

Esplugues on the Madrid Principles

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Over the past few years, the European Union has undertaken an active and broad process of harmonization of Private Law and Private International Law. Focusing on choice-of-law rules, many diverse areas of law have been influenced by this harmonization, so that today a growing set of common choice-of-law rules exists within the European Union. Nevertheless, this process, directly grounded upon Article 81 TFEU, is far from being finished. The harmonization effort will likely increase in the near future so as to embrace many domains not yet governed by the European instruments. These future developments will vastly alter the basis and current situation of PIL in Europe, leading to a dramatic change of scene in the years to come. Besides, harmonization will create an additional effect; the process undertaken will foster an even more rapid expansion of international and interstate trade and, therefore, increase the number of cross-border cases arising within the EU integrated territory.

Focusing primarily on what is still to be undertaken within the process of harmonization of PIL in Europe, there is still some concern about the lack of a common set of rules governing the application of foreign law by EU judicial and non-judicial authorities. Although this is a longstanding and well known issue, no common action has been taken so far in Europe, which has created a real and insurmountable weakness in the whole process of harmonization⁴ that is capable of undermining the very effectiveness of the designed common system of choice-of-law rules. The Article deals with the current situation and analyzes the so-called Madrid Principles, approved in February 2010 in order to foster the adoption of a common EU rule on this area.

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