

# Judicial cooperation in civil matters in the European Union

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# PIL

- *„...the realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but egocentric professors who theorize about mysterious matters in a stranger and incoprehensible jargon. The ordinary court, or a lawyer, is quite lost when engulfed and entangled in it“ Prof. Prosser, University of Michigan*

# PIL

- regulating private law relationship with foreign/cross border element
- includes conflict of law rules and procedural rules
- procedural rules:
  - jurisdiction
  - recognition and enforcement
  - other procedural issues

# Sources of PIL

- EU legal acts – priority
- multilateral conventions (Hague conventions – global, CoE conventions)
- bilateral conventions
- domestic Law (Act on Private International Law in Slovakia of 1963)

# Judicial cooperation – a new EU policy?

- Establishing treaties (ECCS, EURATOM, EEC) did not foresaw the competence of Communities in this area
- Maastricht Treaty (TEU, 1992) – III pillar
- Amsterdam Treaty (1997) – transfer of judicial cooperation in civil matters into 1st pillar (article 65 TEU)
- Treaty of Nice (2001)
- Lisbon Treaty – Treaty on Functioning of the European Union (2007); article 81 ZFEÚ

# Reasons for judicial cooperation rules in the EU law

- increased mobility of people/entities – increased number of cross border cases
- differences in substantive laws of MS
- obstacles to the proper functioning of Single Market
- paralel proceedings
- forum shopping
- need for legal certainty

# Goals of judicial cooperation

- improve access to justice in cross border cases
- predictability
- free movement of judgements
- more rapid cross border proceedings
- lower costs

# Article 81 TFEU

TITLE V

AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.



# Article 81 TFEU

2. For the purposes of paragraph 1, the EP and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

- (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
- (b) the cross-border service of judicial and extrajudicial documents;
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d) cooperation in the taking of evidence;
- (e) effective access to justice;
- (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- (g) the development of alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

# Article 81 TFEU

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.

# Competence of the Court of Justice

- case law of the CJ EU = source of law
- duty of EU-conform interpretation of the domestic law for national courts
- article 267 TFEU – preliminary ruling procedure

# Judicial cooperation in civil matters

- Legal instruments on jurisdiction, recognition and enforcement of decisions
- Legal instruments on applicable law
- European cross border procedures
- Additional measures strengthening the principle of mutual recognition

# Jurisdiction, recognition and enforcement of decisions

- **Brusel I** Council Regulation (EC) No 1215/2012 of 12 December 2002 on jurisdiction and the recognition and enforcement of judgments in **civil and commercial matters** (replaced Brussels I Regulation no. 44/2001 as of 10 January 2015)
- **Brusel II bis** 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

# Jurisdiction, recognition and enforcement of decisions

- 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

# Applicable Law

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (**Rome I**)
- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (**Rome II**)
- Council Regulation No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (**Rome III**)

# Horizontal regulations

- Regulation (EU) no 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in **matters of succession** and on the creation of a European Certificate of Succession
- Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to **maintenance obligations**



# European cross border procedures

- Council Regulation 1896/2006 of 12 December 2006 creating a **European order for payment** procedure
- Council Regulation 861/2007 of 11 July 2007 establishing a **European Small Claims Procedure**

# Other legal instruments implementing the principle of mutual recognition

- **Service of documents** Regulation (EC) No. 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
- **Taking of evidence** 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
- **Mediation** 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
- **Legal Aid** Council Directive 2003/8/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
- **Victims of crime** Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
- Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

# Horizontal instruments

- Regulation 4/2009 of 18 Decemer 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and on cooperation in Matrimonial Cases
- Regulation no. 650/2015 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions in Successions

# New instruments

- Regulation (EU) no. 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters
- Regulation (EU) no. 655/2014 of 15 May 2014 of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

Future instruments?

# Negotiated draft legal acts in the area of civil judicial cooperation

- Regulation(EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (**Recast Insolvency Regulation**)
- Council Decision (EU) of 9 June authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships
- Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain **public documents** in the European Union and amending Regulation (EU) No 1024/2012

Thank you for your attention

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