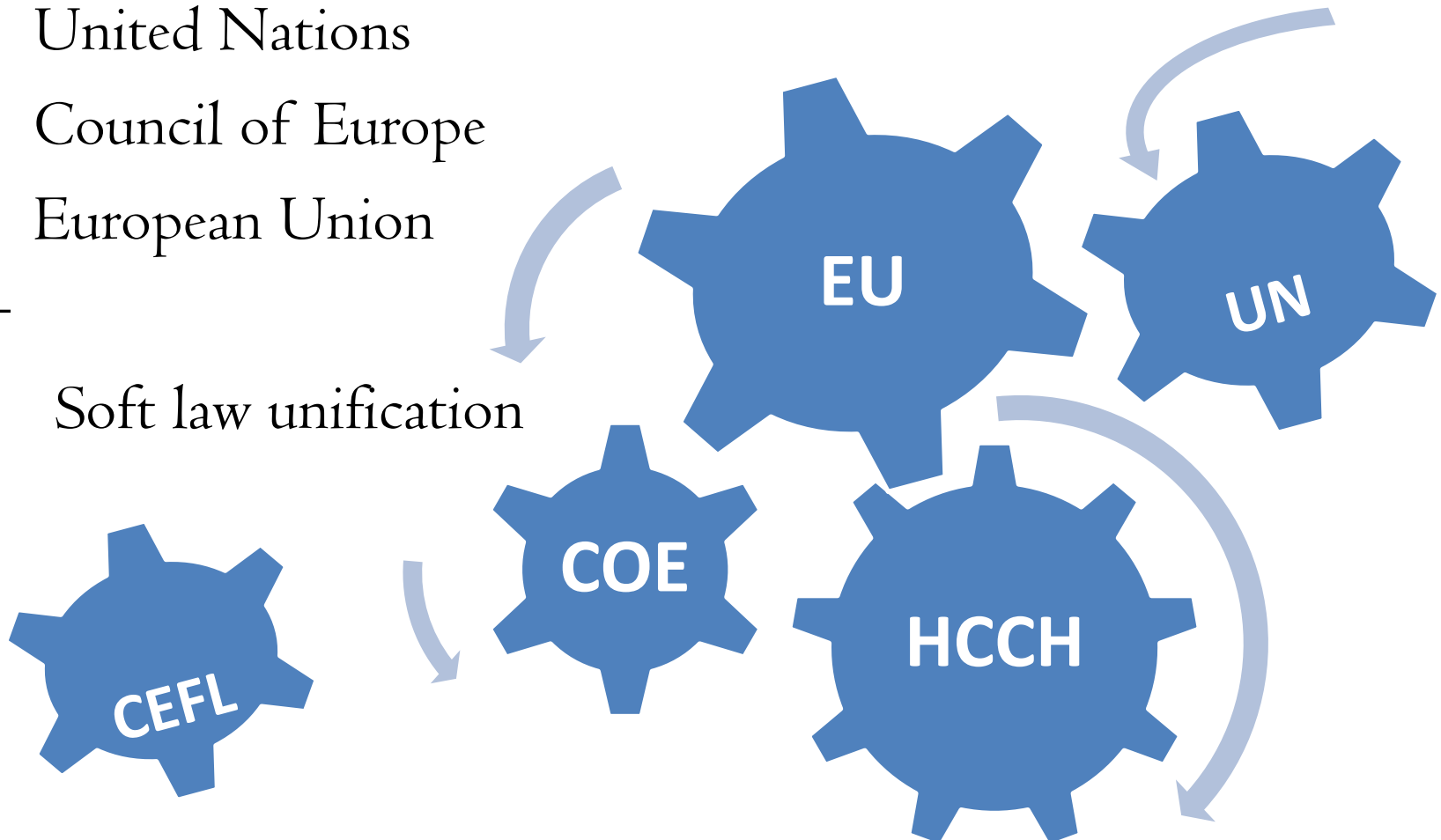
- I. Interplay of universal and regional level of law harmonization and unification

- II. EU family acquis
 - Legal sources
 - Various methods of unification
 - Delimitation among legal sources
 - Various scope of application – *multi-speed Europe*
 - Interpretation
 - Consequences of non/fault application of the regulations

Annex: LEGAL SOURCES – full title

Interplay of universal and regional level of law harmonization and unification

- Hague conference on private international law
- United Nations
- Council of Europe
- European Union
- +
- Soft law unification



EUROPEAN UNION as unification actor

- encouraging free movement brings the issue of cross border elements to family
 - intensified human mobility leads to internationalization of family life / family law
- inadequacy of national legal systems to regulate newly formed social situations justifies EU action!

- 1997 Treaty of Amsterdam
 - gains internal competences (Art. 65; Art 8I Lisbon Treaty)
- 1999 Tampere programme
 - places mutual recognition of decisions at focus
- 2005 – 2010 Hague programme
 - mutual recognition agenda remained a priority
 - called for the development of EU action in family law: the Commission is invited to submit proposals on maintenance, matrimonial property, and divorce
- 2010-2014 Stockholm Programme
 - mutual recognition transfers to abolished equequatur in family matters
 - inovation: promoting alternative dispute resolution in cross border family cases

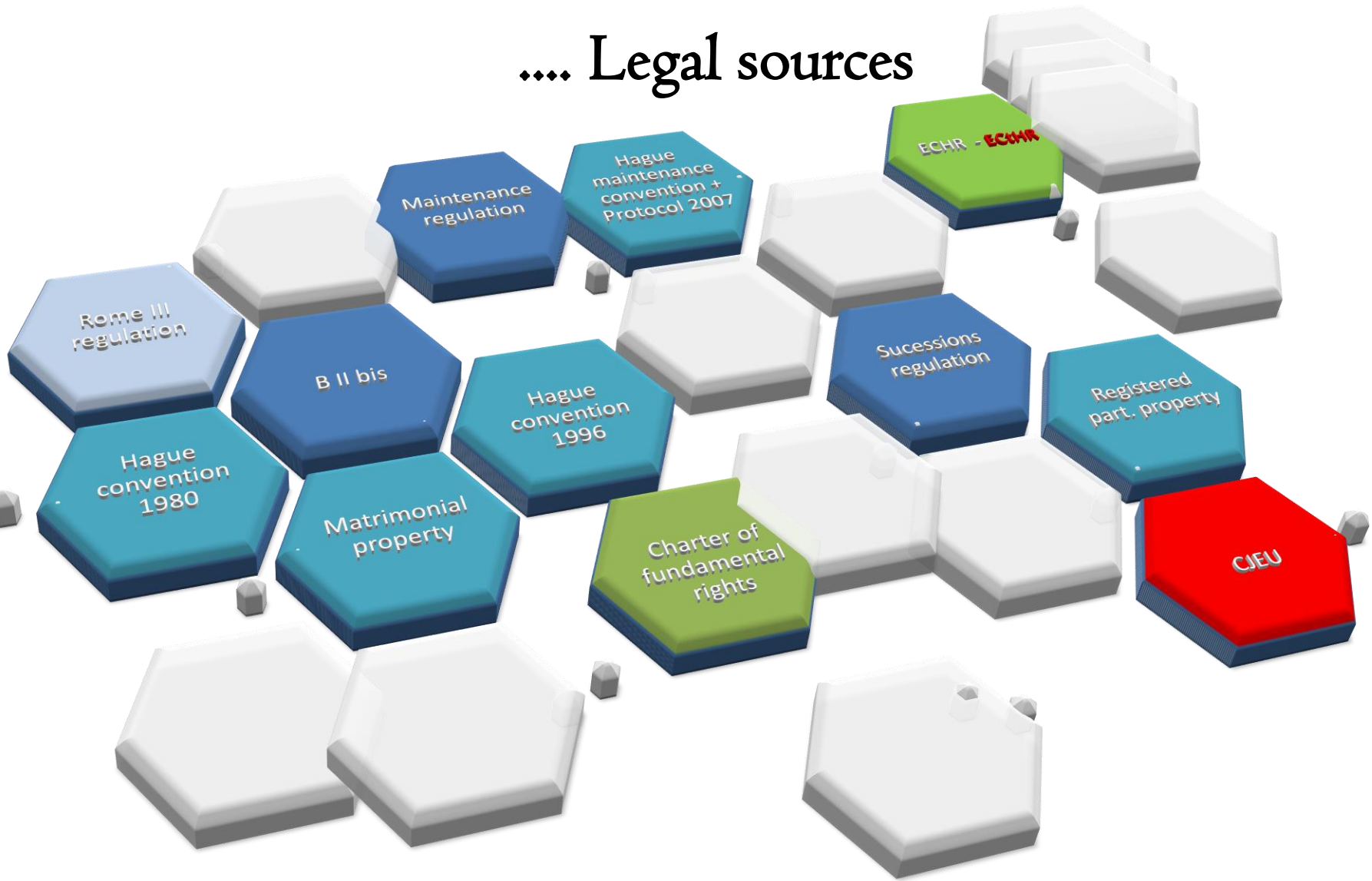
Legal sources



.... Legal sources



.... Legal sources



EU regulations

based on

- harmonized direct jurisdiction rules,
- proper service,
- elimination of procedural irregularities,
- avoidance of parallel procedures and passing opposed decisions,
- exequatur repeal (several approaches),
- applicable law – at low extent so far.

lean on

- European Judicial Network (EJN)
- Central Authorities (CA)
- Hague international judicial network (HIJN)

... various methods of unification

JURISDICTION	RECOGNITION / ENFORCEMENT	COOPERATION OF CENTRAL AUTHORITY	APPLICABLE LAW
Brussels II <i>bis</i> (2201/2003)			<u>divorce matters:</u> -Rome III, 1259/2010 -national PIL <u>parental responsibility:</u> -Hague 1996 convention -Hague 1980 convention - national PIL
Maintenance obligations regulation (4/2009) + Hague protocol (2007)			
Succession regulation (650/2012)			
Marriage/civil partnership property regimes regulation (2016/1104, 2016/1103)			

Delimitation among legal sources

with respect to regulations

- BIIbis – Maintenance
 - notion of “ancillary matter”
- CJEU A v B.
(C-184/14)

with respect to national law /
matters outside the scope of
EU regulations

- Representation in administrative procedure
 - CJEU Gogova v Iliev
(Case C-215/15)
- Successions
 - CJEU Matoušková
(C-404/14)

Delimitation among legal sources

Interplay with human rights

- Child abduction
 - Best interest of a child in CJEU (C-211/10 PPU)
Povse / ECHR Povse v. Austria – No. 3890/11

- Parental responsibility
 - CJEU (C-400/10) McB

..... Varous scope of application
Multi-speed Europe

	TEMPORAL	GEOGRAPHICAL	MATERIAL
Brussels II bis	-as of 1.3.2005 -for Croatia as of 1.7.2013 (Art 64/I)	-all MS of the EU, except Denmark	- divorce - legal separation - marriage annulment - parental responsibility
Rome III	-as of 21.6.2012	-enhanced cooperation -14 participating MS	- divorce - legal separation

Interpretation

- Regulation
 - directly applicable in MS
 - prevails over national law
 - requires autonomous interpretation guided by CJEU
- Autonomous or „Europautonomous“ interpretation
 - National courts must refrain from referring to national concepts / national case law
- Systematic and purposive interpretation
 - Each individual article is to be interpreted in the context of a Regulation as a whole; in accordance to objectives (Recitals)

.... interpretation

- Final and exclusive interpretation authority is CJEU
- Reference procedure concerns
 - only EU law;
 - no questions of national law, even if Regulation refers to national law!
 - only relates to pending proceedings
- Any court of MS is entitled but courts of last instance (no ordinary judicial remedy can be given) are obliged to refer
- UPP -urgent procedure
 - art. 104b Rules of Procedure of the Court of Justice

CONSEQUENCES of *acquis* non/fault application

- Overall ratio of FREE CIRCULATION OF JUDGEMENTS
 - embeded on MUTUAL TRUST
- Consequences of (non)application
 - No possibility to refuse recognition if a judgement is based on non-existent/fault ground of jurisdiction/contains untrue statements
 - CJEU (Case C-455/15 PPU)
- Possible objections by party if regulatons are not applied
 - Any available in national remedy (appeal – revision-constitutional claim?)

ANNEX

LEGAL SOURCES – FULL TITLE

REGULATIONS

directly applicable to cross-border family matters

- Council Regulation (EC) no. 2201/2003 of 27 November 2003 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility which revokes the Regulation (EC) no. 1347/2000
- 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
- Council Regulation (EU) no. 1259/2010 of 29 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

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- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ L 183, 8.7.2016,
- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, *OJ L 183, 8.7.2016*

REGULATIONS

indirectly applicable in cross-border family law

- 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,
- 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,
- Regulation (EEC, Euratom) no. 1182/71 of the Council of 3 June 1971 Determining the Rules Applicable to Periods, Dates and Time Limits,
- 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

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..... REGULATIONS

indirectly applicable in cross-border family law

- Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters,
- Council 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.
- Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters
- Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

PIL CONVENTIONS

applicable to cross-border family law

- Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,
- Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children,
- Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction,
- Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance +
- Hague Protocol of the Law Applicable to Maintenance Obligations.

HUMAN RIGHTS

conventions and *acquis*

- Convention for the Protection of Human Rights and Fundamental Freedoms (COE), 1950; *abbreviation ECHR*
- Convention on the rights of a child (UN), 1989.
abbreviation CRC
- Charter of fundamental rights of the European Union (EU), 2009, *abbreviation CFR*