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# Judicial Cooperation in the European Union

*1. Historical basis*

The concept of cooperation between Member States' governments in civil justice matters was established over 50 years ago. Prior to EU legislation, cross-border cooperation was achieved through a network of multi- and bilateral agreements between Member States. In 1968 the European Economic Community Member States agreed the Brussels Convention providing for mutual recognition and enforcement of civil and commercial judgments. In 1971, the signatory States to the Brussels Convention agreed a Protocol providing for the European Court of Justice (ECJ) to have jurisdiction to interpret the Convention. In 1980, the Member States also signed the Rome Convention on contractual choice of law. A Protocol to this Convention also conferred limited jurisdiction on the ECJ and was eventually signed by all acceding Member States.

In 1992, Member States agreed the Treaty on European Union (TEU), also known as the Treaty of Maastricht. The TEU provided that civil judicial cooperation was in the Member States' „common interest" in helping to achieve „the free movement of persons" in the new EU.[1] Title VI of the TEU „Provisions on Co-operation in the Fields of Justice and Home Affairs" encompassing civil judicial cooperation was placed in the so-called „third pillar" which established cooperation in certain fields. Title VI allowed the Council for example, to adopt „joint actions" and draw up conventions which it could recommend to Member States. But the institutions of the EU did not yet have competence to legislate in this field. Measures in the field of civil judicial cooperation therefore remained largely a matter for intergovernmental cooperation agreement between Member States.

The Treaty of Amsterdam was agreed by Member States in 1997 and entered into force in 1999 and it gave the European Community the competence to legislate in the field of civil judicial cooperation by inserting a new provision, Article 65, into the Treaty Establishing the European Community (TEC). The Treaty of Amsterdam also provided that legislative measures taken under Article 65 were subject to adjudication by the ECJ, subject to certain limitations.[2]

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[1] Article K.1.
[2] Article 68 (1).

The European Council held a special meeting in Tampere on the creation of an area of freedom, security and justice in the EU. The results of that meeting, the Tampere Conclusions stated that the European Council was determined to develop the EU as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. They stated that individuals should be able to „approach courts and authorities in any EU country as easily as in their own" and that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters. Since Tampere, the objective has been that the closer co-operation between the courts and authorities of EU countries should help to eliminate any obstacles caused by different legal systems in each Member State.

Since the entry into force of the Treaty of Amsterdam, the European Union has adopted several instruments in the field of judicial cooperation in civil and commercial matters. This is attributable to a desire by both the Member States and the institutions of the European Union to work on an area that is particularly important in the area of justice, with implications for the everyday life of citizens and businesses in Europe.

The Treaty of Lisbon amended the TEU and replaced the TEC with Treaty on the Functioning of the European Union (TFEU). It entered into force on 1 December 2009. These Treaties set out the way in which the EU functions and provide the legal basis and competence for the EU to take action and propose legislation at a European level.

The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual trust and mutual recognition. In order to establish progressively such an area, the European Union should adopt, amongst other things, the measures relating to judicial cooperation in civil matters having cross-border implications which are necessary for the sound operation of the internal market. Civil judicial cooperation provides a framework to help relevant parties, legal representatives and national courts know which Member State's jurisdiction is responsible for determining cases, know which Member State's law applies, have effective mechanisms to allow judgments from one Member State to be recognised and enforced in another and ensure effective cooperation between courts in different Member States.

The EU's competence to legislate in the field of civil and judicial cooperation is established in, and essentially defined by, Article 81 of the TFEU. As we can read in Article 81 of the TFEU „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. For the purposes of this paragraph, the European Parliament 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 ne-cessary 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.

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."

Two protocols annexed to the treaties relate to the extent of the territorial scope for instruments. The first is the Protocol on the position of the United Kingdom and Ireland. In accordance with that protocol, those Member States do not participate in the adoption of acts relating to judicial cooperation in civil matters except where, within a period of 3 months, one or other of those Member States notifies the President of the Council in writing that it wishes to take part in the adoption and application of any such proposed measure. If this notification is not given, one or other of these Member States may, at any time after the adoption of a measure, notify its intention to the Council and the Commission that it wishes to accept that measure. Experience has shown that both the United Kingdom and Ireland have decided to be involved in a significant number of instruments in the field of judicial cooperation in civil matters.

The second protocol concerns the position of Denmark. In accordance with that protocol, Denmark does not take part in the adoption of measures relating to judicial cooperation in civil matters. However, Denmark may at any time, in accordance with its constitutional requirements, notify the other Member States that it wishes to apply in full all relevant measures then in force in the area of judicial cooperation in civil and commercial matters. In view of this particular situation, two bilateral agreements have been concluded between the European Union and Denmark, one regarding the matters covered by the regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters and the other regarding matters covered by the regulation on the service of judicial and extrajudicial documents in civil or commercial matters.

### *2. The secondary sources*

The most important secondary sources of law in judicial cooperation in civil matters can be classified in a themathical order on different bases. Alongside the most important questions regulated in these sources – as one possibility – here is an alignment:

#### *I. Jurisdictional rules:*

In this group those sources may come under, which on the first hand regulate the repartition of the cases between the Member States and furthermore, the rules of the recogni-

tion of judgements and their execution.[3] These sources of law are usually called as the „Brussels series":

a) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[4] (Brussels I),[5]

b) 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[6] (Brussels IIA),[7]

c) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (which will replace the Brussels I regulation and will be applicable from 10th January 2015).[8]

*II. Rules of the applicable law:*

The international matters contain cross-border elements, so before the process there are two significant questions. Beyond the importance of the selection of the court which will hear and determine the case, it is essential to decide about the substantive law in use. This problem can be solved by the rules of applicable law, which are usually mentioned as the „Rome sources"[9] what are the following:

a) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations[10] (Rome I),[11]

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[3] On the jurisdictional rules of Europe see: OSZTOVITS, ANDRÁS: *Európai joghatósági szabályok polgári perekben,* Budapest, 2010.

[4] MAGNUS, ULRICH – MANKOWSKI, PETER: *Brussels One Regualtion*, Munich, 2007.

[5] See the historical introduction of the regulation JUNKER ABBO: *A Brüsszeli Egyezménytől a Brüsszeli Rendeletig – a nemzetközi polgári eljárásjog változása,* Magyar jog (6) 2003, 366–372 pp. See also about the regulation and the practice of the European Court in details OSZTOVITS ANDRÁS: *A Tanács 44/2001/EK rendelete (2000. december 22.) a polgári és kereskedelmi ügyekben a joghatóságról, valamint a határozatok elismeréséről és végrehajtásáról*, in: GATTER, LÁSZLÓ (ed.): A bírák nagy kézikönyve, Budapest, 2010. 963–1001. pp.

[6] BOELE, KATHARINA – WOELKI, CRISTINA GONZÁLES BEILFUSS: *Brussels II Bis. Its Impact and Application in the Member States*, Mortsel, 2007.

[7] About this and the practice of the European Court in details, see OSZTOVITS ANDRÁS: *Tanács 2201/2003/EK rendelete (2003. november 27.) a házassági ügyekben és a szülői felelősségre vonatkozó eljárásokban a joghatóságról, valamint a határozatok elismeréséről és végrehajtásáról (Brüsszel IIA. rendelet),* in: GATTER 2010, 1003–1042. pp.

[8] About the modification of the new regulation, see OSZTOVITS ANDRÁS (ed.): *A Brüsszel I. rendelet reformja*, Acta Caroliensia Conventorum Scientiarum Iuridico-Politicarum, (2) 2012, 2063–4757. pp.

[9] About the „Rome sources" see details in BURIÁN LÁSZLÓ – CZIGLER DEZSŐ TAMÁS – KECSKÉS LÁSZLÓ – VÖRÖS IMRE: *Európai és magyar nemzetközi kolliziós magánjog,* Budapest, 2010. 236–262. pp. PALÁSTI GÁBOR – VÖRÖS IMRE (eds.): *Európai kollíziós kötelmi jog: a szerződésekre és a szerződésen kívüli jogviszonyokra alkalmazandó európai jog,* Budapest, 2009.

[10] The regulation can be a stage in the standardization of the collisional contract law. Highly respected jurisconsults work on the harmonisation procedure, which produced published works that can be used as com-

b) Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual[12] obligations (Rome II),[13]

c) 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 (Rome III),

d) 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 (Rome IV),[14]

e) Proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (Rome V),[15]

f) Council regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Rome VI).[16]

### *III. Rules regulating the procedure*

Apart from the fact, that in civil procedure neither the determination of the competent court nor the matter of applicable law can be got around, we get a huge amount of help from secondary sources of the European law concerning both several proceedings actions and rules of special proceedings. These are:

a) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000,[17]

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mentaries of the Regulation. See FERRARI, FRANCO – LEIBLE, STEFAN (eds.): *Rome I. Regulation. The Law to Contractual Obligation in Europe*, Munich, 2009.

[11] About this and the practice of the European Court see details in GOMBOS KATALIN: *Az Európai Parlament és a Tanács 593/2008/EK rendelete (2008. június 17.) a szerződéses kötelezettségekre alkalmazandó jogról (Róma I.)*, in: GATTER 2010, 1111–1137. pp.

[12] MAGNUS, ULRICH – MANKOWSKI, PETER (eds.): *Rome II Regulation*, Munich, 2013; DICKINSON, ANDREW: *The Rome II Regulation: The Law Applicable to Non-Contractual Obligations*, Oxford, 2010.

[13] About this and the practice of the European Court see details in GOMBOS KATALIN: *Az Európai Parlament és a Tanács 864/2007/EK rendelete (2007. július 11.) a szerződésen kívüli kötelmi viszonyokra alkalmazandó jogról (Róma II.)*, in: GATTER 2010, 1139–1156. pp.

[14] Apart from the „Rome-series" this Regulation can be classified also in the „Brussels-series", so it is more correct to treat it as complex source of law, as it regulates both the jurisdiction and the applicable law.

[15] The negotiations about the Rome V proposal are at such an early stage, that it's adoption is not expected in the early future.

[16] Apart from the „Rome-series" this Regulation can be classified also in the „Brussels-series", so it is more correct to treat it as complex source of law, as it regulates both the jurisdiction and the applicable law.

[17] About this and the practice of the European Court see details in OSZTOVITS ANDRÁS: *Az Európai Parlament és a Tanács 1393/2007/EK rendelete (2007. november 13.) a tagállamokban a polgári és kereskedelmi ügyekben a bírósági és bíróságon kívüli iratok kézbesítéséről (iratkézbesítés), és az 1348/2000/EK tanácsi rendelet hatályon kívül helyezéséről*, in.: GATTER 2010, 1051–1063. pp.

b) 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,[18]

c) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings,[19]

d) Council Directive 2002/8/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,[20]

e) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims,[21]

f) 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.[22]

*IV. Alternative European procedure rules*

On the field of judicial cooperation we can find certain rules regulating the optional European procedures, in case of cross-border matters and the existence of competing rules with national law. The common feature of these rules is, that they will not replace the national regulation, but if they are chosen to be used they will create collateral proceeding opportunities. These are:

a) 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,[23]

b) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure,[24]

c) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.[25]

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[18] About this and the practice of the European Court see details in OSZTOVITS ANDRÁS: *A Tanács 1206/2001/EK rendelete (2001. május 28.) a polgári és kereskedelmi ügyekben a bizonyításfelvétel tekintetében történő, a tagállamok bíróságai közötti együttműködéséről*, in: GATTER 2010, 1065–1077. pp.

[19] This regulation can be considered as part of the Brussels series, because it contains jurisdictional regulations.

[20] The issue of legal aid is tightly connected to the subject. See details in KIRÁLY LILLA – SQUIRES, NICKOLAS: *Legal Aid int he EU: from the Brussels Convention of 1968 to the Legal Aid Directive of 2003*, Coventry Law Journal (2) 2011, 27–47. pp.

[21] About this and the practice of the European Court see details in GOMBOS KATALIN: *A Tanács 2004/80/EK irányelve (2004. április 29.) a bűncselekmények áldozatainak kárenyhítéséről*, in: GATTER 2010, 1157–1165. pp.

[22] About this and the pactice of the European Court see details in GOMBOS KATALIN: *Az Európai Parlament és a Tanács 2008/52/EK irányelve (2008. május 21.) a polgári és kereskedelmi ügyekben végzett közvetítés egyes szempontjairól*, in.: GATTER 2010, 1177–1183. pp.

[23] About this and the practice of the European Court see details in OSZTOVITS ANDRÁS: *Az Európai Parlament és a Tanács 805/2004/EK rendelete (2004. április 21.) a nem vitatott követelésekre vonatkozó európai végrehajtható okirat létrehozásáról*, in: GATTER 2010, 1079–1086. pp.

[24] About this and the practice of the European Court see details in OSZTOVITS ANDRÁS: *Az Európai Parlament és a Tanács 1896/2006/EK rendelete (2006. december 12.) az európai fizetési meghagyásos eljárás létrehozásáról*, in: GATTER 2010, 1095–1105. pp.

*V. Sources of law regulating structural issues*

The judicial cooperation in civil and commercial matters can work efficently, if there is a loose structural system, so therefore the European Judicial Network was created. Its aim is to help the judicial cooperation between the Member States in civil and commercial matters, both in cases, which have an appropriate regulation and in those which are not yet regulated. The Network especially proceeds in cross-border matters to make them solved in a smooth way, and it is concerned to treat the requests of the Member States in the judicial cooperation and furthermore, it helps the efficent and pragmatic use of both European legal instruments and conventions in force between the Member States. It has highly significant role in cases, where the applicable law is not the nation's own. In these situations the court having the jurisdiction can ask for information from the Network concerning the content of the applicable law. The European Judicial Network maintains the European e-Justice Portal[26] that provides a wide range of information for citizens about the judicial cooperation in civil and commercial matters, the legal instruments provided by European and international law in these cases and about national law, especially on the access to justice. About the European Judicial Network the undermentioned source contains regulation:

Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009 amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters.[27]

*VI. The sources of the European law related to the subserve of the emergence of secondary sources by international conventions*

At the same time when the Treaty of Lisbon came into force the European Union obtained a legal personnality. From this moment there is a possibility to sign or join to conventions, which was earlier the exclusive right of the Community. So there are secondary sources to regulate the signing procedures of these international treaties. We also reckon among these regulations the sources concerning the ratifacation of these conventions.

a) 719/2006 (EC) Council Decision of 5 October 2006 on the accession of the Community to the Hague Conference ont International Private Law,

b) 2008/431/EC: Council Decision of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-

[25] About this and the practice of the European Court see details in OSZTOVITS ANDRÁS: *Az Európai Parlament és a Tanács 861/2007/EK rendelete (2007. július 11.) a kis értékű követelések európai eljárásának bevezetéséről*, in: GATTER 2010, 1079–1086. pp.

[26] Access to the Portal: https://e-justice.europa.eu/home.do?action=home&plang=en&init=true.

[27] About this and the practice of the European Court see details in GOMBOS KATALIN: *Az Európai Parlament és a Tanács 568/2009/EK határozatával (2009. június 18.) módosított 2001/470/EK Tanácsi határozat (2001. május 28.) az Európai Igazságügyi Hálózat létrehozásáról polgári és kereskedelmi ügyekben*, in: GATTER 2010, 1185–1193. pp.

operation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law - Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children,

c) Regulation (EC) No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations,

d) Council Regulation (EC) No 664/2009 of 7 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations,

e) 2011/220/EU: Council Decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,

f) Council Decision of 9 June 2011 on the approval, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,

g) Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (2012/22/EU),

h) 2012/23/EU: Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof.

### *VII. Decisions and conventions with the opt-out and opt-in clauses in case of the late accessions to enhanced cooperations*

The point of enhanced cooperation is that not all of the Member States participate in it. For the authorization of the enhanced cooperation an approval is needed, from which the number of the participating Member States will be clear, as well as the territorial scope of the cooperation. Beyond the opt-out and opt-in clauses, furthermore the opportunity to stay out of the enhanced cooperation and it's basic sources of law, later signed conventions and resolutions have a great significance, which means that the basic sources of law can be used in the correct way exlusively with the above mentioned sources, as they contain the possibility to apply any of these sources in the cases of originally stayed-out Member States. These sources of law are:

a) Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial

matters of 16 November 2005 („parallel" agreement). The agreement entried into force on 1st July 2007,

b) 2009/26/EC: Commission Decision of 22 December 2008 on the request from the United Kingdom to accept Regulation (EC) No 593/2008 of the European Parliament and the Council on the law applicable to contractual obligations (Rome I),

c) 2009/451/EC: Commission Decision of 8 June 2009 on the intention of the United Kingdom to accept Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations,

d) 2010/405/: Council Decision of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation,

e) 2012/714/EU: Commission Decision of 21 November 2012 confirming the participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation.

*VIII. Subsidiary rules to the secondary sources of law*

The subsidiary rules are particularly technical rules, but they can have a huge practical significance. The undermentioned sources are about the elaboration of forms:

a) 2004/844/EC: Commission Decision of 9 November 2004 establishing a form for legal aid applications under Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes,

b) 2005/630/EC: Commission Decision of 26 August 2005 establishing a form for the transmission of legal aid applications under Council Directive 2003/8/EC.

*3. Future challenges*

In the future the subject bringing up the most evident but in a technical aspect very complicated quetions is the electronic jurisdiction. That is why in the European Union's projects concerning the electronical jurisdiction, the participation of the Member States is not obligatory. The revealed fields of electronic jurisdiction are the electronic land register, the electronic insolvency register, the electronic succession register and electronic business register. The Treaty of Lisbon does not provide the possibility of a full standardization in the civil procedures, however the aims related to the elaboration of better business circumstances made the basis of several steps in the harmonization (e.g.: the payment procedure, the simplification of the execution of uncontested claims, the creation of the possibility of the automatic administration).

It can be surely mentioned about the judicial cooperation in civil and commercial matters, that on the regulation level it is a real success, as it is one of the most dinami-

cally progressing area of EU regulations.[28] The most important step was, the communitisation of the European legal area, which was provided by the Treaty of Amsterdam and since then the legislation continued its progress in a forward direction. One of it's consequences is that the previous form of legal regulation, which was made by mostly international conventions is replaced by a regulation using secondary sources of law, particularly regulations. Among the adopted rules there are both procedural and substantive law concerned. Before the Treaty of Amsterdam the possibility of the harmonisation of legal procedure had been raised. In 1990 a group of experts was founded to work on the basic questions of the harmonisation of civil procedures.[29] The draft of the experts' team was publicized in 1993, and it contained for the first time the idea of the „European Model Code of Civil Procedure". The draft did not became a directive but the idea of the harmonisation found its followers. The idea of the autonomy of the Member States in procedures is known as a contradictory point of view. It means that the civil procedural law is not part of the legal fields which need any act of the European Union. However in this interpretation the theory cannot be used, so we can deduce the untenability of this point of view from the texts of several judgements of the European Court. "In case of the lack of concerning Community rule"[30] and "if the given field has not been regulated yet by European sources,"[31] these phrasings do not mean that the regulation of civil procedural law is an exlusive compentece of the Member States. On the contrary: the national law enforcement bodies can only consider the national regulation on procedural law if there is no EU regulation on the field.[32]

On the basis of the doctrines created by the European Court the indivudals have the possiblity to enforce their claims based on the European law in front of national jurisdiction.[33] With the entry into force of the Treaty of Lisbon by its Article 6 paragraph (1) first subparagraph the European Charter of Fundamental Rights was given binding legal effect equal to the Treaties. Article 47 of the Charter declares expressis verbis the right to effective judicial protection. Because of the right to effective judicial protection and legal remedy the substantive rules of law can be deduced from the European regulations, however European procedural rules usually do not associate with the possibility of legal remedy. So the consequence of these facts is that, if a person wants to enforce his claims based on European regulation in front of the national jurisdiction, he has to

[28] About the different possible ways of the progression, see details in OSZTOVITS ANDRÁS: *Az Európai Unió polgári eljárásjoga fejlődésének irányai,* Európai jog, (5) 2008, 4–8. pp.

[29] About the work of the experts, see details in BOLT JAN: *Procedural Laws in Europe Towards Harmonisation* (Marcel Stomeed 2003), German Law Journal (6) 2005, pp. 817–826 – can be reached on the following website: http://www.germanlawjournal.com/index.php?pageID=11&artID=595.

[30] C-46/93. és C-48/93. Brasserie du Pêcheur SA v. Federal Republic of Germany and The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd and Others. 1996.ECR I–01029.

[31] 212-217/80. Amministrazione delle Finanze dello Stato v. Srl Meridionale Industria Salumi and others; Ditta Italo Orlandi & Figlio és Ditta Vincenzo Divella v. Amministrazione delle Finanze dello Stato. (1981) ECR 2735.

[32] OSZTOVITS ANDRÁS: *Az előzetes döntéshozatali eljárás legfontosabb elméleti és gyakorlati kérdései,* Budapest, 2005. 37. p.

[33] About legal remedy see details in DOUGAN, MICHAEL: *National remedies before the Court of Justice. Issues of harmonisation and differentiation,* Oxford, 2004.

accept the use of national procedural law,[34] and he just has the right to make the basis of his claim on the substantive regulations of the EU. So this concept is the real rule of the procedural autonomy related to the enforcement of claims based on European regulation. However it only means that in case of the lack of the European regulation the procedural rules are meant to be defined by the national regulation.[35]The procedural autonomy of the Member State stays valid even if there are some European rules concerning the subject, which have to be executed by the national legislation.[36]About the interpretation of the theory we can state the following: the procedural autonomy of the Member States[37] exists, so there are no intentions to create a uniformed judicial system in Europe.

The two parts of the judicial cooperation in civil and commercial matters can be identified from the regulations so far, so we can consider as first generation sources of law those regulations which aim to facilitate the procedure in case of cross-border matters. Compared to first generation sources of law, the second generation sources are meant to provide to citizens the possibility to chose independent or secondary European legal institutions as an option beside the national ones. Nevertheless it should be considered to adopt a concentrated European regulation in one act, concerning cases that definitely contain cross-border elements. As the European Court pointed out in its practice on the field of justice, freedom and security, and as a close antecedent in its decisions about international conventions concerning the subject: in the procedural categories an independent Union vocabulary is needed. Effective legal protection needs a uniform interpretation of law. In case of autonomous interpretation it has a bigger risk that the legal institution which exists in the national legal system, too, under the same name, but with another meaning, will be misintrepreted by the national law enforcement bodies. (In the relation of European law and Hungarian law we can cite several collisional situations, such as the notion of civil and commercial matters, pending proceedings, the fulfilment based on the selection of alternative jurisdictional rules, or the place of the damage). In these cases, the correct interpretation of the European regulation gets lost even if the obligation of the use of Union law is respected and the practitioner just offend the principle of the priority right of interpretation.[38] The steps in harmonisation made so far, are just not enough to have a correct regulation from the point of view of legal protection. The European regulations adopted so far, made a coherent legal sys-

[34] BLUTMAN LÁSZLÓ: *A közösségi jogon alapuló igények érvényesítése a belső jogban,* Európai jog (3) 2004, 12. p.

[35] C–439/08. Vlaamsefederatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers (VEBIC) VZW v. Raadvoor de MededingingMinister van Economie. 2010 ECR I-12471. par. 63–64.

[36] C–364/07. Vassilakis Spyridon, Theodoros Gkisdakis, Petros Grammenos, Nikolaos Grammenos, Theodosios Grammenos, Maria Karavassili, Eleftherios Kontomaris, Spyridon Komninos, Theofilos Mesimeris, Spyridon Monastiriotis, Spyridon Moumouris, Nektaria Mexa, Nikolaos Pappas, Christos Vlachos, Alexandros Grasselis, Stamatios Kourtelesis, Konstantinos Poulimenos, Savvas Sideropoulos, Alexandros Dellis, Michail Zervas, Ignatios Koskieris, Dimitiros Daikos, Christos Dranos v. Dimos Kerkyras. 2008. ECR I-90.149. par.

[37] OSZTOVITS 2005, 37. p.

[38] About the priority right of interpretation see details in GOMBOS KATALIN: *A jogértelmezés jelentősége a közösségi jogban – avagy az értelmezési elsődlegesség elvéről,* Európai jog (2) 2010, 3–10. pp.

tem, as legislation by regulations make national law enforcement bodies to execute them directly. On those legal fields, where regulation was made by directives, a harmonised system with minimum requirements was the aim of the Union legislators. The aims of both legislation techniques suppose that the free flow of courts' decisions and the principle of mutual regcognition and confidence, which became both general and legal harmonisation principles since the Cassis-principle[39] was born, are largely prevailed. Yet, even if these principles are exquisitly prevailed in practice, we still have to envisage the existence of some legal protection problems in case of totally uniformed Union rules. The subfields under the synthetic notion of private law are regulated with different intensity by the European Union. Let's think about the field of family law, the matrimonial law where there is an absence of the will to compromise, even if this field of law has been becoming more and more international thanks to mixed marriages, so the number of cross-border matters is high in front national courts.

The current Union regulation's danger is that it became very frittered. It is historical experience that the rules of procedures – along the separation of general and special rules – in the same act, in a concentrated form are better known and recognized, and also applied more effectively. So among others, because of these practical ideas it would be necessary to create some kind of common procedural rules by putting Union procedural rules in a thematic order. The unified European area of Jusitce needs the creation of unified rules appearing in a concentrated way, so the ambition urging the creation of the European Procedural Law Code should be supported. After the preparation of the Treaty of Amsterdam, in the Council's legislative proposals the will of the facilitation of the civil law enforcement was shown, contradictory to the fact that in the action plans defining the priorities of the European Union there is no point concerning the elaboration of a European Civil Procedural Law Code, but at the same time, the demand of such a regulation should be drafted at least as a future resolution. Namely there are such differences between the national procedural rules, which can become the obstacles of the law enforcement.

The modern justice can facilitate the law enforcement effectively on a Union-scale, if the classic garanties of civil law are respected. The rights related to justice are such as, the right to access to justice, the right to a fair trial in it's widest interpretation, the right to see a judge, the right to be represented (to have a lawyer) (inculding the cases of poor people, when their defence should be for a cheaper price or for free), and the right to appeal.[40] The right to access to justice means that everyone has the right to bring his legal case in a judicial procedure. This is a big category, so the right to see a judge is part of it. The restriction of this right is only acceptable in the case of heading to a legal aim, and if between the applied means and expected goal there is rational proportionality. The fair trial principle includes all the qualities required from the court and the procedure. The fair trial can be investigated only if we study the whole procedure with its

[39] Aff.: 120/78, but it became famous as Cassis de Dijon, which was one of the products in the case. This decision contains the principle of mutual recognition, which became one of the most important principles of the legal harmonisation for nowadays. See details in KECSKÉS LÁSZLÓ: *EU-jog és jogharmonizáció*, Budapest, 2003. 618–621. pp.

[40] NÉMETH JÁNOS: *Alapvető elvek*, in: NÉMETH JÁNOS – KISS DAISY (eds.): A polgári perrendtartás magyarázata, Budapest, 2006. first volume 59–62., 77–81. pp.

circumstances. The notion of fair trial includes the fact that the court should be established in a legal way, the judgement has to come out of an independent and neutral procedure, the decision has to be made in a reasonable time, furthermore everyone has the right to a rightful trial, and the equality has to be provided in every aspect. The right to see a judge means that no one can be removed from his rightful judge. It means partly the application and respect of the jurisdictional rules and partly the rules of the distribution of cases. The party – because no one can expect from him to have a legal knowledge – has the right to employ a legal representative. The person, who does not have enough financial means to enter a lawsuit, has the right to have a legal representative assigned by the authorities. The courts during their law enforcement activity make decisions that create rights and obligations that have an obligatory force. According to the right to appeal, everyone has the right to make his case to be reviewed by the appropriate superior court within the limits determined by the law, if the decision harmed his right or rightful interest. These rights can be prevailed in the same way in every Member State by the most important procedural garanties, if we apply standard European rules in cross-border cases.