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The impact of EU PIL regulations on the Hungarian domestic conflict of laws rules over the past decade

Abstract

There is an organic interaction between the private international law of the EU Member States and EU private international law. EU private international law affects the private international law of the Member States in a number of ways. As a result of the EU legislative process over the last decades, an increasing proportion of private international law issues previously governed by national law are now governed by EU law. However, the impact of EU law can also be observed where the issue is still governed by national private international law. This study examines the impact of EU private international law on the Hungarian domestic conflict of laws rules in the period between 2013 and 2023.

Keywords: private international law, conflict of laws, European Union, national law

Introduction

Many people say, especially after the Covid-19 period, that years fly by in the blink of an eye. How can we measure a year, or even a decade? A little more than ten years ago, I wrote a piece about the impact of EU private international law on the national conflict of laws rules in Hungary.[1] This time, in this contribution, I look at a possible aspect of measuring the past decade in respect of Hungarian private international law: the impact of EU private international law regulations on the Hungarian domestic conflict of laws rules in the period between 2013 and 2023.

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[1] I. Erdős, The impact of European private international law on the national conflict of laws rules in Hungary, (2013) (54) *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae. Sectio iuridica,* 161–189, https://www.ajk.elte.hu/file/annales_2013_08_Erdős.pdf (Last accessed: 29.12.2023.)

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I. The continuous development of EU conflict of laws rules in this period

The first decade of the 21st century was a very productive period for EU private international law. This was due to several factors, a discussion of which falls outside the scope of this contribution. Nevertheless, it is worth noting that, in this period, Rome I,[2] Rome II[3] and Rome III[4] regulations were adopted. Of course, there were several other developments that had specific effects on the domestic conflict of laws rules, for example the respective CJEU decisions on the national conflict of laws rules regarding personal law, more particularly the right to bear a name.[5] It is important to remember that the regulations mentioned brought about a significant shift in how national courts should solve situations within the Union involving conflict of laws issues. These regulations, stemming from their very nature,[6] are binding and directly applicable, and so, whenever the case falls under the scope of any of these regulations, the national courts must apply the respective regulation and not the *lex fori* conflict of laws rules of national origin.[7] Of course, the domestic rules remain applicable to those issues that are not covered by these EU regulations,[8] or where these regulations allow room for the national legislator.[9]

This trend of creating directly applicable EU conflict of laws rules continued in the second decade of the century as well. The next piece of legislation was the so-called Succession Regulation in 2012.[10] It is a complex regulation: it deals with jurisdiction, applicable law and recognition and enforcement issues, and intends to "ensure consistency between the rules relating to jurisdiction and those relating to the applicable law",[11] and "the rules of [the]regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be able to apply its

[2] 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), OJ L 177, 4.7.2008, 6–16
[3] 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), OJ L 199, 31.7.2007, 40–49.
[4] 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, OJ L 343, 29.12.2010, 10–16.
[5] For a discussion on how these regulations and CJEU affected the national conflict of laws rules in Hungary see: Erdős, The impact of European private international law on the national conflict of laws rules in Hungary, 161–189.
[6] See: TFEU Article 288.
[7] For a recognition of this effect, see e.g. Kúria (Supreme Court of Hungary) Mfv.10.008/2022/5.
[8] E.g. the determination of the content of the applicable law.
[9] See e.g. Rome II regulation, preamble 25.
[10] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 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 OJ L 201, 27.7.2012, 107–134.
[11] Case C-20/17, *Vincent Pierre Oberle,* ECLI:EU:C:2018:485, 52.

own law".[12] The regulation has applied as of 17 August 2015.[13] The scope of the regulation covers almost all aspects of succession,[14] and all civil-law aspects of succession to the estate of a deceased person, with a few exceptions.[15] It applies to successions with cross-border implications within the EU.[16] The concept of succession means "succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession".[17] As it is a regulation, national laws can only regulate matters that are not covered by these EU rules. Chapter III of the regulation deals with the issue of applicable law. It is quite comprehensive, containing nineteen articles, and dealing with many aspects of the determination of the applicable law. The general rule applied in the regulation was already quite a departure for many member states: it is based on the habitual residence of the deceased person.[18] Furthermore, the regulation ensures flexibility through the escape clause[19] and allows for a choice of law.[20] The introduction of the possibility of a choice of law in this area, even if it is very limited[21] and was not out of the blue,[22] was again a significant change for many.

Proceeding in chronological order, the next instrument adopted was the recast regulation on insolvency proceedings.[23] However, considering the special subject matter, this contribution will not deal with this regulation.

Family law is a sensitive area when it concerns the unification of national laws, which is the case with the conflict of laws aspects here as well. The fact that Rome III regulation could only have been adopted through enhanced cooperation (enabling Member States to move at different speeds and towards different goals) is good proof of it.[24] The same applies to the next two EU instruments, two regulations dealing with

[12] Case C-422/20, *RK v CR,* ECLI:EU:C:2021:718, 55.
[13] Art. 84.
[14] Art. 1.
[15] Case C-20/17, *Vincent Pierre Oberle,* ECLI:EU:C:2018:485, 30.
[16] Case C-20/17, *Vincent Pierre Oberle,* ECLI:EU:C:2018:485, 32.; Case C-80/19, *E. E.,* ECLI:EU:C:2020:569, 34.
[17] Art. 3.1.a.
[18] Art. 21.1.
[19] Art. 21.2.
[20] Art. 22.
[21] Art. 22.1.: A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.
[22] For comparison, see art. 5 of the 1989 Hague Convention: "A person may designate the law of a particular State to govern the succession to the whole of his estate..." Art. 5.1.
[23] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141, 5.6.2015, 19–72.
[24] See: Erdős I., A házasság, az élettársi és a bejegyzett élettársi kapcsolat nemzetközi kollíziós magánjogi szabályozásának egyes kérdései, in Szeibert O. (ed.), *Család és családtagok: Jogági tükröződések* (ELTE Eötvös Kiadó, Budapest, 2018) 137–158.

private international law aspects of certain family relationships, adopted in 2016. The first instrument regulates matters of matrimonial property regimes,[25] while the second deals with aspects of the property consequences of registered partnerships.[26] Both were adopted in enhanced cooperation, and regulate jurisdiction, applicable law, and recognition and enforcement.

And so we reach the end of the story of adopted regulations. Besides these, mention has to be made of two proposals as well. Looking at their legislative history, these proposals might or might not be adopted in the near future.

The first in this line aims to create common conflict of laws rules on the third-party effects of assignments of claims.[27,28] This regulation, when adopted, would sort of supplement the rules in the Rome I regulation. Actually, Rome I itself provides that

> "the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced".[29]

According to Rome I regulation, the deadline for this report was 17 June 2010. The respective Commission report was adopted in 2016.[30] The report concluded that, considering the divergences of both the substantive law and conflict of laws rules in the

[25] 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, 1–29.

[26] 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, 30–56.

[27] Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims, COM/2018/096 final – 2018/044 (COD).

[28] For a discussion of the proposal, see e.g. H. Labonté, Third-Party effects of the assignment of claims: new momentum from the Commission's Capital Markets Union Action Plan and the Commission's 2018 Proposal, (2018) 14 (2) *Journal of Private International Law,* 319–342. DOI: https://doi.org/10.1080/17441048.2018.1508621; C. Walsh, The law applicable to the third-party effects of an assignment of receivables: whither the EU?, (2017) 22 (4) *Uniform Law Review,* 781–807. DOI: https://doi.org/10.1093/ulr/unx050; E-M. Kieninger, European rules on the law applicable to third-party effects of assignments: a never-ending story?, (2019) 24 (4) *Uniform Law Review,* 633–648. DOI: https://doi.org/10.1093/ulr/unz035; S. V. Bazinas, The law applicable to third-party effects of assignments of claims: the UN Convention and the EU Commission Proposal compared, (2019) 24 (4) *Uniform Law Review,* 609–632. DOI: https://doi.org/10.1093/ulr/unz032

[29] Art. 27.2.

[30] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person, COM/2016/0626 final.

member states,[31] and their impact on cross-border transactions, "[u]niform conflict of law rules governing the effectiveness of assignments against third parties as well as questions of priority between competing assignees or between assignees and other right holders would enhance legal certainty and reduce inherent practical problems and legal costs relating to the current diversity of approaches in the Member States".[32] The Commission finally presented its proposal for the regulation on the law applicable to the third-party effects of assignments of claims in 2018. That was more than five years ago.[33] According to the "Joint Declaration 2023-24",[34] substantial progress is expected in the legislative process of the proposal in the legislative period 2023–2024. Time will tell.

The second proposal is quite a recent one. It was submitted by the Commission in December 2022 and aims to establish EU-wide private international law rules in matters of parenthood.[35] The Parliament adopted[36] its legislative resolution on the proposal in December 2023.[37]

II. The retirement of the 1979 Code and the rise of a new Hungarian Private International Law Act

The most notable development in the field of domestic rules on private international law in Hungary was the adoption of a new act on private international law in 2017 ("new PIL Act").[38] The new PIL Act replaced the 1979 Code,[39] the first ever codification of private international law in Hungary. As it was discussed in my previous piece, the 1979 Code was modified several times; however, almost all of these modifications were

[31] Commission Report 3.1.–3.3., 6–9.
[32] Commission Report 5., 12.
[33] According to an EP briefing, "[b]oth Parliament and Council have adopted their positions, and the proposal is currently the subject of trilogue negotiations." See: Law applicable to the third-party effects of assignments of claims, Briefing 20-09-2022, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)623546 (Last accessed: 29.12.2023).
[34] See: https://oeil.secure.europarl.europa.eu/oeil/popups/thematicnote.do?id=41380&l=en (Last accessed: 29.12.2023).
[35] Proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM/2022/695 final.
[36] See: https://www.europarl.europa.eu/doceo/document/PV-9-2023-12-14-ITM-007-09_EN.html (Last accessed: 29.12.2023).
[37] European Parliament legislative resolution of 14 December 2023 on the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood COM(2022)0695 – C9-0002/2023 – 2022/0402(CNS).
[38] Act XXVIII of 2017 on Private International Law. The act was published in the official gazette on 11 April 2017.
[39] Law-Decree No. 13 of 1979 on International Private Law.

induced by the EU private international law rules and developments.[40] The last relevant modification of the 1979 Code took place in 2015 and was necessary because of the Succession Regulation. This 2015 modification[41] was the first and only amendment of the provision on succession since the adoption of the Code in 1979. Due to the wide scope[42] and the universal application[43] of the Succession Regulation, the 1979 Code was modified to regulate only the formal validity of an oral will[44] and bona vacantia.[45] Actually, the domestic provision on formal validity of an oral will is largely identical to the provision of the Succession Regulation on written wills.[46] The new PIL Act retains these rules.[47]

The codification process leading to the adoption of the new PIL Act started in 2015, and resulted in several modifications, innovations and developments as to the previous national regime. The new PIL Act, like the 1979 Code, deals with all the three areas of private international law: jurisdiction, applicable law and recognition and enforcement.[48] The conflict of laws rules in the new PIL Act were affected to a very large extent by the respective EU regulations. Both directly and indirectly.

III. On some of the conceptual impacts of the EU rules on private international law on the new Hungarian Private International Law Act

Apart from the fact that domestic law can only regulate matters not covered by EU regulations, the rules and underlying principles of the EU regulations had significant impacts on some of the general conceptual approaches of the new PIL Act as well. In this contribution I mention only three of these conceptual impacts; party autonomy, escape clause and the emergence of the concept of habitual residence.

[40] Erdős, The impact of European private international law on the national conflict of laws rules in Hungary, 163.
[41] Act LXXI of 2015.
[42] Art. 1.
[43] Art. 20.
[44] Art. 36.
[45] Art. 36/A.
[46] Art. 27.1.
[47] Arts 64–65.
[48] On the new PIL Act see e.g. Király M., Az új Nemzetközi Magánjogi Törvény, in Benisné Györffy I. (ed.), *Negyvenedik Jogász Vándorgyűlés,* (Magyar Jogász Egylet, Budapest, 2017) 58–65.; Somssich R., Új nemzetközi magánjogi törvény az uniós rendeletek szorításában, in Menyhárd A. and Varga I. (eds), *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara. A jubileumi év konferenciasorozatának tanulmányai I.–II. kötet.* (ELTE Eötvös Kiadó, Budapest, 2018) 669–682.

In relation to party autonomy,[49] the new PIL Act follows a broader approach than that of the 1979 Code. The 1979 Code actually followed a relatively narrow approach to this and, apart from the amendments stimulated by the introduction of Rome I regulation (and Rome Convention[50]), the provisions of the 1979 Code dealing with party autonomy remained intact over the almost forty-year lifespan of the 1979 Code. Over the past two decades, the respective EU private international law regulations introduced the principle of party autonomy in more and more areas of private international law; this principle is not only present in the field of contracts, but now also in the areas of non-contractual obligations, family law matters (e.g. divorce and separation, matrimonial property regimes), and succession. Of course, the extent of party autonomy is not the same in these areas: in some matters it is broad, in others more restrictive or limited. The widespread application of this principle had an impact on the new PIL Act as well, and now party autonomy as a core principle of the new PIL Act applies in more areas than it had in the 1979 Code.[51]

Escape clauses are widely used in the relevant EU regulations,[52] although not used in the 1979 Code. Influenced by the specific provisions of the respective EU rules,[53] the new PIL Act introduced this method into the domestic rules of private international law. However, the new PIL Act takes a slightly different approach. It actually provides for a general escape clause.[54] According to this clause, where it is clear from the circumstances that the case is manifestly more closely connected with a law of a country other than that determined based on the conflict of laws rules of the new PIL Act then this other law can be applied, as an exception.

Finally, conceptual impact can be detected in relation to the more widespread use of the principle of habitual residence. The principle was already present in the 1979 Code when it was adopted; however, its use was originally very limited. Basically, it was a subsidiary[55] or an alternative[56] principle to that of domicile, which was applied, for

[49] On party autonomy in the new PIL Act see e.g. Király M., A felek autonómiája az új nemzetközi magánjogi kódexben, in Menyhárd A. and Varga I. (eds), *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara. A jubileumi év konferenciasorozatának tanulmányai I.–II. kötet.* (ELTE Eötvös Kiadó, Budapest, 2018) 722–728.; I. Erdős, Re-codification of private international law in Hungary: the emergence and regulation of the principle of party autonomy in the new Hungarian private international law act, in M. Hrnčiříková (ed.), *Řešení přeshraničních sporů – pravomoc a autonomie vůle,* (Praha, 2017) 177–190.

[50] 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 /* Consolidated version CF 498Y0126(03) */ OJ L 266, 9.10.1980, 1–19.

[51] E.g. family law, non-contractual obligations.

[52] On escape clauses in EU regulations see e.g. C. S. A. Okoli and G. O. Arishe, The Operation of the Escape Clauses in the Rome Convention, Rome I Regulation and Rome II Regulation, (2012) 8 (3) *Journal of Private International Law,* 513–545. DOI: https://doi.org/10.5235/JPRIVINTL.8.3.513

[53] See e.g. Rome I regulation Art. 4.3., 5.3., 8.4., Rome II regulation Art. 4.3., 5.2., 10.4., 11.4., 12.2.c.

[54] Art. 10.

[55] Art. 11.4.

[56] Art. 25.m., 36.2.c.

example. in the areas of personal law,[57] non-contractual obligations,[58] and family law.[59] As time went on, the principle of habitual residence began to play a role in other areas as well, but the conceptual change came with the new PIL Act. The new law deliberately breaks with the application of the principle of domicile in favor of applying the principle of habitual residence. In fact, the replacement was again largely inspired by EU rules, for example in the field of non-contractual obligations, where the 1979 Code previously provided for "common domicile"[60] but the new PIL Act uses the concept of "common habitual residence".[61] The only conflict of laws area in which the principle of domicile continues to apply in the new PIL Act is the formal validity of wills made orally.[62]

IV. Some of the special impacts of the EU conflict of laws rules on some of the special conflict of laws provisions of domestic private nternational law

1. Contracts

As there are contracts that are not covered by the Rome I. regulation, the national legislator had some room to regulate contractual obligations, and the new PIL Act regulates contracts in seven sections.[63] The underlying principles and conceptual decisions of these new rules are the same as those of the Rome Convention and the Rome I. regulation respectively. There is however one area where, due to the lack of relevant EU rules, there are no similarities, namely the law applicable to arbitration agreements. The determination of the law governing arbitration agreements is a very difficult issue. It was therefore a notable move that the national legislature decided to address this issue in the new PIL Act[64] and thus take a stand on it.

The new PIL Act first provides for choice of law rules,[65] and second, in the absence of choice of law, determines the applicable law based on objective connecting principles. In relation to choice of law, the new PIL Act basically mirrors the respective

[57] Art. 11.3.
[58] Art. 32.2.
[59] Art. 39, Art. 40.
[60] Art. 32.3.
[61] Art. 61.
[62] Art. 64.d.
[63] Arts 50–57.
[64] Art. 52.
[65] See also: Erdős, Re-codification of private international law in Hungary... 177–190.

rules of Article 3 of the Rome I regulation deliberately; for example that the parties' choice can be expressed or tacit, or the parties can choose only state law. An obvious difference is that the new PIL Act does not provide for any similar provision to that of the internal market clause of the Rome I regulation.[66] It also largely takes over the rule on the validity and formation of a choice of law agreement under Article 3.5. of the Rome I Regulation, but the rules on incapacity, for example, are dealt with in the part on persons.[67] As regards the law applicable to the contract in the absence of choice, the new PIL Act follows, in some limited respects, the rules of Article 4 of the Rome Convention[68] and does not adopt the regime of Article 4 of the Rome I Regulation. It should be noted that the 1979 Code applied a system somewhat similar to the staggered system of Article 4 of the Rome I Regulation for a long time.[69] Under the new PIL Act, the law applicable to contracts has to be determined on the basis of the principle of the closest connection: in the absence of choice of law, the contract is governed by the law of the country with which it has the closest connection in relation to the essential elements of the contract.[70] The new PIL Act also omits the explicit application of the principle of characteristic performance.

2. Non-contractual obligations

The new PIL Act provides for some conflict of laws rules in the area of non-contractual obligations as well. However, the scope of application of these rules is very limited. Given that of the Rome II Regulation, the Rome II Regulation will be the applicable conflict of laws regime in many situations of non-contractual obligations. The new PIL Act only applies where the matter in question does not fall within the scope of the Rome II Regulation or where the Rome II Regulation itself leaves some room for national law. As such, the new PIL Act first supplements some rules of Rome II regulation, and second, regulates matters not covered by it.

Starting with the first situation, In the area of environmental damage, the Rome II regulation allows[71] the person seeking compensation for damage to choose between two laws: the law of the country in which the damage occurred[72] and the law of the

[66] Art. 3.4.
[67] Explanatory memorandum to Act XXVIII of 2017, comments on Art. 50.
[68] Art. 4.1.: "To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected..."
[69] Arts 24–29. (until 16.12.2009).
[70] Art. 51.
[71] Art. 7.
[72] Art. 4.1.

country in which the event giving rise to the damage occurred.[73] This regulation does not however determine when this choice can be made. The regulation It provides that this question "should be determined in accordance with the law of the Member State in which the court is seised".[74] According to the new PIL Act, this choice has to be made in the pre-trial (preparatory) phase of the proceedings, in accordance with the deadline set by the court.[75]

As for the second situation, being the regulation of matters not covered by Rome II, The new PIL Act in this regard was to a large extent inspired by the rules of the Rome II regulation. In fact, it was the intention of the legislator to align the respective rules of the new PIL Act as closely as possible with the rules of Rome II.[76] Therefore, the new PIL Act adopts the approach of the regulation: it allows for a choice of law, and, in the absence of choice of law, provides for a three-level mechanism for determining the applicable law. The provisions on choice of law in the new PIL Act[77] a follow the corresponding provisions of Rome II almost identically.[78] The new PIL Act provides that the choice of law can be either expressed or tacit. If the choice of law is not expressed, it must be demonstrated with reasonable certainty by the circumstances of the case. The parties can choose whichever law they want, so the chosen law does not need to have any connection with the situation. However, where the non-contractual obligation is connected with one country only, the parties' choice of law cannot prejudice the application of the law of this country's provisions, which cannot be derogated from by agreement. There is, however, a difference. According to Rome II, the parties can choose the applicable law both before (with limitations)[79] and after the event giving rise to the damage had occurred. The new PIL Act allows retrospective option only: it can only be made after the non-contractual obligation has emerged. The parties may choose the applicable law in the pre-trial (preparatory) phase of the proceedings, in accordance with the deadline set by the court. In the absence of a choice of law, the new PIL Act provides for a three-level mechanism, similar to that[80] in the Rome II regulation. Accordingly, the main rule in the new PIL Act is that the non-contractual obligation is governed by the law of the country in which the effects of the facts establishing the non-contractual obligation took place. This concept is analogous to the underlying principle of the connecting principles "the law of the

[73] Art. 7.
[74] Preamble 25.
[75] Art. 59.
[76] Explanatory memorandum to Act XXVIII of 2017, comments on Art. 59.
[77] Art. 63.
[78] Art. 14.
[79] Parties who are pursuing a commercial activity can choose the applicable law before the event giving rise to the damage occurs. See: Art. 14.1.b.
[80] Art. 4.

country in which the damage occurs",[81] "the law of the country in which the unjust enrichment took place",[82] and "the law of the country in which the act was performed"[83] under Rome II. Introducing this new rule was a significant change, considering the *lex loci delicti commissi* principle used in the 1979 Code (even after the adoption of the Rome II regulation).[84] The common habitual residence rule was also introduced into the new PIL Act. Rome II r provides that where the parties have their habitual residence in the same country, the law of that country shall apply.[85] The new PIL Act contains a similar provision,[86] which is a slight departure from the 1979 Code, because the respective provision of the 1979 Code was based on the principle of domicile,[87] and not that of habitual residence. As discussed above, the new PIL Act adopted the idea of an escape mechanism as well. Furthermore, the new PIL Act allows the joint treatment of related legal relationships.[88] Indeed, it resembles the "pre-existing relationship" rule of the Rome II regulation where the other legal relationship can be of any kind.

3. Family law matters

As Hungary does not take part in the enhanced cooperations concerning the two 2016 property regime regulations, they are not applicable in Hungary. The national legislator therefore had the possibility to regulate the matters covered by them in the new PIL Act. The conflict of laws solutions applied in the regulations were taken into consideration during the drafting of the new PIL Act, which contains provisions similar to those in the Regulations, but which differ from them on certain points.[89]

Probably, the most notable impact is through the introduction of the principle of party autonomy into this area as well. The new PIL Act allows the spouses, the parties to choose the applicable law concerning property regimes in the case of marriage,[90] partnership,[91] and registered partnership.[92] Regarding married couples, the new PIL Act provides that the spouses can agree to designate the law applicable to their

[81] Art. 4.1.
[82] Art. 10.3.
[83] Art. 11.3.
[84] Art. 32.1.
[85] Art. 4.2., Art. 10.2., Art. 11.2., Art. 12.2.b.
[86] Art. 61.
[87] Art. 33.3.
[88] Art. 62.
[89] Erdős, A házasság, az élettársi és a bejegyzett élettársi kapcsolat nemzetközi kollíziós magánjogi szabályozásának egyes kérdései, 137–158. and Gellérné Lukács É., A családtagok kérdéskörének kapcsolata a személyek szabad mozgásával az EU-jogban, a Brexit fényében, in Szeibert O. (ed.), *Család és családtagok: Jogági tükröződések* (ELTE Eötvös Kiadó, Budapest, 2018) 109–136.
[90] Art. 28.
[91] Art. 36.
[92] Art. 37.

matrimonial property regime.[93] Although *dépeçage* is not excluded, this freedom is limited by the new PIL Act itself, since the spouses can only choose one of the following: the law of the country where they are both citizens at the time of the conclusion of the marriage, the law of the country where the habitual residence of one of the spouses is located at the time of the conclusion of the agreement, or the law of the forum, namely Hungarian law. The law applicable can be chosen by future spouses as well.[94] They can designate the applicable law in the pre-trial (preparatory) phase of the proceedings, in accordance with the deadline set by the court.[95] Unless the spouses agree otherwise, the law designated by the spouses to govern their matrimonial property regime has only prospective effect (*ex nunc* effect).[96] The agreement regarding matrimonial property regime may also be considered valid in Hungary if it is valid from the point of formal validity under the respective requirements of the law of the country where it was concluded.[97] In order to protect the interests of the family and especially those of any children, the choice of law must be expressed. These provisions apply to the choice of law concerning property regimes in partnerships[98] and registered partnerships[99] as well. Finally, concerning married couples, the act sets the time limit for choosing the applicable law under Articles 5–7 of the Rome III regulation: the parties may designate the applicable law in the pre-trial (preparatory) phase of the proceedings, in accordance with the deadline set by the court.[100]

V. Closing remarks

It is no secret that EU law has some impact, even on areas of domestic law that are not covered by EU law. This is also true in the area of private international law. Domestic rules on conflict of laws are affected by the relevant EU regulations, even if they essentially apply only to matters that are not covered by the EU legislation in question. This is the case with domestic conflict of laws rules, for example in the area of contractual and non-contractual obligations. In these areas, the national legislator deliberately sought to formulate domestic rules that are as similar as possible to the respective EU rules. Furthermore, even EU regulations that are not applicable in Hungary can have some impact on the domestic conflict of laws rules. This was the case in the areas of matrimonial property regimes and the property consequences of

[93] Art. 28.1.
[94] Art. 28.2.
[95] Art. 28.3.
[96] Art. 28.4.
[97] Art. 29.
[98] Art. 36.
[99] Art. 37.
[100] Art. 30.

registered partnerships. With the adoption of the new PIL Act, the past decade definitely counts as one of the most significant periods in the history of domestic private international law in Hungary. In many respects, the developments that occurred in this period were influenced by EU law. Partly because there were cases when the domestic legislator had an obligation to do so, but more often because the national legislator wanted to adopt domestic rules in alignment with the EU private international law sources. After all, private international law does not really remain within the confines of a national legal system. EU private international law rules and domestic rules of private international law coexist and together define the system of private international law in the EU Member States, not forgetting, of course, international conventions, which have an impact on both EU and national private international law. As always, it is difficult to predict what the next decade will bring, but it is very likely that EU private international law and national private international law will coexist and probably grow together in an even "closer relationship". As the past decade shows, the national conflict of laws regime certainly tries its best.