ADVISORY AND TRAINING SYSTEM FOR INTERNET-RELATED PRIVATE INTERNATIONAL LAW

D2.3 – Comparative report on Internet related Private International Law (PIL): legal framework and case law at EU and national levels

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Summary

This comparative report provides an outline of the analyses carried out on national and EU legal frameworks and case law concerning Internet-related private international law.

This document is intended to encapsulate the main findings of the specific national reports and identify common and diverging trends and patterns.

THE EUROPEAN UNION

MAIN DISTINCTIVE FEATURES OF THE EUROPEAN LEGAL FRAMEWORK

In the last few decades, the European Union has progressively developed a well-developed *corpus* of rules in the field of judicial cooperation in civil matters having cross-border implications (the "supranational expression" for "private international law"). This corpus of rules is aimed at *i)* identifying the competent court (rules on jurisdiction), *ii)* designating the applicable law (conflict-of-laws rules) and *iii)* defining conditions for the recognition and enforcement of the decisions (rules on recognition and enforcement).

The nature and the "shape" of such rules have significantly changed over time.

Thanks to the Treaty of Amsterdam, first the EC and then the EU were granted direct competences to adopt measures on judicial cooperation in civil matters. - Before that treaty, uniform rules on private international law were the outcome of international agreements concluded between member states (Article 220 TEC). This was the case for the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, but also the 1980 Rome Convention on the Law Applicable to Contractual Obligations.

Today, the legal basis for adopting EU measures of private international law is contained in the combined provisions of Articles 67 and 81 TFEU. Article 81 TFUE, in particular, underlines that the legal instruments adopted following the granting of such a competence are "… based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases" and that "[s]uch cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States".

However, despite the exponential and sectorial development that European private international law (hereinafter also "EU PIL") has been undergoing since the Treaty of Amsterdam, it was considered that the time was not yet ripe to justify the creation of a genuine "system" of European private international law.

European private international law has been progressively eroding Member States' private onternational law systems, leaving national PIL rules a residual function. The measures adopted under Article 81 TFEU are mainly regulations, binding and directly applicable in all member states (Article 288 TFEU).

In addition to the productive action of the European legislature, the "quasi-legislative" activity of the Court of Justice of the European Union (hereinafter also "CJEU") has considerably contributed to the development of EU PIL (Article 267 TFEU), even at the time of the Brussels and Rome Conventions (see the Protocol concerning the interpretation by the Court of Justice of the Convention of 27 September

1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Luxembourg on 3 June 1971).

The increasing role of EU PIL has also had a great impact on the development of the European Single Market and, in general, on the ongoing process of European integration.

For the time being, there are 19 measures currently applicable in the field of judicial cooperation in civil matters, including those concerning "family law with cross-border implications" adopted under Article 81, para. 3 TFEU (Whereas Regulation 2019/1111 on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and the Matters of Parental Responsibility, and on International Child Abduction - adopted on 25 June 2019 - will be applicable from 1 August 2022).[1]

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[1] The measures adopted so far, and still in force, are the following: Regulation (CE) n. 44/2001 on urisdiction and the recognition an enforcement of judgements in civil and commercial matters (called "Brussels I", only applicable to decisions rendered in proceedings started before 10 January 2015), now replaced by 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 (recast – "Brussels I *bis*"); 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; 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; 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 (called "Brussels II *bis*"); 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; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure; 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); Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure; 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; 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; 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); 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; 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 (called "Rome III"); 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; Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters; Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters; 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; Council Regulation (EU)

Since the advent of the Internet, new media and communication technologies have developed significantly. This has led to two interrelated consequences: the number of online social relationships and commercial transactions have increased, as has the number of online cross-border disputes.

This has deeply affected the implementation of EU PIL rules, in particular the rules on jurisdiction and the conflict-of-laws rules applicable to contractual and non-contractual obligations.

The fragmentation and, therefore, the complexity of such a legal framework has increased due to the fact that special EU PIL rules can be found in a number of EU measures providing for the material disciplines of specific matters. This is the case, for example, of Article 77 of Regulation 2016/679 of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, repealing Directive 95/46/EC (General Data Protection Regulation – "GDPR"), of Article 4 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, as well as Article 24 of Regulation (EU) 2017/1001 on the European Union Trade Mark (which repealed Regulation (EC) n. 207/2009 on the Community Trade Mark).

The Court of Justice of the European Union has rendered several decisions concerning the interpretation of EU PIL instruments in relation to the digital environment. This case law is aimed at adapting traditional rules on jurisdiction provided for by the "Brussels I *bis* regime" to the new challenges posed by cyberspace. Moreover, many principles established in rulings rendered by the Court of Justice of the European Community way before the Internet was created have been adapted to the digital environment. With regard to data protection, the Court had a crucial role in clearly defining the territorial scope of application for the relevant EU legal instruments. The field of consumer protection has also experienced proactiveness on the part of the CJEU in both conflict-of-laws rules and rules on jurisdiction.

CASE LAW

From a case law perspective, 27 judgments rendered by the CJEU were selected as as relevant to this field. The main areas where the CJEU has developed productive case law concerning the application of EU PIL to the Internet context are: data and consumer protection, personality rights , intellectual property rights and competition law. In

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; Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012.

particular, 7 decisions were rendered in the field of contracts, and 20 in the field of non-contractual obligations, mainly related to personality rights and data protection.

MAIN FINDINGS ABOUT THE EUROPEAN LEGAL BACKGROUND AND JUDICIAL PRACTICE

The Internet has been progressively changing the Court of Justice's approach to the interpretation of expressions used in European measures on judicial cooperation in civil matters adopted under Article 81 TFEU, as well as of those scattered in other legal instruments.

In its prolific "quasi-legislative" activity, the CJEU has been adapting traditional rules on jurisdiction and conflict-of-laws rules in the light of the characteristics of the Internet (such as immediacy and ubiquity). Due to the development of online commercial transactions, the CJEU has paid increasing attention to Internet-related PIL issues, mainly in fields such as data protection, copyright and consumer protection.

So far, such adaptation of traditional EU PIL rules (originally conceived to operate offline) is now conducted on a case-by-case basis: such an approach, while ensuring flexibility, may jeopardize predictability.

This is why, *de jure condendo*, at least as far as personality rights are concerned, scholars wonder whether it would be appropriate to abandon the territorially-limited "mosaic" jurisdiction established in *Shevill* and further extended in *e-Date* for cases involving the digital environment. It has little meaning with regard to content made accessible on the Internet when a situation of multiple infringements occurs in different Member States. Alternatively, and in line with the *Mines de Potasse* doctrine, the place of damage could serve as a general forum (competent to assess all damages suffered by a libel victim) coinciding with the centre of interests of the person involved (which is defined differently for natural persons and legal persons), in accordance with the criteria established by the *eDate* and the *BOÜ/Ilsjan* cases.

In the changing framework for the digital environment, the CJEU case law relating to EU measures in the field of judicial cooperation in civil matters - adapted to the demands of the Internet - clearly invites a reflection on the "tightness" of such measures.

At the supranational and international level, there are no proposals for the time being aimed at any recast or drafting new conventions containing uniform PIL rules conceived *ad hoc* for Internet-related issues. However, scholars in the field take particular note : of a non-binding Resolution published on 31 August 2019 by the *Institut de droit international* entitled *Les atteintes aux droits de la personnalité par l'utilisation d'internet: compétence, droit applicable et reconnaissance des jugements étrangers*.

The activity of the Court of Justice of the European Union, therefore, becomes even more relevant. And as its interpretative function relies on an in-depth understanding of private international law, it follows that experts need to explore the EU PIL dimension

of the digital environment, and support the work of the CJEU (the *European Association of Private International Law (EAPIL) is one* recent positive phenomenon).

AUSTRIA

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

Since the first EU Regulations based on Article 81 TFEU came into force in 2001, the Austrian legislature has chosen not to transpose those rules into national law.

This approach was chosen for the pertinent EU Regulations, namely Brussels I/I-bis, Rome I and Rome II. Those Regulations were not integrated into national legislation, they were not even put together in the form of a compilation of EU conflict-of-laws rules, they remain self-standing EU instruments. In the case of the Rome I and II Regulations, there is not even national legislation supporting those instruments. The domestic private international law rules simply do not apply within the scope of application of the Rome Regulations. On the other hand, there is national legislation transposing the Brussels Regime into Austrian law where such 'back-up' is needed. In the case of the Brussels I Regulation, the Act on Enforcement (*Exekutionsordnung*, EO) applied, which contained rules concerning proceedings with relation to the recognition and enforcement of all types of foreign titles (Articles 79 to 86c EO). With the abolition of exequatur in the Brussels I-bis Regulation, the recognition and enforcement of intra-EU titles changed its character. Consequently, the legislature chose to regulate the necessary adaptory rules in other parts of the *Exekutionsordnung*, i.e. Articles 2 (2), 404 or 405 EO.
Other EU instruments such as the E-Commerce Directive and others are not necessarily all transposed into a Code of EU Private Law or the like. Instead, every instrument of EU secondary law that requires transposition, especially directives, will be integrated into a given framework of domestic law. In that sense, the E-Commerce Directive has been transposed into the Act on E-Commerce (*Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden – E-Commerce-Gesetz*, ECG).

CASE LAW

5 decisions concerning contractual obligations were identified, mainly in the field of consumer protection. As far as non-contractual obligations are concerned, the report included 11 decisions.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

Generally, the few reported cases on Internet-related private international law seem to be quite satisfactory. Internet-related legal problems mostly follow a similar pattern, e.g. pertaining to the direction of activities towards the state of habitual residence of the consumer. Nevertheless, the related questions may vary in detail as set out in this report. The Austrian courts are aware of such differences, which has led to various preliminary rulings. Through those referrals, e.g. in *Pammer and Hotel Alpenhof*, the Austrian courts added to the development of relevant CJEU case law. It can be observed that the Austrian courts follow the interpretation advanced by the CJEU, e.g. making reference to *eDate Advertising*. This shows that the Austrian courts give due attention to the pertinent case law of the CJEU.

As mentioned above, Internet-related problems in contractual cases mainly occurred in the context of jurisdiction under Article 17 Brussels I-bis Regulation or its predecessors. Given the rather extensive jurisprudence of the CJEU by now, this particular problem may attract less attention by the higher courts in Austria in the future. For the same reasons, the number of preliminary ruling proceedings before the CJEU may decrease due to the fact that the CJEU has already made substantial clarifications. It can be inferred from this that the system of preliminary rulings seems to work quite well, at least in the field of Internet-related private international law.

BULGARIA

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

The jurisprudence of Bulgarian courts concerning Internet-–related PIL issues reveals a **small number of cases without any dictum of the higher Bulgarian courts**. In some categories of Internet-related disputes, there is no evidence of any cases being handled by Bulgarian courts, especially for personality rights torts. In the sphere of **contractual obligations,** the Internet aspect is not a central issue in the case and of court reasoning, since the Internet is only the medium through which the contract is concluded.

In the area of **intellectual property infringements,** Internet intricacies don't represent a challenge for Bulgarian courts. All of the cases could be characterized as copyright torts where the illegal act is the display of photography or sale via the Internet of protected pieces of art and literature. In **no** decision did the courts come to the same analysis as the **ECJ case laws** *regarding the place where the harmful event occurred* **as per article 7, paragraph 2 of the Brussels I-bis Regulation**. One of the reasons is that in almost all of the cases, the domicile of the defendant was in the territory of Bulgaria. A most remarkable and problematic case is that in which the court refused to make statements on a claim for lack of international jurisdiction since the copyright infringement was committed online by publication of a photo. The court reasoned that acts of infringement on the Internet are *ubiquitous* by nature and *thus no damage occurred in the territory of Bulgaria.* The question of the *accessibility* of the webpage as a unique criteria for localising Internet IP torts, is rejected by the court (it can be presumed that the court is not familiar with ECJ judgments on the matter).

In the area of **applicable law regarding IP infringements,** courts apply Bulgarian copyright laws without revealing the grounds for doing so, following the principle of *lex loci protectionis* established from a comparative perspective. The rules of article 8 of the Rome II Regulation on applicable law regarding IP torts have the same underlying rationality, but courts cite only the material provisions of Bulgarian copyright law concerning the national regime for foreign authors and works published abroad . No attention is paid to ECJ jurisprudence on the interpretation of the Rome II Regulation.

CASE LAW

The study of the jurisprudence of Bulgarian courts identified a core of eleven decisions by courts of different ranks on civil and commercial cases[2]. As far as the type of court and its functions are concerned, six rulings were issued by second instance courts in appeal proceedings (Regional Courts and Appellate Courts) and five by first instance courts (Municipal Courts). An important issue that needs to be underlined is that the Bulgarian Supreme Court of Cassation (Върховен касационен съд) have not issued any decisions concerning PIL matters in an Internet environment, not even any so-called decision on interpretation, nor regular case law with a mandatory character for lower instances.

Two judgments concerned only **jurisdictional** issues and **four** judgments concerned only **applicable law** in cases of Internet-related PIL cases.

In **five** judgments, the courts applied EU PIL sources regarding **both** jurisdiction and applicable law. This is a logical outcome since the cross-border element in a case puts national courts in a position of having to first establish international jurisdiction and then decide on the subject-matter of the dispute.

- Subject-matter of the case: The analysis of relevant case law shows a clear predominance of *torts arising from copyright infringements* for unauthorized use of works of literature and photographs on the Internet[3]. The second largest group of cases concerns online *contracts for transport of passengers and their luggage by air*[4]. A third group of decisions relates to consumer contracts, concluded via the Internet and to the fulfillment of criteria for directing the professional's activities toward the member state of the consumer's domicile[5].

On the other hand, the research *does not show any case related to personality rights* torts committed via the Internet, including defamation, having cross-border implications. Neither was any case law detected on the infringement of industrial property rights (trademarks, patents, and designs) either subject to national or international registration, or disputes concerning competition protection.

[2] Up to October 2019.
[3] 6 of nine cases.
[4] 4 of nine cases.
[5] One case.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

In conclusion, a critical assessment of Bulgarian jurisprudence on Internet–related PIL issues is currently notable for the **restricted relevance of the localization of effects of acts committed via the Internet**. This is due to the *small number of cases.* Bulgarian courts need to increase their awareness of EU PIL instruments and of the ECJ's jurisprudence on Internet-related PIL issues. Even if the number of cases are currently low, the future trend is clear – Bulgarian courts will face an increasing number of Internet-related civil and commercial cases. Up to now, in the majority of decisions analysed, Bulgarian courts have come to the correct conclusions regarding PIL issues, but there is a lack of argumentation on the matter that takes into account the context of ECJ judgments. The **ECJ case law on Internet-related PIL cases is often not referred to or even disregarded** when cases fall into its scope. Diverging approaches to the ECJ caselaw in localization of acts committed on the Internet also affect legal security. Bulgarian courts are reluctant to accept an approach that considers mere accessibility of content over the Internet because of the ubiquitous character of the Internet.

In the area of torts committed over the Internet, Bulgaria is the *Forum domicilii debitoris* in a number of cases brought before the courts of another member state referring to the place where the damage occurred (for instance, specialized platforms for compensation of copyright infringements such as PhotoClaim tend to bring all cases initiated in Germany on the basis of the place where the damage occurred). Internet-related PIL rules need a balanced approach between the right to a fair trial for both claimant and defendant. s

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

Czech private international law was historically codified in Act No 97/1963 Coll., on Private International Law and Rules on Procedure relating thereto (hereinafter referred to as the 1963 PILA). The 1963 PILA entered into force on 1 April 1964 and remained in force until the end of 2013.

The 1963 PILA contained both conflict-of-law rules and procedural rules in one single act. The 1963 PILA contained 70 provisions that were divided into two main parts. The first part contained general provisions (§§ 1-2), conflict-of-laws rules for determining the applicable law (§§ 3-31) and provisions dealing with the legal status of aliens (§§ 32-36); the second part of the 1963 PILA contained provisions on international civil procedural law (§§ 37-58c).[6] Additionally, the 1963 PILA contained final provisions (§§ 69-70). The 1963 PILA was considered to be a relatively brief and well-structured legislation.

The 1963 PILA was praised as a modern and independent codification. Even though Czechoslovakia was historically part of the Eastern Socialistic Bloc, thanks to the specific features of its autonomous legal discipline, private international law was not heavily influenced by Communist legislation.

On 1 May 2004, the Czech Republic became a member state of the European Union (EU). Because of this, several amendments were made to the 1963 PILA to implement EU directives[7] and EU regulations.[8] Apart from these changes, the 1963 PILA did not undergo any major changes.

[6] The Czech doctrine of private international law traditionally encompasses both conflict-of-law rules and rules on international jurisdiction. This was considered as a very modern approach, which proved to be very efficient. Modern EU PIL regulations are also based on this approach (e.g. the Succession Regulation).

[7] Among others, Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ([2002] OJ L168, 43) or L345/1); Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and Exchange contracts ([2009] OJ L33/10).

[8] These amendments were made especially as regards to the recognition and enforcement of foreign judgments. Relevant regulations were: Council Regulation (EC) No 44/2001 of 22 December 2000 on

In 2000, work on the recodification of Czech private law began. The goal was to create a new and modern Civil Code. This recodification represented a radical change for Czech law. The recodification was completed in 2014. The recodified Czech law now consists of a commercialized Civil Code (Act No 89/2012 Coll., Civil Code, hereinafter referred to as the new Czech Civil Code), supplemented by the Commercial Corporations Act (Act No 90/2000 Coll., on Corporations and Co-operatives). The recodification introduced a new systematic and structural division of private substantive law based on three basic "pillars": family, ownership and contract.

Within the framework of the recodification of Czech private law, it was considered necessary to recodify also the area of private international law. The draft of 2012 was overshadowed by the drafting of the new Czech Civil Code. During the finalization stages of the new Czech Civil Code, the private international law act underwent only minor changes, which were brought because of further developments in the unification of private international law adopted in new EU regulations. Another influence on the 2012 PILA could be found in the 1987 Swiss Private International Law Act. The 2012 PILA came into effect on 1 January 2012 and contains 125 sections (therefore, it is not as concise as its predecessor, the 1963 PILA).

The 2012 PILA is closely connected to EU law and international conventions. Compatibility with these sources of law is ensured by a general clause in § 2 (entitled "International Agreements and European Union Law") of the 2012 PILA, which stipulates*: "This Act shall be applied within the limits of the provisions of promulgated international treaties by which the Czech Republic is bound (hereinafter referred to as "international treaty") and directly applicable provisions of the European Union law."* The 2012 PILA thus mandates that its provisions are to be applied within the directly applicable provisions of the law of the EU and international convention.

CASE LAW

In the Czech Republic, there is comparatively little case law regarding private international law cases and application of EU regulations.

One of the reasons might be that the Czech Republic is a relatively "new" member state of the EU. This holds true for both contractual (2 decisions) and non-contractual obligations (3 decisions). The majority of private international law cases in front of the Czech courts deal with recognition and enforcement of foreign judgments, territorial jurisdiction, judicial assistance and mutual cooperation, or family matters (divorce, maintenance or parental responsibility). Furthermore, there are almost no cases in relation to the Internet and online contractual and non-contractual obligations.

jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([2001] OJ L12/1), (hereinafter referred to as Brussels I Regulation) and 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 ([2003] OJ L338/1), (hereinafter referred to as Brussels IIbis Regulation).

The reasons are that many cases are consumer disputes and, due to the sums at stake, many of them do not go to court. Secondly, consumers might use ADR mechanisms (although there are no current empirical studies on the use of consumer ADR in the Czech Republic). Third, there seems to be a general trend in substantive law of enhancing consumer protection, especially through rights to remedy.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

Generally, the few reported cases on Internet-related private international cases are not very satisfactory. The reasons for the lack of case law might be twofold: the Czech Republic is a relatively small jurisdiction in comparison to other member states of the EU, thus producing fewer disputes. The other reason might be that the majority of Internet-related cases concern consumer disputes that are dealt with using ADR methods and not court proceedings.

Knowledge of private international law in the Czech Republic is slowly increasing. This is due to the fact that judges and legal practitioners are more often confronted with private relationships with an international element due to the free movement of persons. In the Czech Republic, there are four state law faculties. All of them offer courses on private international law. However, it is the Faculty of Law, Masaryk University in Brno that offers the most comprehensive curriculum on various aspects of (EU) private international law. Brno is also the seat of the highest Czech courts (the Constitutional Court, Supreme Court and Supreme Administrative Court), which employs students and alumni that are aware of private international law.

Another way to increase the knowledge of EU private international law is continuous education of judges, lawyers and other legal practitioners. Private international law is also part of the final Bar exam, therefore every licensed advocate shall have at least basic knowledge of this area of law.

FRANCE

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

Traditionally, private international law (PIL) in France covers four fields: nationality, jurisdiction, applicable law, and recognition and enforcement of judgments.

As regards the attitude of the legislature towards EU PIL rules, since they are usually included in Regulations, there are no particular measures of implementation. The exception is Regulations that have laid down special procedures, such as the EU order for payment, which required the EU legislature to introduce some new provisions in the Code of Civil Procedure.

CASE LAW

17 decisions concerning contractual obligations were identified: 13 issued by the *Cour de cassation*, 1 from a Court of Appeal (Versailles), 3 by a court of first instance (Paris).

As far as non-contractual obligations are concerned, the report included 12 decisions of the French *Cour de cassation* and 1 decision by a Court of Appeal, all regarding jurisdiction to adjudicate. All decisions reported concern Art. 7(3) of the Brussels I-bis Regulation, except the 2 decisions on enforcement that concern Art. 24(5) of the Brussels I-bis Regulation and the decision on EU design, which concerns Art. 8(1) of the Brussels I-bis Regulation.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

French courts are generally attentive to PIL issues. There are a few factors that contribute to a generally good application of EU PIL, including Internet-elated cases. On the one hand, the French Supreme Court (*Cour de cassation*) issues regular reports and guidelines for the lower courts. On the other hand, there are "poles" of expertise in PIL within the French judiciary (eg., the Paris and Versailles courts tend to have more experience, as they tend to adjudicate more cases involving at least one international party. This is true in all domains, but especially when it comes to commercial disputes,

because many companies are based in the Paris or Versailles areas and tend to litigate in their "home" courts). In addition, for more than 20 years the Paris *Tribunal de Commerce* (first degree court for B-to-B disputes) has had a specialist chamber for cases involving issues of EU law, including private international law. Moreover, in April 2018, a specialist international chamber within the Court of Appeal of Paris was established. The French Supreme Court, too, has a specialist chamber for questions of private international law.

On the other hand, traditional approaches to PIL sometimes square uneasily with the EU-derived nature of the rules of PIL. The first of such approaches regards qualification. The application of all EU rules regulating obligations is based on the premise that it is possible to qualify such obligations as either contractual or non-contractual, and that such a qualification will be consistently applied by all EU national courts within the scope of application of the regulations on EU PIL. The first premise proves difficult to uphold in the French legal orde because it includes the notion of a "quasi-contract". More importantly, there are obligations, such as the obligation not to break a so-called "established" B-to-B contractual relationship, that have proven difficult to work out for the purposes of the Brussels I-*bis* Regulation. The second approach regards the scope of a court's discretion in applying the rules of PIL (*l'office du juge*). Suffice it to say that in traditional French PIL, when the claim is one that parties may waive (i.e., is not a family- or capacity-related claim of a non-patrimonial nature), if none of the parties raises an issue of jurisdiction or applicable law, the court is not obliged to apply PIL rules at all and may, in practice, treat the case as if it were wholly domestic. This means that EU PIL may be disregarded when, actually, the situations falls within its scope of application and it is therefore applicable. While in some instances the result would not be different from what the EU PIL rules command, it is not always the case and a clear answer is not provided for now.

GERMANY

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

Since the first EU Regulations based on Article 81 TFEU came into force in 2001, the German legislature has chosen not to transpose those rules into national law.
This approach was chosen for the pertinent EU Regulations, namely Brussels I/I-bis, Rome I and Rome II. Those Regulations were not integrated into national legislation, they were not put together in the form of a compilation of EU conflict of laws rules, they remain self-standing EU instruments. In the case of the Rome I and II Regulations, there is not even national legislation supporting those instruments. The domestic private international law rules simply do not apply within the scope of application of the Rome Regulations. On the other hand, there is national legislation transposing the Brussels Regime into German law where such 'back-up' is needed. In the case of the Brussels I Regulation, a special Act ('*Gesetz zur Ausführung zwischenstaatlicher Verträge und zur Durchführung von Verordnungen und Abkommen der Europäischen Gemeinschaft auf dem Gebiet der Anerkennung und Vollstreckung in Zivil- und Handelssachen*', in short: *Anerkennungs- und Vollstreckungsausführungsgesetz – AVAG*) applied, which contained rules concerning proceedings with relation to the recognition and enforcement of all types of foreign judgments.

With the abolition of exequatur in the Brussels I-bis Regulation, the recognition and enforcement of intra-EU titles changed its character. Consequently, the legislature chose to regulate the necessary adaptory rules in the Code of Civil Procedure, i.e. sec. 1110 to 1117 ZPO. Together with other similar rules, e.g. on the EU executory title, they form a separate book on judicial cooperation in the EU (Book 11: Judicial collaboration within the European Union).

CASE LAW

6 decisions concerning contractual obligations were identified (most reported decisions in the field of contract law pertain to consumer law). As far as non-contractual obligations are concerned, the report included 12 decisions.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

Generally, the few reported cases on Internet-related private international law seem to be quite satisfactory. Contractual and non-contractual Internet-related cases mainly concerned disputes about 'direction of activity' . After the *Pammer and Hotel Alpenhof* decision of the CJEU, there was a change in the case law of Germany because the 'active vs. passive website' argument was no longer relied upon. Also, the BGH and the Higher Regional Courts are citing relevant case law of the CJEU in this field, for example *Nintendo/BigBen* and *Coty Germany* in BGH (I ZR 164/16) and *Emrek* as well as *Pammer and Hotel Alpenhof* in OLG Düsseldorf (I 16 U 83/17). This shows that German courts seem to give due attention to the CJEU's rulings.

The system of preliminary proceedings pursuant to Article 267 TFEU will probably lead to further legal development in the interpretation of the Brussels I/I-bis Regulation also in Germany regarding Internet-related private international law cases. On the other hand, especially with regard to consumer cases in the field of contractual obligations, there will still be only a few court decisions by ordinary courts, because systems of ADR, from the perspective of consumers, may lead to more time- and cost-efficient settlements. There might be fewer legal disputes in relation to 'direction of activity' becuase there is sufficient German jurisprudence in this field after the CJEU's rulings in inter alia *Pammer and Hotel Alpenhof*.

IRELAND

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

Regulation 593/2008 on the Law Applicable to Contractual Obligations ("Rome I") is directly applicable in Ireland and covers all aspects of contractual obligations.

Regulation 864/2007 on the Law Applicable to Non-Contractual Obligations ("Rome II") is directly applicable in Ireland, with some exceptions, notably defamation.

For issues not included in the Regulation, domestic Irish law applies. However, there is no legislation in Ireland on conflict of laws in tort cases and there is very little case law. Domestic conflict-of-law rules in Ireland have their source primarily within the Common Law and, as such, are subject to change and evolution. Moreover, because case law in this area is relatively sparse, it is difficult to be conclusive as to the state of the prevailing law in a number of areas. In matters of torts, the Irish courts have so far taken into account various principles: the "lex fori principle" according to which when Irish Courts have jurisdiction, the law of the forum should apply; the "lex loci delicti principle", under which the law of the place where the tort was committed should apply; the principle of the "proper law of tort", which recommends a flexible approach, allowing the court to consider all the different connecting factors and deciding the jurisdictional issue accordingly (when no European instrument or international convention applies of course).

CASE LAW

According to the research carried out on Irish case law, 7 decisions selected referred to the field of contractual obligations, 2 in the framework of non-contractual obligations (mainly defamation) and 1 related to the topic of the International Registry for International Interests in Mobile.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

The Internet-related cases found in the Irish databases pertain to three main subject-matters: contractual obligations, defamation, and the International Registry for International Interests in Mobile.

Four of the cases related to contractual issues concern the activities of Ryanair, and this may explain the relatively high number of cases in comparison with other countries. A

very interesting issue concerns the validity of the choice-of-forum clauses of the Ryanair webpage under the Brussels regime.

Three cases concern defamation: in two of them, the main issue is jurisdiction, again under the Brussels regime.

One of the disputes has a very particular character: it is connected to the operation, through a company, Aviareto, established in Dublin, of the International Registry for International Interests in Mobile established under the 2001 Capetown Convention and its Aircraft Protocol.

Irish courts quote the ECJ case law extensively.

ITALY

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

The main Italian legislative instrument in the field of private international law is Act n. 218 of 31 May 1995,, entitled "*Riforma del sistema italiano di diritto internazionale privato*" (hereinafter referred to as the "Italian PIL Act"), which sets out the Italian system on private international law. It includes dispositions regulating the general part of private international law (preliminary issues, *lis pendens*, *iura novit curia*, *renvoi*, application of foreign law etc.), general and special rules on jurisdiction, conflict-of-laws rules, rules on recognition and enforcement.

The Italian legislature does not tend to "nationalize" EU regulations adopted in the field of judicial cooperation in civil matters within the internal legal system. Such measures thus apply directly in Italy without any national measures of integration .

CASE LAW

5 decisions concerning contractual obligations were identified: 4 issued by the United Sections of the Supreme Court (*Sezioni Unite della Corte di cassazione*), and 1 by a court of first instance (Justice of the Peace of Trapani). The Supreme Court's decisions concerned the application of Brussels I and I *bis* Regulations, the first-instance decision was about consumer protection.

As far as non-contractual obligations are concerned, the report included 11 decisions, 3 of the Italian *Corte di cassazione* and 8 decisions rendered by lower courts. The main non-contractual issues examined concerned personality rights, trademark infringements and competition law.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

The research shows that Italian courts' application of EU measures adopted in the field of judicial cooperation in civil matters and the corresponding case law of the Court of Justice of the European Union in Internet-related situations is consistent.

In particular, attention towards PIL issues in the digital environment is not well developed yet in the fields of non-contractual obligations (personality rights, intellectual property rights and competition cases)m=, contractual obligations, or =consumer protection. In the latter, mainly due to the fact that consumer protection disputes do not involve large sums of money and, therefore, individuals most often i) rely on alternative dispute resolution mechanisms or, in any case, ii) do not pursue the path of judicial procedures.

The same applies to low-value disputes arising in relation to online sales contracts concluded with airlines (*point-and-click* or *click-wrapping* contracts). As the Court of Justice established in the *Rehder* case, air flight passengers are to be considered parties to a contract of provision of services, according to Article 5, par. 1, let. *b),* second indent of the BrusselsI Regulation, now Article 7, par. 1 let. *b),* second indent of Brussels I-*bis* Regulation. When Regulation (EC) n. 261/2004 Establishing Common Rules on Compensation and Assistance to Passengers applies (in case of denied boarding, cancellation or long delay of flights), individuals rarely go to court. However, the Supreme Court recently issued two decisions on the application of the Brussels I *bis* Regulation and, in particular, to choice-of-court agreements in the framework of disputes between passengers and air companies (order n. 18257/2019 and n. 3561/2020).

There is also the added issue of accessibility: transnational cases involving air companies and passengers are frequently handled by Justices of the Peace, who decide cases not exceeding 5,000 euros, and whose decisions are usually not available unless published in a journal. The "SCAN Project",[9] an EU-funded project aimed at analysing the European Small Claims Procedure, introduced by Regulation (EC) n. 861/2007, may help identify case law arising from disputes between passengers and airlines.

Most of the cases analysed have been decided by recalling and adapting principles set out by the Court of Justice. As has been stressed, however, Italian courts sometimes recall EU PIL rules and the corresponding CJEU case law to resolve purely internal cases, falling outside the scope of the application of private international law (in particular, allocation of territorial competence).

It is likely that Italian courts' attention towards European private international law and, in particular, towards the private international law dimension of Internet-related issues, will increase in the near future.[10]

In order to raise awareness of these topics in Italy, training activities on the intersection of technological and legal developments (both substantial and PIL law) shall be organized, and addressed to legal operators, as well as private citizens and companies, via events, seminars and the establishment of networks of permanent groups or think-thanks.

[9] Available at: http://www.scanproject.eu/.

[10] Among the six Commission priorities for 2019-24 is "A Europe Fit for the Digital Age", aimed at creating a single digital market. One of the key points of the *digital single market strategy* is the approximation and unification of laws and rules in fields that are crucial for the Internet environment, such as copyright, protection of consumers, data protection and digital platforms transparency. For further information on the Digital Single Market see: https://ec.europa.eu/commission/priorities/digital-single-market_en.

POLAND

THE MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL BACKGROUND

Art. 33 of the Act on Private International Law[11] stipulates that the law applicable to theobligation arising from an event that is not a legal act should be established under the Rome II Regulation.

In principle, the court should establish the jurisdiction and the applicable law in every case. However, these issues, even if considered during the proceedings, tend not to be explicitly mentioned in the text of the judgment.

In certain cases, the PIL issues should be dealt with only if a corresponding objection is raised (see: Art. 1165 Polish Code of Civil Procedure[12] which stipulates that in the event of a case being brought before a court regarding a dispute covered by an arbitration clause, the court shall reject the application or a motion to initiate non-litigious proceedingss, if the defendant or a participant in non-litigious proceedingss raised the plea of an arbitration clause before entering into the dispute as to the substance of the case.).

Previous arbitration proceedings affect the scope of courts' competences: the court does not act as a second-instance court – it is not authorized to examine substantive matters using substantive law. It is entitled only to verify whether any of the infringements listed in Art. 1206 Polish Code of Civil Procedure took place.

CASE LAW

The cases found were 22 and the Judgments issued 53. Of these 53 judgments:

- 22 judgements were of courts of the first instance,
- 21 judgements were of courts of appeal (including three judgements of the Supreme Administrative Court, which is the second instance in the case of administrative proceedings),
- 10 judgments were of the Supreme Court.

[11] Act of 4 February 2011 O.J. 2011, No. 80, item 432, in force since 16th May 2011.
[12] Act of 17 November 1964, O.J. 1964, No. 43, item 296.

The main topics of the judgments collected were:

Contractual obligations (in total 6 cases, 17 judgments)

- 4 cases (11 judgments) concern **contractual obligations**
- 2 cases (6 judgments) touch upon **consumer contracts**

Non-contractual obligations (in total 16 cases, 36 judgments)

- 11 cases (25 judgments) on **personality rights**
  Of these: 9 cases concern **defamation** (20 judgments).
  6 of these judgments were issued as a result of three lawsuits filed because of one deed of alleged defamation
- 3 cases (7 judgments) on **copyright**
- 2 cases (4 judgments) on **online gambling (administrative penalties)**

MAIN FINDINGS ABOUT THE NATIONAL JUDICIAL PRACTICE

The following findings are here reported:

- Typically, online context is missing in the courts' argumentation or treated marginally
- Focus on parties' residence or a firm's headquarters – no delving into analysis of the "mechanics" of transfer of data online
- Internet – seen merely as a means of remote communication, not as a self-standing transnational legal domain
- Noticeable differentiation between B2C and B2B transactions (much more meticulous analysis in the case of the former)
- Competing EU and domestic jurisdiction rules are observed (e.g. divergent legal grounds in the group of the right to be forgotten cases)
- Scarce references to CJEU caselaw (though, if made, usually used as substantial arguments)
- The choice of the more favourable legal regime under Rome I does not exclude the *ex officio* review of B2C contract clauses under the 93/13/EEC directive

ROMANIA

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

According to the Romanian Civil Procedure Code, the application of foreign law to cases having a cross-border element may be invoked either by a court or by a party to the case. Based on its active role, any Romanian national court may raise its own motion and have the parties debate the application of a foreign law where the Romanian conflict rule makes reference to it. Nevertheless, any party to a dispute may invoke foreign law in a court, under the principle of availability.

The Romanian Civil Code expressly provides conflict-of-law rules. To this effect, Chapter 7 of Book VIII of the Romanian Civil Code contains express provisions with respect to the "*law applicable to contractual obligations*" (Article 2.640) and the "*law applicable to non-contractual obligations*" (Article 2.641).

Romania applies the Rome I Regulation. According to Article 2.640 of the Romanian Civil Code on the "*law applicable to contractual obligations*", "*the law applicable to contractual obligations is determined according to the EU regulations*", thus in line with Rome I Regulation. Under Rome I, a contract concluded by a natural person for a purpose which can be regarded as being outside his/her trade or profession (consumer) with another person acting in the exercise of his/her trade or profession (professional) is governed by the law of the country where the consumer has his/her habitual residence, provided that the professional either:

- pursues his/her commercial or professional activities in the country where the consumer has his/her habitual residence.
- by any means, directs activities to that country or to several countries including that country, and the contract falls within the scope of those activities.

In particular, the regulatory framework for online business is set out in Act No. 365/2002 on E-commerce (the "**Romanian E-commerce Law**") and its application guidelines approved by Government Decision No. 1308/2002 (the "**Guidelines**"). The E-commerce Law and the Guidelines apply to business-to-consumer and business-to-business situations. The E-commerce Law transposes Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. In addition to special rules in the E-commerce Law, the general provisions of Government Emergency Ordinance No. 34/2014 on Consumer Rights in Agreements with Professionals are also applicable to business-to-consumer situations, thus transposing into national legislation Directive 2011/83/EU on Consumer Rights.

CASE LAW

No Romanian case law was identified applying European private international law in Internet-related situations referring to both contractual and non-contractual obligations.

Some judgments address the territorial scope of Romanian jurisdiction. The research managed to identify part of the relevant body of case law on this aspect.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

Romanian cases highlight a divide between law in the books and law in action. While the Romanian legal order is largely in line with relevant EU law, and relevant authorities are fully aware of existing EU legislation, the case law on Internet-related issues is almost non-existent. This is mainly due to the belated implementation of Internet broadband compared to other member states.

SLOVAKIA

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

Slovak private international law is inextricably connected to Czech private international law. From 1918 to 1989, the Czech and Slovak lands shared their history, development and law. The history of Czechoslovakia as a constitutional entity started in 1918 on the ruins of the former Austro-Hungarian Empire and ended in 1993 when two independent states were created.

The Slovak and Czech parts also shared a private international law act. Czechoslovak private international law was historically codified in Act no. 97/1963 Coll., on Private International Law and Rules on Procedure Relating Thereto (hereinafter referred to as the "1963 PILA"). The 1963 PILA entered into force on 1 April 1964 and, in contrast to the development of private law in Czechia, remains in force in Slovakia to this date.

The 1963 PILA has been praised as modern and independent codification. Even though Czechoslovakia was historically part of the Eastern Socialistic Bloc, private international law was not heavily influenced by Communist legislation, thanks to its specific features as an autonomous legal discipline.

In 1992, the Czechoslovak Republic dissolved and on 1 January 1993, two new independent states were established - Czechia and Slovakia. Both states assumed existing domestic law and binding international treaties; Slovakia declared itself bound by all international treaties and conventions except those directly connected to the territory of Czechia.

On 1 May 2004, Slovakia, together with Czechia, became member states of the European Union (EU). Because of this, several amendments to the 1963 PILA were adopted to implement EU directives and EU regulations. Apart from these changes, the 1963 PILA did not undergo any major changes.

CASE LAW

In Slovakia , there is comparatively little case law regarding private international law and application of EU regulations. One of the reasons may be that Slovakia is a relatively "new" m ember s ate of the EU. This holds true for both contractual and non-contractual obligations. The majority of private international law cases in front of Slovak courts deal with recognition and enforcement of foreign judgments, territorial and personal jurisdiction, judicial assistance and mutual cooperation, or family matters (divorce, maintenance or parental responsibility). Furthermore, there are

no relevant cases in relation to the Internet and online contractual and non-contractual obligations.

The reasons are that many cases are consumer disputes and due to the sums at stake, many of them do not go to court. Secondly, consumers might use ADR mechanisms (although there are no current empirical studies on the use of consumer ADR in Slovakia). Thirdly, there seems to be a general trend in substantive law of enhancing consumer protection, especially through rights to remedy.
There is no relevant case law for Internet-related contractual relationships with an international (cross-border) element.

There is no relevant case law for Internet-related non-contractual relationships with an international (cross-border) element.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

Generally, the reasons for the lack of case law for Internet-related situations with an international element might be twofold: Slovakia is a relatively small jurisdiction compared to other member states of the EU, thus producing fewer disputes. The other reason might be that the majority of Internet-related cases concern consumer disputes that are dealt with using ADR methods and not court proceedings.

Knowledge of private international law in Slovakia is increasing slowly. This is due to the fact that judges and legal practitioners are more often confronted with private relationships with an international element due to the free movement of persons. Another way to increase knowledge of EU private international law is continuous education of judges, lawyers and other legal practitioners. Private international law is also part of the final Bar exam, therefore every licensed advocate should have at least basic knowledge of this area of law.

SPAIN

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

The Spanish system of private international law is based (as are the systems of most EU countries) on three sources:
- national law: mainly the "*Capítulo IV, Normas de Derecho internacional privado*", of the *Código Civil: Título Preliminar*, enacted in 1974 (*Decreto 1836/1974, de 31 de mayo*), for the rules on the establishment of the applicable law; *Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial* (last amended in 2019) for issues of jurisdiction and recognition and enforcement of foreign judgments;
- international conventions, both multilateral and bilateral;
- European law, in particular regulations adopted in the frame of judicial cooperation in civil matters.

National law has a residual application for cases that do not fall under any of the other sources.

CASE LAW

2 decisions concerning contractual obligations were identified. As far as non-contractual obligations are concerned, the report included 8 decisions.

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

In spite of the increasing growth of Internet-based contractual relationships and of the enormous and still growing number of transactions on the Internet, there are very few judgments in Spanish case-law related to electronic commerce. This is possibly explained if we consider that a) many platforms (for instance, E-Bay) have their own dispute resolution system or other systems of redress; and that b) when consumer contracts are involved, often the economic relevance of the dispute is small and may not justify the costs and burden of judicial proceedings. The two decisions that we found both relate to electronic commerce disputes and, interestingly, both concern the issue of abusive clauses in contracts regarding carriage by air.

In comparison, the number of judgments concerning non-contractual obligations is higher. Quite a few disputes in Internet-related caselaw concern defamation. This is a matter in which the harmonization of EU private international law is not complete: national law on the establishment of the applicable law and internal substantive law differ to a large extent. It is a very sensitive matter because it is connected to the

fundamental rights of freedom of speech on the one hand and protection of privacy on the other hand. This is, accordingly, an area where forum shopping is still relevant and permits so-called libel tourism. Accordingly, the issue of jurisdiction is often very relevant.

Notably, caselaw of the European Court of Justice is extensively cited as precedent in Spanish courts.

SWEDEN

MAIN DISTINCTIVE FEATURES OF THE NATIONAL LEGAL FRAMEWORK

As far as contractual obligations are concerned, Sweden is bound by Regulation (EC) 593/2008 on the Law Applicable to Contractual Obligations ("Rome I Regulation")

As forconflict-of-laws rules applicable to sales contracts, it is relevant to note that the 1955 Hague Convention, as implemented in the Swedish legislation by Act 1964:528, prevails over the Rome I Regulation pursuant to Art. 25 of the Regulation.

With respect to non-contractual obligations, the relevant rules in Sweden are to be found in Regulation (EC) 864/2007 on the Law Applicable to Non-Contractual Obligations ("Rome II Regulation"). Matters not covered by the Regulation *ratione materiae*, such as defamation, are governed by residual Swedish conflict-of-laws rules, which are essentially unwritten.

The connecting factor normally employed in Sweden in relation to torts is the place where the harmful act was committed: the applicable law for torts, therefore, is the *lex loci delicti* (cfr. NJA 1969, p.163).

As for jurisdiction matters, the Brussels and Lugano regimes usually apply. If the dispute does not fall within the scope of these acts, the application of the 1977 Nordic Convention (in force between Sweden and Finland, Iceland, Norway, Denmark) should be considered. When the dispute does not fall within the scope of any statutory provisions, the national rules determining the internal venue are used by analogy to establish international jurisdiction.

Recognition and enforcement of decisions in civil and commercial matters are governed in Sweden by EU law (the Brussels I Recast Regulation and the Hague Convention on Choice-of-Court Agreements), and other international instruments such as the 2007 Lugano Convention and the 1977 Nordic Convention. No residual national rules addressing this matter are to be found in Swedish law. However, case law exceptionally recognizes and enforces foreign judgments in situations falling outside convention obligations.

CASE LAW

The research identified a limited but apparently growing body of recent case law on PIL Internet-related issues:

- Contractual obligations: 2 cases
- Non-contractual obligations: 2 cases

- Cases involving public law issues: 3 cases

MAIN FINDINGS ABOUT THE NATIONAL LEGAL BACKGROUND AND JUDICIAL PRACTICE

The limited body of case law identified reflects a general Swedish trend towards minimization of legal disputes. The overall Swedish population is another factor in the limited number of legal disputes.
Generally, the few reported cases tend to take into account international and European instruments as well as CJEU case law. In this respect, it is worth noting that given the absence of a comprehensive piece of legislation on private international law matters in the Swedish legal system, the EU and the international instruments are sometimes resorted to as a source of accepted principles useful to fill statutory gaps.

This reflects the overall Swedish commitment to relevant EU and international law in this domain.

CONCLUSIONS

The nature and the "shape" of European private international law (EU PIL) rules – or to use the EU legislature's language: the rules on judicial cooperation in civil matters – have significantly changed over time. They have developed together with the progress of the Internet, and its impact on individuals and companies .

The Internet has also deeply affected, on the one hand, the implementation of EU PIL rules in member states, in particular the rules on jurisdiction and conflict-of-laws rules applicable to contractual and non-contractual obligations. On the other hand, the advent of the Internet has increased the fragmentation and, therefore, the complexity of the European private international law legal framework, as special EU PIL rules can also be found in a number of (substantial) EU legislative instruments (e.g. Article 77 of Regulation 2016/679 of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and repealing Directive 95/46/EC (General Data Protection Regulation – "GDPR").

The legislative development that the EU framework has been undergoing has also been integrated by the "quasi-legislative" activity of the Court of Justice of the European Union, which has rendered several decisions (27 in total) concerning the interpretation of EU PIL instruments in relation to the digital environment. This caselaw has been adapting traditional rules on judicial cooperation in civil and commercial matters to new challenges posed by cyberspace. Many principles established in rulings rendered by the Court of Justice of the European Community way before the Internet was created have been adapted to the digital environment. The fields which have been subject to such evolutions are contracts (mainly concluded online) and extra-contractual obligations (in particular data and consumer protection, personality rights, intellectual property rights and competition law).

The CJEU case law relating to EU measures in the field of judicial cooperation in civil matters - adapted to the demands of the Internet - invites a reflection on the "tightness" of such measures. Currently, there are no proposals aimed at any recast or drafting new conventions containing uniform PIL rules conceived *ad hoc* on Internet-related issues, even if scholars have some concerns. By now, then, the activity of the Court of Justice of the European Union has become even more relevant. And as its interpretative function relies on an in-depth understanding of private international law, it follows that experts need to explore the EU PIL as regards the digital environment, and support the work of the CJEU.

At the national level, the research carried out in the member states involved in the project has shown that the principles developed at the supranational level by the Court of the Justice in "shaping" EU PIL rules to the Internet has not been applied very much by national courts. Actually, it has been pointed out that across all member states, the caselaw applying legal instruments adopted under Article 81 of the TFEU in Internet-related situations is poor (around 15 per Member State, but some of them have zero case law on the issue). The reasons for this are twofold.

First, accessibility: among others, transnational cases involving air companies and passengers (who bought tickets online) are frequently dealt with by lower courts (e.g. Justices of the Peace in Italy), who decide disputes not exceeding a certain amount of money (5,000 euros), and the decisions issued within the proceedings are usually not available unless published in specialist journals. Secondly, national judges frequently apply EU PIL rules and corresponding CJEU caselaw to purely internal cases, falling outside the scope of application of private international law (for example, to designate territorial competence).

It is likely that national courts' attention towards European private international law and, in particular, towards the private onternational law dimension of Internet-related issues, will increase in the near future. To do so, it is necessary to raise awareness of these topics, making available, among others, training activities on the intersection of technological and legal developments (both substantial and PIL law). Such activities shall be addressed to legal operators (judges, attorneys etc.), as well as private citizens and companies, via events, seminars and the establishment of networks of permanent groups or think-thanks.