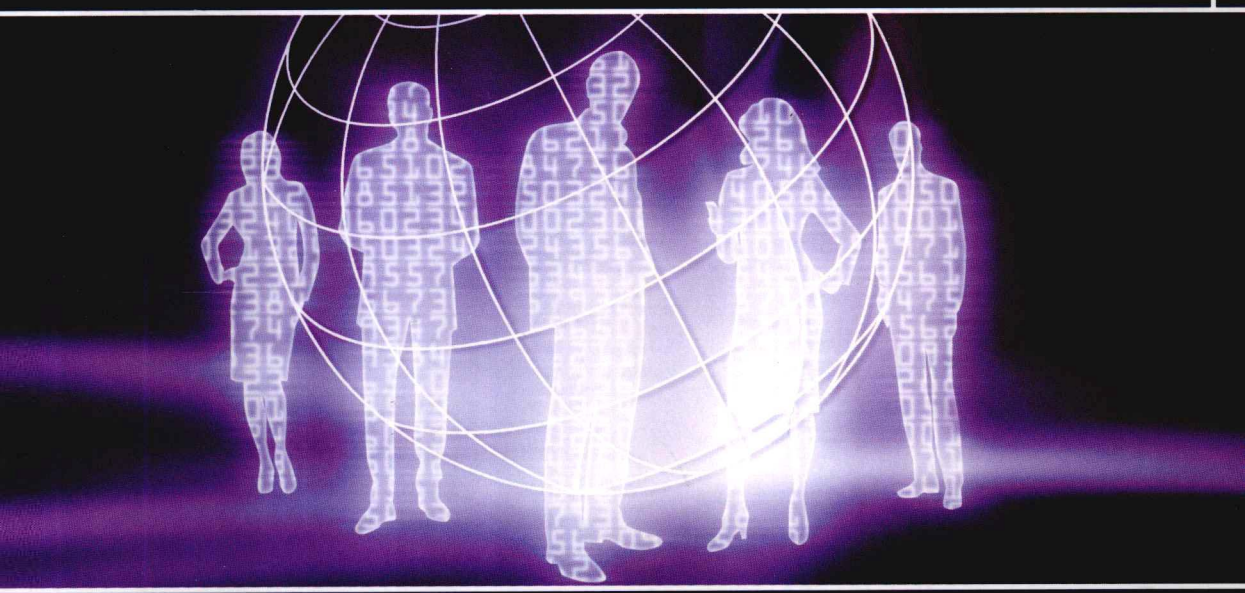
EU PRIVATE INTERNATIONAL LAW

SECOND EDITION

PETER STONE



ELGAR EUROPEAN LAW

EU Private International Law

Second Edition

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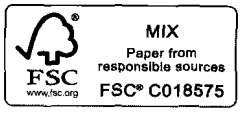
Edward Elgar
Cheltenham, UK • Northampton, MA, USA

Published by
Edward Elgar Publishing Limited
The Lypiatts
15 Lansdown Road
Cheltenham
Glos GL50 2JA
UK

Edward Elgar Publishing, Inc.
William Pratt House
9 Dewey Court
Northampton
Massachusetts 01060
USA

A catalogue record for this book is available from the British Library

Library of Congress Control Number: 2009941137



ISBN 978 1 84844 083 8 (cased)

Typeset by Cambrian Typesetters, Camberley, Surrey
Printed and bound by MPG Books Group, UK

Preface

The European Union legislation in the sphere of private international law has undergone considerable development since the publication of the first edition of this work in 2006. The case-law on existing EU measures (the Brussels I Regulation on civil jurisdiction and judgments; the Rome Convention 1980 on the law applicable to contractual obligations; the Brussels IIA Regulation on matrimonial matters and parental responsibility; and the Regulation on insolvency proceedings) has continued to expand, and several new EU regulations have been adopted. Thus choice of law in respect of civil obligations is now governed by the Rome I Regulation on contractual obligations, and by the Rome II Regulation on non-contractual obligations. In the sphere of family law, a Regulation on jurisdiction, choice of law and judgments in respect of maintenance obligations has been adopted and will become applicable in 2011. The European Union has become a member of the Hague Conference on Private International Law, and is in the process of giving effect, in relation to external countries, to the Hague Convention 1996 on parental responsibility and child protection, and to the Hague Convention 2005 on choice of court agreements. With regard to the EFTA countries, a revised Lugano Convention on civil jurisdiction and judgments has been concluded by the European Union and brought into operation in relation to Norway. Consideration has also begun of a proposal for an EU regulation dealing with succession on death.

In general, the present author continues to welcome the harmonisation of private international law at European Union level. Since private international law seeks to co-ordinate the operation of private law in the interests of justice and certainty for persons involved in transnational activities or relationships, and the achievements of these goals can be obstructed by divergencies between the rules adopted in different countries, the establishment of a harmonised system of private international law, operative throughout most of Europe, seems an appropriate activity for the EU institutions. Thus the recent willingness of British governments to give way to pressure from certain commercial interests and their level advisers, and accordingly to play an obstructive role in relation to this harmonisation project, seems entirely regrettable.

On the other hand, there are features of the current approach adopted by the European institutions in this sphere which appear to merit fundamental reconsideration. In particular, the enthusiasm of the EU Commission to eliminate the need, in the context of the enforcement of one Member State of a judgment given in another Member State, for an enforcement order made by a court of the State of enforcement, seems unjustified and, indeed, dangerous. Apart from the practical difficulties which may arise, the idea of automatic enforceability gives far too little consideration to the need to ensure that (at least) private individuals and small businesses receive a minimum of essential procedural protection from the courts of the country in which they reside or are based. Even the suppression of jurisdictional review in the State addressed goes beyond what has been found acceptable between sister States in the United States of America, and has obvious

dangers, especially in relation to proceedings brought in bad faith. There is a real risk that excessive enthusiasm for 'the free movement of judgments' may eventually discredit the whole process of harmonisation in this sphere.

In general the manuscript of this work was completed in January 2010. But major developments (such as rulings given by the European Court) up to September 2010 have been incorporated.

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PART I

Introduction

1. Introduction

PRIVATE INTERNATIONAL LAW AND ITS HARMONISATION

The area of law known as private international law, or the conflict of laws, addresses three kinds of problem which arise, in connection with legal relationships governed by private law, where a factual situation is connected with more than one country. Rules of private international law may conveniently be referred to as conflict rules.

Such a situation may arise from the connections of persons, of acts or events, or of property involved. Thus relevant connections may include an individual's domicile, residence, or nationality; the place of incorporation, or the location of the headquarters, or of a branch, of a company; the place of conclusion or performance of a contract; the place where an accident giving rise to a tort claim occurred; or the location of property.

Three kinds of problem are dealt with by conflict rules. They relate to direct jurisdiction; to choice of law; and to foreign judgments. Rules on direct jurisdiction define the circumstances in which the courts of one country are competent, and should be willing, to entertain proceedings in respect of disputes which have some connection with another country. Such rules are applicable by a court for the purpose of determining its own jurisdiction to entertain proceedings instituted before it. Rules on choice of law select from the connected countries the one whose law is to supply the substantive rules to be applied in determining the merits of the dispute. Rules on foreign judgments define the circumstances in which a judgment given by a court of one country is to be recognised or enforced in another country.

In the modern world, every country having a developed legal system has its own set of conflict rules, which form part of its private law. Such rules differ from one country to another, and these differences tend to undermine the purposes of the rules. For such purposes include the achievement of legal security (by way of certainty, predictability and uniformity of results, regardless of which country's courts are involved) for the persons involved. Like any other rules of a country's private law, its conflict rules may be harmonised with those of other countries by means of international treaties, and in this respect much has been achieved by the conventions negotiated at the Hague Conference on Private International Law.[1] Especially in recent years, further harmonisation has been achieved at European level by measures adopted within the framework of the European Community or Union, and it is on such harmonisation that the present work is focused.

[1] On 3rd April 2007, the European Community became a member of the Hague Conference on Private International Law, by accession pursuant to EC Council Decision 2006/719, [2006] OJ L297/1. See pp. 13–14 et seq. below.

HARMONISATION AT EUROPEAN COMMUNITY LEVEL

Since the entry into force of the Treaty of Lisbon on 1st December 2009, the adoption at European level of measures for the harmonisation of conflict rules is now governed by Title V (Articles 67–89) of Part III of the Treaty on the Functioning of the European Union. These provisions have replaced Title IV (Articles 61–9) of the EC Treaty, under which many important measures had been adopted in the sphere of private international law, mainly in the form of EC regulations adopted either by the Council alone, or jointly by the Council and the Parliament. By the Treaty of Lisbon, the European Union has replaced and succeeded to the European Community.

Article 67(1) of the Treaty on the Functioning of the European Union declares that the Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. Article 67(4) adds that the Union is to facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

Within Title V of the Treaty on the Functioning of the European Union, Chapter 3 (Article 81) is entitled Judicial Co-operation in Civil Matters.[2] Article 81(1) requires the Union to develop judicial co-operation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases; and specifies that such co-operation may include the adoption of measures for the approximation of the laws and regulations of the Member States. Then Article 81(2) authorises the adoption of measures for these purposes, particularly when necessary for the proper functioning of the internal market,[3] aimed at ensuring the following results:

(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) co-operation 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; and
(h) support for the training of the judiciary and judicial staff.

Thus it seems clear that all aspects of private international law may be subjected to harmonisation by measures adopted under Title V.

Article 81(2) also specifies that measures under Article 81 are to be adopted by the Parliament and the Council, acting in accordance with the ordinary legislative procedure.[4]

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[2] Article 81 replaces Articles 65 and 67 of the EC Treaty.

[3] The insertion of 'particularly' in Article 81(2) seems designed to weaken the requirement of connection with the internal market, as compared with Article 65 of the EC Treaty.

[4] This corresponds to the co-decision procedure under the EC Treaty.

But an exception is made by Article 81(3) in respect of measures concerning family law with cross-border implications. Measures on family law are to be established by the Council, acting in accordance with a special legislative procedure, under which the Council will act unanimously after consulting the European Parliament.[5]

The power of the European Court to give preliminary rulings on the validity or interpretation of acts of the European institutions at the request of national courts, now conferred by Article 267 of the Treaty on the Functioning of the European Union, now has full application to measures adopted under Article 81 of that Treaty or under its predecessor, Articles 61(c) and 65 of the EC Treaty. Prior to the entry into force of the Treaty of Lisbon, Article 68 of the EC Treaty enabled preliminary rulings on the interpretation of measures adopted under Title IV thereof to be requested only by national courts of last resort, but this restriction has now been eliminated by the Treaty on the Functioning of the European Union. Thus a reference for the interpretation of a provision of, for example, the Brussels I Regulation may now be made by any court of a Member State, whether the referring court is a court of first instance, a court of intermediate appeal, or a court of final appeal.[6]

By Protocol 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union, as amended by the Treaty of Lisbon, measures adopted under Title V of Part III of the Treaty on the Functioning of the European Union apply to the United Kingdom or Ireland only if they elect to participate in the adoption of, or after its adoption to accept, the measure in question. By Protocol 22, as so amended, measures adopted under Title V do not apply to Denmark, unless and until it elects wholly or partly to abandon this opt-out. These provisions conferring options on the relevant Member States resemble those formerly made by Article 69 of the EC Treaty, along with associated Protocols, in relation to measures adopted under Title IV of that Treaty. But Protocol 22 now enables Denmark to substitute a regime giving it an option in relation to each individual measure, similar to that enjoyed by the United Kingdom and Ireland.

So far Ireland has chosen to participate in the adoption of all of the measures which have been adopted under Title IV of the EC Treaty in the sphere of private international law, and with one exception[7] the United Kingdom has chosen either to participate in the adoption of, or after adoption to accept, all of these measures. Accordingly, almost all of the existing measures in this sphere are applicable to the United Kingdom and to Ireland. But these measures have not become applicable to Denmark except where a special agreement on their extension to Denmark has been concluded between the European Community and Denmark.

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[5] Article 81(3) also permits the Council to adopt a decision transferring aspects of family law with cross-border implications to the ordinary legislative procedure. Such a decision may be adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament. But the proposal must also be notified to the national Parliaments, and if a national Parliament makes known its opposition within six months of the notification, the decision cannot be adopted.

[6] In principle, a national court of last resort has an obligation to refer relevant questions, but this is subject to the limited exception relating to clear and obvious points admitted by the European Court in Case 283/81: *CILFIT v Ministry of Health* [1982] ECR 3415. For a sound application of the *acte clair* principle in the sphere of private international law, see *T v L* [2008] IESC 48 (Irish Supreme Court). For a rejection of a reference by a lower court, relating to the Brussels I Regulation, as inadmissible under Article 68 of the EC Treaty, see Case C-278/09: *Martinez v MGN*, 20th November 2009.

[7] The exception relates to EC Council Decision 2009/941, on the Hague Protocol 2007 on the Law Applicable to Maintenance Obligations.

Before 1999, measures designed to secure the harmonisation of conflict rules at EC level had taken the form of conventions, signed and ratified by the Member States. Conventions in this sphere could be concluded on the basis of Article 220 of the EEC Treaty, or its successor, Article 293 of the EC Treaty, which required the Member States, so far as is necessary, to enter into negotiations with each other with a view to securing for the benefit of their nationals (inter alia) the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards. Conventions could also be based on a voluntary choice by the Member States to go beyond the requirements of that provision. After the entry into force of the Treaty of Maastricht on European Union, such conventions could also be drawn up by the Council, and recommended to the Member States for adoption in accordance with their respective constitutional requirements, on the basis of Title VI (Article K) of that Treaty, which dealt with co-operation in the fields of justice and home affairs, including judicial co-operation in civil matters. After the entry into force of the Treaty of Amsterdam, Title VI of the Treaty of Maastricht ceased to be available; and after the entry into force of the Treaty of Lisbon, Article 293 of the EC Treaty has also ceased to be available. Thus future measures at European level within the sphere of private international law must now be based on Article 81 of the Treaty on the Functioning of the European Union.

The measures of European harmonisation of conflict rules, currently adopted or proposed, may be classified under five headings: civil jurisdiction and judgments; the law applicable to civil obligations; family matters; insolvency; and procedural co-operation.

CIVIL JURISDICTION AND JUDGMENTS

The Brussels I Regulation

The most important Community instrument in the sphere of private international law is Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, which is commonly referred to as the Brussels I Regulation.[8] The Regulation was adopted by the EC Council on 22nd December 2000. It entered into force on 1st March 2002 for the fourteen then existing Member States other than Denmark; on 1st May 2004 for the ten then acceding Member States;[9] on 1st January 2007 for Bulgaria and Romania;[10] and on 1st July 2007 for Denmark.[11] It has replaced the Brussels Convention of 27th September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is commonly referred to as the Brussels Convention.[12]

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[8] For its text, see [2001] OJ L12/1. The Brussels I Regulation is examined in Chapters 2–11 and 18 of the present work.

[9] See the Athens Act of Accession 2003, Article 2. For minor adjustments, see its Annex II, Part 18(A)(3).

[10] See the Luxembourg Act of Accession 2005, Articles 2 and 56; [2005] OJ L157.

[11] See the Agreement between the European Community and Denmark, approved by EC Council Decisions 2005/790 and 2006/325; [2005] OJ L299/61 and [2006] OJ L120/22.

[12] For the latest version of its text, see [1998] OJ C27/1. The Convention was based on Article 220 of the EEC Treaty.

The Regulation lays down rules on direct jurisdiction, applicable by the court seised of the original action in determining its own jurisdiction, as well as rules on the recognition and enforcement of judgments given in other States to which the Regulation applies. It applies to most types of civil matter. But certain matters (such as most family matters; and insolvency proceedings) are excluded from its scope.

On 21st April 2009, the EC Commission issued a Report on the Application of the Brussels I Regulation,[13] together with a Green Paper on the Review of the Regulation.[14] These documents launched a consultation, designed to lead eventually to a proposal for the amendment of the Regulation.

The Lugano Conventions

The Brussels I Regulation is supplemented by the Lugano Convention of 16th September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which may conveniently be referred to as the Lugano Convention 1988.[15] This was designed in substance to extend the Brussels Convention to the EFTA countries, and its substantive provisions largely accord with those of the 1989 version of the Brussels Convention. It remains in force between the fifteen pre-2004 EC Member States, and Switzerland, Iceland and Poland.

A revised version, which may conveniently be referred to as the Lugano Convention 2007, has been signed and concluded by the European Community.[16] This entered into force between the Community, Denmark and Norway on 1st January 2010, but it has not yet entered into force for Switzerland and Iceland. Its contents largely reflect the Brussels I Regulation.

The Hague Convention 2005

A Convention on Choice of Court Agreements was adopted at the Hague Conference on Private International Law on 30th June 2005. This Convention was signed by the European Community on 1st April 2009,[17] and has also been signed by the United States of America, and acceded to by Mexico; but it has not yet entered into force.

Uncontested Claims

As regards judgments, the Brussels I Regulation is now supplemented by EC Regulation 805/2004, creating a European Enforcement Order for Uncontested Claims.[18] This

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13 COM(2009) 174 final.

14 COM(2009) 175 final.

15 For its text, see [1988] OJ L319/9. See also the Jenard and Möller Report, [1990] OJ C189/57.

16 See EC Council Decisions 2007/712 and 2009/430; [2007] OJ L339/1 and [2009] OJ L147/1. The revised Convention was signed at Lugano on 30th October 2007. For its text, see [2009] OJ L147/5.

17 See EC Council Decision 2009/397; [2009] OJ L133/1. For the text of the Convention, see [2009] OJ L133/3. The Convention is examined at pp. 181–6 and 252–4 below.

18 This will be referred to as the Uncontested Claims Regulation. For its text, see [2004] OJ L143/15. For discussion, see Chapters 10 and 11 below.

Regulation was adopted by the Parliament and Council on 21st April 2004. It became applicable on 21st October 2005 in the twenty-four then Member States other than Denmark, and on 1st January 2007 in Bulgaria and Romania.[19] It enables the court of origin to issue a European Enforcement Order in respect of a judgment on an uncontested claim, with the result that the judgment becomes enforceable in other Member States without the need to obtain an enforcement order there.

Further provision in relation to uncontested claims has been made by EC Regulation 1896/2006, creating a European Order for Payment Procedure.[20] This Regulation became applicable in the Member States other than Denmark on 12th December 2008. It creates a procedure which involves an ex parte application to a court of a Member State for a European payment order. When made by the court, the order is served on the defendant. If he lodges a statement of opposition, the case proceeds as an ordinary civil proceeding. If he fails to lodge a statement of opposition, the court declares the order for payment enforceable, and it then becomes enforceable throughout the Member States, without the need for a declaration of enforceability in the State of enforcement.

Small Claims

EC Regulation 861/2007, establishing a European Small Claims Procedure,[21] became applicable on 1st January 2009 in the Member States other than Denmark. It establishes a European procedure for small claims intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States. The Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in a Member State under the European small claims procedure.

THE LAW APPLICABLE TO CIVIL OBLIGATIONS

The Rome I Regulation

In the sphere of choice of law, EC Regulation 593/2008 on the Law Applicable to Contractual Obligations, which is commonly referred to as the Rome I Regulation,[22] lays down choice of law rules for most types of contract. The Regulation became applicable in the Member States other than Denmark on 17th December 2009, in respect of contracts concluded after that date.

The Rome I Regulation has replaced the Rome Convention of 19th June 1980 on the Law Applicable to Contractual Obligations, which may conveniently be referred to as the Rome Convention 1980.[23] The Convention was not based on any particular Treaty provision, but on the desire of the Member States 'to continue in the field of private international law the work

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19 See the Luxembourg Act of Accession 2005, Articles 2 and 56; [2005] OJ L157.
20 For its text, see [2006] OJ L399/1. For discussion, see Chapter 11 below.
21 For its text, see [2007] OJ L199/1. For discussion, see Chapter 11 below.
22 For its text, see [2008] OJ L177/6. The Regulation is examined in Chapters 12 and 13 below.
23 For its text, see [1998] OJ C27/34.

of unification of law which has already been done within the Community, in particular in the field of jurisdiction and enforcement of judgments'.

The Rome Convention had entered into force on 1st April 1991. Prior to the entry into operation of the Rome I Regulation, the Rome Convention 1980 had been in force in all twenty-seven Member States.[24] It remains in force in Denmark, and also remains applicable elsewhere in relation to contracts concluded before 17th December 2009.

The Rome II Regulation

EC Regulation 864/2007, on the Law Applicable to Non-contractual Obligations, which is commonly known as the Rome II Regulation,[25] lays down choice of law rules for torts and restitutionary obligations. It became applicable in the Member States other than Denmark on 11th January 2009, in respect of events occurring after that date.

FAMILY MATTERS

The Brussels IIA Regulation

In the sphere of family law, jurisdiction and judgments in respect of matrimonial proceedings and of proceedings concerning parental responsibility for children are now governed by EC Regulation 2201/2003, concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, which may conveniently be referred to as the Brussels IIA Regulation.[26] The Regulation became applicable on 1st March 2005 in the twenty-four then Member States other than Denmark, and on 1st January 2007 in Bulgaria and Romania.[27]

The Brussels IIA Regulation deals with jurisdiction and judgments (but not choice of law) in respect of matrimonial proceedings (divorce, separation and annulment of marriage), and also of proceedings concerning parental responsibility for children, regardless of whether a marriage or divorce is involved. It replaces EC Regulation 1347/2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility for Children of Both Spouses, which is commonly referred to as the Brussels II Regulation.[28] This in turn had replaced a Convention, commonly referred to as the Brussels II Convention,[29] based on Article K.3(2)(c) of the Treaty on European Union, which had been adopted and signed on 28th May 1998, but had not entered into force.

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24 See the Luxembourg Accession Convention of 14th April 2005, [2005] OJ C169/1; the Luxembourg Act of Accession 2005, Article 3(3)–(4) and Annex 1, para 1, [2005] OJ L157; and EC Council Decision 2007/856, [2007] OJ L347/1.

25 For its text, see [2007] OJ L199/40. The Regulation is examined in Chapters 14 and 15 below.

26 For its text, see [2003] OJ L338/1. The Brussels IIA Regulation is examined in Chapters 16 and 17 below.

27 See the Luxembourg Act of Accession 2005, Articles 2 and 56; [2005] OJ L157.

28 For its text, see [2000] OJ L160/19. The Brussels II Regulation had entered into force on 1st March 2001 for the fourteen then Member States other than Denmark, and on 1st May 2004 for the ten Member States which joined the European Community on that date. See the Athens Act of Accession 2003, Article 2; and for minor adjustments, see its Annex II, Part 18(A)(2).

29 For its text, see [1998] OJ C221/1.

As regards matrimonial proceedings, the Brussels IIA Regulation consolidates the provisions of the Brussels II Regulation without substantial alteration. As regards parental responsibility, the Brussels IIA Regulation is much wider than its predecessor, since it extends to all children, regardless of whether a marriage or divorce is involved.

The Hague Convention 1996

By its Decisions 2003/93 and 2008/431,[30] the EC Council has authorised the Member States, in the interest of the Community, to sign and to ratify or accede to the Hague Convention of 19th October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.[31] The Member States are also authorised to make declarations that, as between Member States, recognition and enforcement of judgments relating to parental responsibility and child protection will be governed by Community law. The intention is that the Hague Convention 1996 will govern the relations between the Member States and non-member countries in regard to proceedings and judgments concerning parental responsibilty for children. It was hoped that the ratifications or accessions would take place by 6th June 2010, but this deadline has not been met.

The Maintenance Regulation

On 18th December 2008, the EC Council adopted Regulation 4/2009 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Co-operation in Matters relating to Maintenance Obligations, which may conveniently be referred to as the Maintenance Regulation.[32] The Regulation will become applicable in the Member States other than Denmark on 18th June 2011. As regards jurisdiction and judgments concerning familial maintenance, it will replace the Brussels I Regulation.

As regards choice of law, the Maintenance Regulation is designed to operate in conjunction with the Hague Protocol of 23rd November 2007 on the Law Applicable to Maintenance Obligations (which may conveniently be referred to as the Hague Protocol 2007).[33] Accordingly, on 30th November 2009 the EC Council adopted Decision 2009/941,[34] approving the conclusion of the Protocol by the European Community and making the Protocol applicable within the Community from 18th June 2011. But the Protocol will not be applicable in Denmark or the United Kingdom.

On 23rd November 2007, the Hague Conference on Private International Law also adopted a Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (which may conveniently be referred to as the Hague Convention 2007). On 28th July 2009 the EC Commission presented a Proposal for a Council Decision on the conclusion by the European Community of the Hague Convention 2007.[35]

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30 See [2003] OJ L48/1 and [2008] OJ L151/36.

31 For the text of the Hague Convention 1996, see [2003] OJ L48/3. For discussion, see Chapter 17 below.

32 For its text, see [2009] OJ L7/1. The Maintenance Regulation is examined in Chapter 18 below.

33 For its text, see [2009] OJ L331/19. The Protocol is examined in Chapter 18 below.

34 See [2009] OJ L331/17.

35 See COM(2009) 373 final. See also JUSTCIV 235, of 6th November 2008.

Matrimonial Property and Succession

On 17th July 2006, the EC Commission presented a Green Paper on Conflict of Laws in Matters concerning Matrimonial Property Regimes, including the question of Jurisdiction and Mutual Recognition.[36] But no European measure on matrimonial property has yet been adopted or even proposed.

On 14th October 2009, the EC Commision presented a Proposal for a Regulation of the European Parliament and the Council on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Authentic Instruments in Matters of Succession and the Creation of a European Certificate of Succession.[37] The Proposal followed a consultation process initiated by a Green Paper presented on 1st March 2005.[38]

Various Hague Conventions

After joining the Hague Conference on Private International Law, the European Community has considered its stance in regard to existing Hague Conventions. In a letter of 14th October 2008 from the EC Commission to the Hague Conference, signed jointly by the EC Commission's Director in the Directorate-General for Justice, Freedom and Security, and the Chairman of the EC Council's Civil Law Committee,[39] the Community has indicated that there are several Conventions relating to family or similar matters whose adoption is for the time being to be left to the Member States individually, because they deal with matters which are of low priority for the Community. These are the 1961 Convention on the Form of Testamentary Dispositions; the 1978 Convention on the Validity of Marriages; the 1978 Convention on Matrimonial Property; the 1989 Convention on Succession to the Estates of Deceased Persons; the 1993 Convention on Inter-country Adoption; and the 2000 Convention on the Protection of Adults.

INSOLVENCY PROCEEDINGS

EC Regulation 1346/2000 on Insolvency Proceedings, which may conveniently be referred to as the Insolvency Regulation,[40] entered into force on 31st May 2002 for the fourteen then Member States other than Denmark; on 1st May 2004 for the ten States which joined the Community on that date;[41] and for Bulgaria and Romania on 1st January 2007.[42] It deals with jurisdiction, choice of law, and the recognition and enforcement of judgments, in relation to insolvency proceedings. The Insolvency Regulation replaced a Convention, based on the

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36 See COM(2006) 400 final.

37 See COM(2009)154 final. The Proposal is examined in Chapter 18 below.

38 See COM(2005) 65 final.

39 See JUSTCIV 235, of 6th November 2008.

40 For its text, see [2000] OJ L160/1. The Insolvency Regulation is examined in Chapter 19 below.

41 See the Athens Act of Accession 2003, Article 2. For minor adjustments, see its Annex II, Part 18(A)(1).

42 See the Luxembourg Act of Accession 2005. Articles 2 and 56; [2005] OJ L157.