



*Tieslietu ministrija*

# European International Family Law

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# I. Notion of European international family law

European international family law forms a part of private international law.

Family law encompasses core areas of law like matrimonial and child law (marriage; family).

Sometimes EU law speaks of ‘family relationships’ and of ‘relationships deemed by the law applicable to such relationships to have comparable effects’.

## II. European competence

Competence for measures in the area of judicial cooperation in civil matters having cross-border implications,  
Art. 81 Treaty on the Functioning of the European Union

Special legislative procedure for family law matters:  
The European Council has to act unanimously after consulting the European Parliament (Art. 81 para. 3 TFEU).

# III. Approaches in private international law

## 1. General part

Increasingly, respect for the free movement of persons (Art. 21 TFEU) resulting from Union citizenship (Art. 20 TFEU) is of particular significance for choice-of-law questions and connections.

A specific general part of European PIL is lacking. No uniform attitude regarding, for example, public policy or renvoi.

## 2. Connecting factors

Development of a consistent system of connections for the conflict rules is necessary.

Habitual residence is the most important connecting factor.

Nationality is unsuited as a primary connecting factor for European PIL.

Party autonomy with a restricted choice of law is developing in family law matters (e.g. Rome III, Maintenance Reg.).

# 3. Recognition of foreign legal acts

## Law of surnames of children

Spaniard Garcia Avello	Belgian wife I. Weber
Two Belgian-Spanish children living in Belgium	
Belgian law:	Name of the father: 'Garcia Avello '
Spanish law:	Name of the father <b><i>and</i></b> the mother: 'Garcia Weber'

Arts. 12 and 17 EC precluded Belgian authorities from refusing to grant an application, made on behalf of minor children resident in Belgium but having dual Belgian and Spanish nationality, for the surname of those children to be changed to that to which they were entitled according to Spanish law and tradition.

European Court of Justice Case C-148/02 – Garcia Avello [2003] ECR I-11613

# Dual surname of a child

## Danish-German case

German father: Grunkin	German mother: Paul
German son, born in Denmark	
German law: 'Grunkin' <u>or</u> 'Paul'	
Danish law: 'Grunkin-Paul'	

Surname determined and subsequently changed in accordance with the law of the Member State of birth and habitual residence – Recognition also by the Member State of nationality.

European Court of Justice Case C-353/06 – Grunkin-Paul [2008] ECR I-7639

# IV. European regulations

## 1. In general

More and more “mixed” regulations

## 2. Divorce

Brussels *Ibis* (Reg. No 2201/2003) on the jurisdiction and the recognition and enforcement of foreign decisions in matrimonial matters and in proceedings concerning parental responsibility

Rome III (Reg. No 1259/2010) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

Enhanced cooperation based on Art 20 Treaty on European Union ,  
Art. 328 para. 1 Treaty on the Functioning of the European Union



### 3. Maintenance obligations

Regulation (No 4/2009) on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Art. 15 Reg.: Hague Maintenance Protocol of 2007 applicable

### 4. Matrimonial property law

Legislative Proposals:

- Reg. on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011) 126).
- Reg. on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011) 127).

# V. International conventions

## 1. In general

External competence of the EU flows from the internal competence of the Union: the Union can enter into external (international) agreements if it has already made use of its internal competences.

## 2. Bilateral agreements of Member States

Council Regulation of 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries

# 3. Hague Conference on Private International Law

European Union is, as a regional organization, a member of the Hague Conference on Private International Law.

For the application between Member States, the procedural Brussels *Ibis* Regulation in principle takes precedence over the international conventions.

## 4. Hague Maintenance Convention 2007 and Hague Protocol 2007

Hague Maintenance Convention of 2007: not yet entered into force.

In relations between Member States:

Maintenance Regulation takes precedence over conventions and agreements.

Hague Maintenance Protocol 2007: not yet entered into force.

But applies provisionally for Member States.

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 Obligations, OJ EU 2009 L 331/17.

## 5. Child protection

Hague Convention on Protection of Children of 1996 in force

## 6. Child abduction

Hague Convention on Child Abduction of 1980 in force

## 7. Protection of adults

Hague Convention on Protection of Adults of 2000, in force in some Member States

## 8. Other conventions

E.g., International Commission on Civil Status (CIEC).

# VI. International law of civil procedure

## 1. Jurisdiction

Maintenance Regulation (Arts. 3 - 14).

Brussels *Ibis* Regulation (Arts. 3 - 20) for divorce (marriage) and parental responsibility.

Family matters are generally not covered by the Brussels I Regulation

## 2. Service and taking of evidence

- European Regulation for service of documents  
(Regulation (EC) No 1393/2007)
  
- European Regulation for taking of evidence  
(Regulation (EC) No 1206/2001)

# 3. Recognition and enforcement of foreign judgments

Maintenance Regulation (Arts. 16 – 43)

Brussels IIbis Regulation for matrimonial matters and parental responsibility (Arts. 21 - 52)