

# German Publication: On the way to a European Law Applicable to Divorce

A dissertation has been published which is of particular interest with regard to the recently published proposal of the European Commission for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters: *Sinja Rüberg, Auf dem Weg zu einem europäischen Scheidungskollisionsrecht*

Here is a short summary:

*With the ever-increasing migration of European Union citizens, more and more people are entering into cross-boarder matrimony; a freedom guaranteed by Art. 6 GG. This brings with it a rise in the number of international family relations and, in parallel, divorce procedures. At the moment in the area of divorce law, the courts in Europe use various choice of law rules and substantive laws for one and the same circumstance. This legal position enables the divorce-seeking applicant to choose the best terms for his purpose. This “forum shopping” conflict can, under exemption of a presently available possibility for harmonisation of the substantive divorce law besides already existing unified rules on jurisdiction and a European accreditation system for family law, only be solved by a unified choice of law rules. The necessity and the possibility of reaching this goal become clear considering the historical development in the area of family law on a European level as well as the deficits in the Brussels II Regulation.*

*In order to point out how diverse the consequences of a divorce case with international bearing can be, the reader is first provided with a legislative-comparative overview of the various larger Central and Western European EU member state’s substantive and international divorce laws regulations. Furthermore, it is demonstrated that the problem has been recognised and taken seriously by the European legislator and that “Rome III” is not just a long-fallen star on the European agenda. Subsequent to this, the disputed question concerning the scope of competence of the European legislator in passing a European Law Applicable to Divorce is discussed.*

*Under consideration of the aforementioned European aspects, this work draws up a concept for a unified choice of law rules, an assignment already commenced by the European Commission under Regulation “Rome III”. The goal must be to localise the legal and the spouse relationships as well as possible and to determine the state to which the closest ties are exhibited. This work should contribute to the necessary pan-European discussion on the causes and arguments for the various national civil law regulations. The new law applicable to divorce should meet the needs of the involved parties exactly. All conceivable tie-regulations are correlated in great detail and examined with regard to their suitability for “Rome III”. An orientation on both the tie-system of the Brussels II Regulations as well as the autonomous international civil regulations regarding the divorce laws of the member states occurs at this juncture. The rationale on which the ties are based is researched in order to assess their transferability to a regulations system within a European law applicable to divorce. Within these bounds, the principal question of whether either the common nationality of the spouses or their habitual residence should have priority in European law applicable to divorce is addressed in detail. The author deals in depth with the adoption of an evasion as well as an absorption clause and discusses the pros and cons of a party autonomy authorisation in law applicable to divorce.*

*The results of these considerations consolidate into a European legal instrument on the law applicable to divorce - “Rome III”, such that the author would recommend this work to the European legislator.*

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## **Publication:            EU            Private International Law**

- ✘ Peter Stone (University of Essex, UK) has published ***EU Private International Law: Harmonization of Laws***, part of the Elgar European

Law Series.

This book focuses on harmonization of conflict laws at the European Community level, which has been driven by the introduction of a series of conventions and regulations. It offers critical assessment of these advances across four main areas of concern: civil jurisdiction and judgments; the law applicable to civil obligations; family law; and insolvency.

Specifically, the measures examined and evaluated include:

- the Brussels I Regulation on civil jurisdiction and judgments
- the Regulation on uncontested claims
- the Rome Convention 1980 on contracts
- the Rome II Proposal on torts and restitution
- the Brussels IIA Regulation on matrimonial proceedings and parental responsibility
- the Regulation on insolvency proceedings.

**Contents:** Preface Part I: Introduction 1. Introduction Part II: Civil Jurisdiction and Judgements 2. History, Outline and Scope 3. Domicile 4. Alternative Jurisdiction 5. Protected Contracts 6. Exclusive Jurisdiction 7. Submission 8. Concurrent Proceedings 9. Provisional Measures 10. Recognition and Enforcement of Judgements 11. Enforcement Procedure Part III: Choice of Law in Respect of Obligations 12. Contracts 13. Protected Contracts 14. Torts 15. Restitution Part IV: Family Matters 16. Matrimonial Proceedings 17. Parental Responsibility 18. Familial Maintenance and Matrimonial Property Part V: Insolvency 19. Insolvency Index

The book is priced at £99.00. More information can be found on the publisher's website.