

Introduction: The EUFams II Project

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I. Background

EUFams II was a study on European private international law in family and succession matters conducted between September 2018 and December 2020 by academic institutions from various EU Member States and funded by the European Commission.¹ The project’s objective was to assess the functioning and the effectiveness of the framework of international and European family law, detect potential problems, and propose possible improvements. Ultimately, it aimed at developing a common European expertise and understanding to secure the uniform, coherent, and consistent application of European family law, so as to facilitate the cross-border movement of persons within the EU. The project built on the predecessor study “Planning the future of cross-border families: a path through coordination (EUFam’s)” initiated by the University of Milan.

1 The project was funded by the European Union’s Justice Programme (2014–2020), Grant no. 800780. The content of the project represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

The EUFams II project was coordinated by the Institute for Comparative Law, Conflict of Laws and International Business Law of Heidelberg University (*Thomas Pfeiffer*) in cooperation with the Universities of Lund (*Ulf Maunsbach* and *Michael Bogdan*), Milan (*Ilaria Viarengo* and *Francesca Villata*), Osijek (*Mirela Župan*), Valencia (*Rosario Espinosa Calabuig*), Verona (*Maria Caterina Baruffi*), and the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law (*Burkhard Hess*). It was supported by an Academic Advisory Board (*Katharina Boele-Woelki*, *Alegria Borrás Rodríguez*, *Fausto Pocar*, and *Vesna Tomljenović*).

Additional information on the EUFams II project can be found on the designated website.²

II. Objectives and methodology

The EU's system of private international law in family and succession matters has rapidly extended its material scope over the last two decades. Of particular interest to the EUFams II research group were the following instruments: Brussels II bis and ter Regulation, Rome III Regulation, Maintenance Regulation, 2007 Hague Maintenance Protocol, Property Regimes Regulations, Succession Regulation, Public Documents Regulation, 1980 Hague Child Abduction Convention, and 1996 Child Protection Convention. These instruments deal with family law matters in a fragmentary, yet interconnected manner. Consequently, demarcation and the interplay of different instruments have become increasingly important. Potential difficulties include the determination of the scope of the regulations, their interplay and actual workability, and the application of their provisions in practice.

Against this background, the EUFams II research group was interested in gaining insight into the actual implementation of these instruments and application of their provisions throughout the EU. Ultimately, the consortium aimed at revealing potential difficulties for, obstacles to, and problems with matters of free movement and cross-border family life. Insofar, the project's focus was laid on translational research.

In the explorative phase, an empirical legal study on the functioning of European family and succession law in practice was conducted by means of a questionnaire. Moreover, a database collecting cases from courts across the EU was set up. Finally, five national exchange seminars gathering renowned

2 www.uni-heidelberg.de/eufams (available in English, German, French, Italian, Spanish, Swedish, Croatian, Greek, Czech, and Slovak, last consulted 14.10.2020).

academics and practitioners were hosted by the members of the consortium, with the aim of identifying shortcomings and deficiencies of European family and succession law on the national level.

In the comparative phase, an international exchange seminar was hosted in Luxembourg. The seminar endeavored to foster mutual learning and the extrapolation of national good practices on the European level. In addition, the database's contents were analyzed in a comparative study on national case law. In a thematic report, national implementation laws were compared and critically assessed.

In the final phase, which built on the totality of the explorative and comparative research activities and outputs, topics of a more general nature and with an overarching character were dealt with at the online final conference, culminating in this volume.

III. Research outputs

1. Empirical study

An empirical study conducted between January and March 2019 by means of an online questionnaire available in nine languages constituted the first stage of the EUFams II project. It aimed at exploring the general familiarity of various groups of (legal) professionals (e.g. judges, lawyers/attorneys, notaries, state officers, scholars/academics, social counsellors) with the framework of European family and succession law. In total, 1,394 professionals participated in the survey. The main findings of the survey are extensively presented from a European perspective in a publicly available report.³ A summarized version focusing on Germany has been published elsewhere.⁴

2. National exchange seminars

National exchange seminars were hosted by the partners in Osijek (7 and 8 March 2019), Lund (11 April 2019), Heidelberg (17 May 2019), Verona (17 May 2019), and Valencia (17 May 2019). They aimed at shedding light on the challenges faced by national legal systems, the interplay between

³ *Lobach/Rapp*, An Empirical Study on European Family and Succession Law, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=2> (last consulted 14. 10. 2020).

⁴ *Lobach/Rapp*, *Zeitschrift für das gesamte Familienrecht* 2020, 83.

national and European law, and the impact of recent decisions of the CJEU on the domestic legal order. The discussions and findings of the seminars were summarized in national reports on Croatia⁵, Sweden⁶, Germany⁷, Italy⁸, and Spain⁹. In addition, a volume containing the German conference proceedings was published separately.¹⁰

3. International exchange seminar

An international exchange seminar was hosted by the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law on 25 October 2019. On the basis of the controversial and problematic issues addressed in the national reports, the international exchange seminar aimed at identifying common patterns, exploring possible solutions, and sharing good practices with regard to the application of the EU instruments in family law. The conference proceedings were presented in the corresponding report.¹¹

5 *Župan/Šego/Poretti/Drventic*, Report on the Croatian Exchange Seminar, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=10> (last consulted 14. 10. 2020).

6 *Maunsbach*, Report on the Swedish Exchange Seminar, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=11> (last consulted 14. 10. 2020).

7 *Zühlsdorff*, Report on the German Exchange Seminar, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=12> (last consulted 14. 10. 2020).

8 *Baruffi/Danieli/Fratea/Peraro*, Report on the Italian Exchange Seminar, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=9> (last consulted 14. 10. 2020).

9 *Espinosa Calabuig/Quinzá Redondo*, Report on the Spanish Exchange Seminar, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=14> (last consulted 14. 10. 2020).

10 *Pfeiffer/Lobach/Rapp* (eds.), *Europäisches Familien- und Erbrecht – Stand und Perspektiven*, 2020.

11 *Brosch/Mariottini*, Report on the International Exchange Seminar, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=17> (last consulted 14. 10. 2020).

4. Case law database and comparative analysis

A case law database containing cases from the courts of various EU Member States was set up as part of the predecessor project and was optimized and enlarged over the course of EUFams II. Along with standardized data for each judgement, the database also comprises a summary of both the facts and the decision given by the court as well as a short critique. The database currently contains more than 1,100 cases and can be accessed online.¹²

The collected cases served as a profound foundation for the subsequent comparative report on national case law¹³ which aimed at unveiling the application of European family and succession law as practiced by national courts.¹⁴ Moreover, it was observed that the effectiveness and functioning of European family and succession law greatly depends on the interplay between the national legal system and the European framework. Therefore, a report on national implementation laws was dedicated to this issue.¹⁵

IV. Online final conference and final study

The final conference of the EUFams II project was hosted online by Heidelberg University on 30 October 2020. The project partners presented the papers published in this volume which accordingly serves as the project's final study. The contributors were invited to present historical developments, discuss the status quo, and draw the lines along which European family and succession law may develop in the near future. Overall, this volume endeavors to inspire its readership and the scientific community at large to engage in further research along and across these lines.

12 <http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=entscheidungsdatenbank> (last consulted 14. 10. 2020).

13 *EUFams II Consortium*, Comparative Report on National Case Law, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=20> (last consulted 14. 10. 2020).

14 Additional publications referring to the case law database include *Župan*, Utjecaj zaštite ljudskih prava na suvremeno međunarodno privatno pravo, in: Barbić/Sikirić (eds.), *Međunarodno privatno pravo – interakcija međunarodnih, europskih i domaćih propisa*, 2020, p. 125.

15 *EUFams II Consortium*, Report on National Implementation Laws, <http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=18> (last consulted 14. 10. 2020).

1. The main connecting-factors: party autonomy and habitual residence

Habitual residence serves as the main objective connecting-factor in European family and succession law. *Thomas Pfeiffer* investigates whether the notion of habitual residence is of a unitary nature or differs throughout the regulations. Moreover, he addresses various selected issues, such as the relevance of subjective elements for the purposes of establishing habitual residence and particularities pertaining to minors. Finally, the contribution discusses procedural aspects of the ascertainment (e.g. *ex officio*) of habitual residence.

An important paradigm shift of the last decades has been the gradual introduction of party autonomy in European family and succession law. Despite the (initial) skepticism of some Member States, party autonomy plays an important role in the current instruments. *Ulf Maunsbach* investigates the historical developments in European and Swedish law alike, and the opportunities parties have under the current framework to choose the competent court and/or the applicable law, be it directly or indirectly. The author arrives at the conclusion that a trend towards increased party autonomy balanced by a similarly increased possibility for court discretion to take into account the interest of weaker parties can be observed.

2. International child protection

International child protection is characterized by a plurality of sources resulting in difficulties of demarcation and interplay between the pertinent instruments, all of which rely on what at first glance appear to be similar concepts, such as the best interest of the child, the right of the child to be heard, and habitual residence (of very young children). *Rosario Espinosa Calabuig* and *Laura Carballo Piñeiro* criticize that the legal and cultural divergencies between Member States cannot be sufficiently accounted for by the predominantly procedural and technical rules on international child protection.

3. Judicial training

The EUFams II project has on numerous occasions identified a lack of knowledge and awareness of the legal framework amongst legal operators. This deficiency is one of the most important challenges of present European family

and succession law. Education and training of those engaged in applying the law may be an important measure to close the existing knowledge gap. *Mirela Župan, Ivana Kunda, and Paula Poretti* describe and assess the various educational measures pertaining to European family and succession law currently offered by various institutions, both at the national as well as at the European level. Additionally, they analyze the benefits and downsides of specialization in the judiciary and of professional networks (e.g. liaison judges, EJM, IHNJ).

4. Defining marriage and other unions

The notion of marriage continues to be one of the most controversial in European family law and gives rise to numerous questions, ranging from personal status to financial aspects. In a joint contribution, *Ilaria Viarengo, Francesca Villata, Nicolò Nisi, Lenka Valkova, Diletta Danieli, and Cinzia Peraro* engage in a comparative analysis of the various concepts of formalized relationships in substantive national law as well as in private international law. They particularly focus on same-sex marriages and registered partnerships open to same-sex as well as opposite-sex couples against the background of EU free movement law, recent CJEU case law, and the respective scopes of application of various regulations.

5. Third country nationals

Migration from third countries to the EU and vice versa, notably against the backdrop of the so-called refugee crisis and Brexit, have emphasized the need for a predictable legal framework providing practicable solutions in matters involving third country nationals. Against that background, *Marlene Brosch and Cristina M. Mariottini* examine the European framework and its implementation in national case law involving third country nationals, with a focus on procedural aspects. Substantive aspects such as legal concepts unknown to domestic law, questions of personal status, and public policy in relation to third country nationals are dealt with by *Marcel Zühlsdorff*.