The Impact of European Law on Hungarian Conflict-of-law Rules

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Abstract

Twenty years ago, on 1 May 2004, Hungary became a member of the EU. The much anticipated and celebrated move fundamentally changed the functioning and structure of the Hungarian legal system. The evolution of Hungarian conflict-of-law rules over the past two decades is a striking example of this statement. To illustrate this huge impact, this paper takes stock of the most important changes in conflict-of-law rules brought about by EU legislation. The importance of EU legislation that has become part of national law (Section 2) will be discussed in more detail in the context of conflict of laws (Section 3). The most significant changes (Section 4) will be presented in two parts: the general institutional parts (Section 4.1) are followed by the specific part modifications (Section 4.2). It is important to highlight the regulatory gaps in EU legislation and to highlight the importance of case-law in these areas (Section 4.3). The final part of the study – based on a review of legislation, cases and literature – concludes with a summary (Section 5).

Keywords: private international law, conflict of laws, EU law, codification, private international law

1. Introduction

Although private international law is, according to classical doctrines, "neither international nor private law" in the literal sense of the word,[1] the international element in the conflict of laws renders this area of law

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1 Private international law is part of the national legal system, but it also regulates relationships that are not traditionally part of private law. László Burián, 'Európai kollíziós jog: korszak- és paradigmaváltás a nemzetközi magánjogban?' *Magyar Jog*, 2012/11, p. 697.

particularly sensitive to the impulses of changing relationships between nations.[2] Internationalization trends have their roots in the 20th century, but in recent decades globalization has increased exponentially, affecting the volume of world trade, international tourism and, more generally, the movement of persons and the volume of foreign employment.[3] The system of norms governing international economic flows and Hungary's external economic relations have changed fundamentally.[4]

Twenty years ago, on 1 May 2004, Hungary became a member of the EU. The much anticipated and celebrated move fundamentally changed the functioning and structure of the Hungarian legal system. The evolution of Hungarian conflict-of-law rules over the past two decades is a striking example of this statement. To illustrate this huge impact, this paper takes stock of the most important changes in conflict-of-law rules brought about by EU legislation.

The importance of EU legislation that has become part of national law (Section 2) will be discussed in more detail in the context of conflict of laws (Section 3). The most significant changes (Section 4) will be presented in two parts: the general institutional parts (Section 4.1) are followed by the specific part modifications (Section 4.2). It is important to highlight the regulatory gaps in EU legislation and to highlight the importance of case-law in these areas (Section 4.3). The final part of the study – based on a review of legislation, cases and literature – concludes with a summary (Section 5).

2. The EU Accession of Hungary and the Ensuing Changes in the National Legal System

The field of private international law is one of the areas of law best suited to illustrate the impact of European law on national law: some authors

2 In the case of Hungary, this is particularly important given our very open economy. Our national income is largely generated by foreign trade. Lajos Vékás, 'Az új nemzetközi magánjogi törvényről', *Jogtudományi Közlöny*, Vol. 73, Issue 10, 2018, p. 413.

3 Carlos Esplugues, 'General Report on the Application of Foreign Law by Judicial and Non-Judicial Authorities in Europe' *in* Carlos Esplugues *et al.* (eds.), *Application of Foreign Law*, Sellier, Munich, 2011, p. 4.

4 On the relationship of recent national codes to EU Regulations, *see* Réka Somssich, 'Cohabitation of EU Regulation and National News in the Field of Conflict of Laws', *ELTE Law Journal*, 2015/2, pp. 73–78.

say that the unification work in this area has brought about a 'legal earthquake'.[5] In addition to the strong influence of the EU, there is another trend that must be highlighted. During this period, the life relations raising the possibility of international conflicts have multiplied, even exponentially, and in addition to the quantitative change, they have also transformed qualitatively. With the changes in these characteristics, new trends have emerged in the science of international private law, and new legal institutions have become dominant or at least demanded special attention, which the increasing number of recent European national codifications have also addressed.[6] This is an important development, since EU *acquis* will gradually reduce the importance of national rules. Nevertheless, in recent years, the number of new private international law acts adopted in the different Member States has been increasing. For example, the Polish act entered into force in 2011 and the Dutch law in 2012, when the new Czech Code was also adopted. The Austrian Private International Law Act was enacted in 2004, while the Bulgarian law in 2005. The changes have also affected Hungarian international private law regulation. The 'legislative inflation' and the atomization of this area of law led to a call for rationalization on the part of legal practitioners. Therefore, the time has come for a comprehensive review of the regulation.

3. The Role of EU Law in Conflict of laws

The first Hungarian act to regulate conflict of laws and private international law in a comprehensive sense – the Old PIL Code – was adopted in 1979.[7] It marked the beginning of a new phase in the history of this field of law in Hungary, which had been shaped by judicial practice for almost forty years. The Old PIL Code was a progressive and timeless legislative feat,[8] which,

5 Esplugues 2011, p. 4.

6 Peter McEleavy, 'The Codification of Private International Law: The Belgian Experience', *International and Comparative Law Quarterly,* Vol. 54, Issue 2, 2005, p. 500.

7 Decree-Law No 13 of 1979 on private international law. In the Hungarian terminology, the name 'Code' has been adopted to refer to legal sources of private international law, as it traditionally seeks to cover the whole range of legal relationships where conflict of laws issues arise. On the other hand, the specificity of its code-like character is reflected in the function of the general part, *i.e.* that the rules it contains apply to all legal relationships within its scope.

8 In the foreword to the volume containing the preliminary studies on the codification of the new Private International Law Act, Martonyi says: "[...] this legislation is a very

prior to Hungary's accession to the EU, was only reformed owing to the fact that the country underwent a change of political system in 1990. Certain bilateral conventions on mutual assistance also contained conflict-of-law provisions. The most important multilateral international convention was the Rome Convention,[9] which provided for the law applicable to contractual obligations between the States of the EC.[10]

EU accession has brought about a huge change in the sources and structure of conflict of laws rules. Whereas before the entry into force of the Treaty of Amsterdam the unification of conflict-of-law rules was possible only through international conventions, Article 81 TFEU (former Article 65 TEC) allows the European Parliament and the Council to legislate under the ordinary legislative procedure (with the exception of family law). As a result of this 'Copernican change', by the second half of the 2000s, secondary legislation governed significant areas of the specific part of private international law, and this was also true of an increasing part of the general rules. The process accelerated even further when the Lisbon Treaty broadened the scope of harmonization, placing an obligation on the domestic legislator to regulate.[11] From the end of the 2000s onwards, the Old PIL Code had to be amended more frequently, resulting in a radical overhaul of national PIL. The new Private International Law Act,[12] which entered into force on 1 January 2018, is a reaction to the EU's rapid process of legal unification but also a response to the national legislator's regulatory obligation under the EU.

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special area of pre-transition legislation, which even at its inception stood the test of any international comparison. As with the Civil Code, it formulated its rules at a high level of abstraction and represented a legal culture of a particularly high standard, which ultimately enabled it [...] to survive in its essential elements to the present day." János Martonyi, 'Előszó', *in* Barna Berke & Zoltán Nemessányi (eds.), *Az új nemzetközi magánjogi törvény alapjai. Kodifikációs előtanulmányok*, HVG ORAC, Budapest, 2016, p. 14.

9 Convention on the Law Applicable to Contractual Obligations 1980.

10 The Rome Convention was in force in Hungary from 1 June 2006 to 17 December 2009. Within the given framework, the rules of the Rome Convention replace the rules of the Code. With the entry into force of the Rome I Regulation, the rules of the Rome Convention are no longer applicable, except in relation to Denmark.

11 Réka Somssich, 'Az uniós tagállamok szabályozástechnikai megoldásai a nemzeti jog, valamint az uniós jog viszonyának rendezésére a nemzetközi magánjog területén', *in* Berke & Nemessányi (eds.) 2016, p. 44.

12 Act XXVIII of 2018 on Private International Law (New PIL Code).

4. Changes in the Conflict-of-laws

The regulatory burden places a complex task on national legislators. The main reason for this lies in the special relationship between private international law and other rules of national law. Conflict-of-law rules create a *loi uniforme*, *i.e.* they apply not only in the case of conflicts of laws between Member States but also in relation to third countries.[13] Moreover, they do not strictly lay down rules only on the specific aspects they are intended to regulate. They also typically regulate certain institutions of a general nature, but they do so in a non-uniform manner.

Because of their direct applicability, these rules very often trigger a deregulation process in the Member State, such as the obligation to repeal earlier rules on the same subject. In certain cases it may also be necessary to adopt implementing provisions. In the case of optional mandates for regulations, drafting certain rules may also part of the task, with a view to making use of the legislator's residual regulatory power. While regulations automatically become part of national law and enjoy supremacy over national conflict of law rules, they may necessity some groundwork by the national legislator before their entry into force. In such cases, the aim is to adapt existing conflict-of-law rules in the field in question so as not to duplicate the rules unnecessarily, but also to avoid leaving areas not covered by unification unresolved.

4.1. General Institutions

Mádl, arguing in 1968 that conflict of laws is indeed a separate branch of law, emphasized the condition of the so-called general part and its spill-over to the whole field of law as a criterion to speak of a separate branch of law.[14] It is the legal institutions falling within the general part which constitute the bulk of the theoretical questions occupying the academics investigating private international law. However, the importance of these rules does not stop at a theoretical level: the correct practical application

13 It is worth noting that this is not the case for Regulations on jurisdiction, recognition and enforcement of foreign judgments, which create a 'two-channel system' with different rules governing the relationship between Member States.

14 Ferenc Mádl, 'Új szakasz a magyar nemzetközi magánjogban? Reflexiók a magyar nemzetközi magánjogi kodifikációhoz és Világhy Miklós "Bevezetés a nemzetközi magánjogba" című munkájához', *Állam- és Jogtudomány*, Vol. 11, Issue 2, 1968, p. 301.

of the rules of this branch of law depends mostly on a thorough knowledge and precise formulation of these rules. It is important to note that the scope of the general part of the institutions is not an exact category, and the range of methodological issues that can be included is not limited. The general part is an abstraction of science, so it is not surprising that different institutions appear in the various national legislations.

Although EU regulations cover specific areas, they also address general matters. In this area, not only do the individual regulations provide differently depending on their subject matter: their legislative solution often differs from the provisions of the national legal sources. The regulation of *renvoi* is an excellent example: while the Rome I,[15] Rome II[16] and Rome III[17] Regulations exclude it, the Succession Regulation in turn allows it. While the Old PIL Code – as a general rule – only allowed remission, the New PIL Code allows double *renvoi* if the applicable foreign law was determined on the basis of the connecting factor of citizenship.[18] Even the concept of EU public policy – where the Member States' solutions are the most similar – requires a different approach from the legal practitioner in the application of the general rule. The creation of a Regulation on general institutions of European conflict of laws, a 'Rome 0 Regulation', has been the subject of some expert reflection,[19] but the success of unification is

15 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

16 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.

17 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.

18 New PIL Code Section 5 (1): "If the conflict-of-law rules of this Act determining the applicable law refer to a
foreign law, the substantive law rules of the foreign law that directly govern the matter shall apply."
(2) If, by virtue of this Act, the applicable foreign law is determined on the basis of nationality and the conflict-of-law rule of the foreign law *a)* refers back to Hungarian law, the Hungarian substantive law shall apply; *b)* refers onwards to a different foreign law, the substantive law rules of that law shall apply."
There has been a decades-long debate among scholars about the justification of *renvoi*, and perhaps the only undisputed result of this debate is that no overwhelming argument can be made on a purely logical basis either for its retention or its rejection. In the field of private international law, however, there is a tendency to reject *renvoi*. Geert van Calster, *European Private International Law, second edition*, Hart Publishing, Oxford, 2016, p. 8.

19 Erik Jayme & Carl Zimmer, 'Brauchen wir eine Rom 0-Verordnung – Überlegungen zu einem Allgemeinen Teil des Europäischen IPR – Symposium an der Universität

unlikely given the differences in national rules. When applying the Regulations, the practitioner must therefore also bear in mind the supremacy of the institutions of the general part, which are regulated differently.

The New PIL Code reacts to the EU context also in its 'General Provisions'.[20] For example, as regards the application of foreign law, the Commission's research program yielded the *Madrid Principles*[21] in 2010 which were defined as a framework for future EU legislation. These whose aspects were given great emphasis in the codification of the general institutions of the New PIL Code.[22] On the other hand, the Rome Convention (and later the Rome I Regulation) was the first to allow the legislator to take into account the mandatory rules of third countries in certain cases, a revolutionary innovation at the time. The rule which has become established in European contract law[23] is reproduced in Section 13(2) of the New PIL Code, which provides for the application of the mandatory rules of other states which are closely connected with the factual situation and are of decisive importance regarding its assessment.

None of the conflict-of-law Regulations adopted by the EU contain provisions on establishing the content of foreign law. In many cases, it appear true that conflict of laws, by designating the applicable foreign law, does not in fact solve the problem but much rather creates it.[24] Indeed, practice shows that the task of determining the applicable foreign law is no simpler than that of applying it. A review of Hungarian court practice revealed several anomalies, which may have been caused by the vagueness of the Old

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Bayreuth', *Praxis des Internationalen Privat- und Verfahrensrechts*, Vol. 43, Issue 1, 2013; Rolf Wagner, 'Do We Need a Rome 0 Regulation?', *Netherlands International Law Review*, Vol. 61, Issue 2, 2014; Stefan Leible & Michael Müller, 'The Idea of a 'Rome 0 Regulation'' *in* Andrea Bonomi & Gian Paolo Romano (eds.), *Yearbook of Private International Law Vol. XIV – 2012/2013*, Sellier, Cologne, 2013.

20 New PIL Code, Sections 1–12.

21 Principles for a Future EU Regulation on the Application of Foreign Law (The Madrid Principles of 2010). Project JLS/CJ/2007-I/03.

22 István Erdős, 'Illusion or Reality: The Interrelation of the Conflict of laws Rules and the Practices of State Courts and Arbitral Tribunals', *in* Miklós Király & Tamás Szabados (eds.), *Perspectives of Unification of Private International Law in the European Union*, ELTE Eötvös Kiadó, Budapest, 2018, pp. 30–31.

23 On the process, *see* Laura Maria van Bochove, 'Overriding Mandatory Rules as a Vehicle for Weaker Party Protection in European Private International Law', *Erasmus Law Review*, Vol. 7, Issue 3, 2014.

24 Péter Metzinger, 'Pro lege fori, avagy a kollíziós módszer elméleti szépsége és gyakorlati kudarca' *in* Sarolta Szabó (ed.), *Bonas iuris margaritas quaerens. Emlékkötet a 85 éve született Bánrévy Gábor tiszteletére*, Pázmány Press, Budapest, 2015, p. 216.

PIL Code in the absence of EU guidance. The Minister of Justice shall, at the request of a court or other authority, provide information on foreign law – according Article 5(2) of the Old PIL Code. The misunderstanding arose from the fact that, while a request from the Ministry was only one of the means available, the wording in the old legislation made it the general rule in the *fora*. The Ministry so addressed lacked the capacity to deal with the growing demand from legal practitioners. The new PIL Code therefore provides that

> "[t]he court may use any means to establish the content of the foreign law, in particular the submissions of the parties, expert opinions or the related information provided by the Minister of Justice".[25]

In order to prevent protracted proceedings, the criterion of reasonableness was inserted into the New PIL Code,[26] both as a lesson from the much-quoted *Karalyos and Huber case*[27] of the ECtHR and a requirement of the Madrid Principles.[28]

The expression of the autonomy of the parties in the institution of choice of law has been a traditional element and a fundamental principle of conflict of laws since the 20th century. The directly applicable EU conflict of laws Regulations are a means of ensuring a wide choice of law, which has also played a major role in the reform of Hungarian national rules.[29] As Mádl noted, "[the] institution of choice of law is the true synthesis of legal certainty and value-oriented legal thinking."[30] This balancing role of the institution is demonstrated by the fact that – having outgrown its traditional terrain, the world of contract law – it has become a fundamental instrument of conflict of laws in the last decades, also in the EU legal instruments, in an ever-widening range of situations (non-contractual obligations, family law, succession, infringement of personal rights, *etc.*).[31] The old private

25 New PIL Code, Section 8(2).
26 "If the content of the foreign law cannot be established within a reasonable period of time, Hungarian law shall apply." New PIL Code, Section 8(3).
27 *Karalyos and Huber v Hungary and Greece,* No. 75116/01, 6 April 2004.
28 István Erdős, 'The Non-application of Foreign Law under the General Part of the New Hungarian Private International Law Act', *ELTE Law Journal*, 2021/1, pp. 11–12.
29 Lajos Vékás, *A nemzetközi magánjogról szóló törvény kommentárja*, HVG, Budapest, 2020.
30 Ferenc Mádl, 'Érték vagy jogbiztonság a nemzetközi magánjogban', *Állam- és Jogtudomány,* Vol. 28, Issue 3, 1985, p. 424.
31 Lajos Vékás, 'Európai uniós és tagállami nemzetközi magánjog', *Magyar Jog*, Vol. 64, Issue 10, 2017, p. 594.

international law regime also allowed for a choice of law – albeit with sometimes contradictory and imprecise provisions – for a narrower range of legal relationships.[32] The New PIL Code provides for this instrument in a much greater number of cases (even in areas where it is less widespread, such as in the rules of the law of property), but more importantly, it brings a qualitative change. A section has already been inserted in the General Provisions, and since "the general provisions of private international law acts, as a coefficient of the conflict-of-law rules, encompass the whole formula of conflict-of-law rules",[33] this reflects a change of approach, in addition to the reasons of practicality.[34] As such, the rules in the specific part amount to a well thought-out and chiselled system.[35]

4.2. Specific Part

Traditionally, provisions of the specific part of conflict of laws are distinct from the more abstract rules of the general part and, mostly following the system of civil law, cover specific facts in different areas of life. It is in this area that EU law's influence is most pronounced.

If we want to present the events in a chronological order, we should start with the emergence of the contract law Regulations, as these punched the first significant hole in the overall structure of national legislation.[36] Since 11 January 2009, the law applicable to non-contractual obligations has been governed by Rome II. Less than a year later, Regulation Rome I in relation to contractual obligations, entered into force.[37] In Hungary, the legislative reaction to the Regulations – largely superseding the conflict-of-law rules of the Member States – was Act IX of 2009 amending the Old PIL Code.

32 László Burián, 'Általános részi jogintézmények szabályozása a régi és az új nemzetközi magánjogi Kódexben', *Közjegyzők Közlönye*, 2018/3, pp. 23–24.

33 Mádl 1968, p. 302.

34 With this solution, the main rules on choice of law do not need to be repeated each time in each specific section.

35 Miklós Király, 'A személyek és a felek autonómiája az új nemzetközi magánjogi törvényben', *Jogtudományi Közlöny*, Vol. 73, Issue 12, 2018, p. 513.

36 On the Hungarian judicial practice of Rome I and Rome II, *see* István Csongor Nagy, 'EU choice-of-law rules before Hungarian courts: contractual and non-contractual obligations', *Iustum Aequum Salutare*, Vol. 18, Issue 2, 2022, pp. 101–119.

37 The Regulation lays down rules for contracts concluded after 17 December 2009.

The amending law was sharply criticised in the academic literature.[38] One of the reasons for this was that the legislator, rejecting the possibility of modernization long advocated by academics, retained the principle of *lex loci delicti commissi*, which had become obsolete (the rule had remained unchanged since the Old PIL Code was drafted) for the obligations of non-contractual tort and unjust enrichment, and ordered the law applicable to the place and time of the act or omission giving rise to the tort or delict to be the law applicable. This created a two-channel system which, in cases not covered by Rome II, provides for a different law to be applied in a technically unjustified way. The situation has been resolved by the New PIL Code, which, in line with the rules of the Regulation, now provides as a general rule that the law of the State "in the territory of which the effect of the legal fact giving rise to the obligation emerged" applies (*lex loci damni*). The exception to the general rule has also been redefined, for a similar reason, by replacing shared nationality by the law of the shared habitual residence.[39]

Following the law of obligations, directly applicable Regulations were adopted in the fields of family law and succession law, removing these matters from the scope of the national conflict-of-law rules. 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 applies from 18 June 2011. It adopts a specific solution in respect of conflict-of-law rules: it does not list them itself but refers to the 2007 Hague Protocol.[40] Since 21 June 2012 the law applicable to divorce and legal separation has been governed by Rome III, adopted in the form of enhanced cooperation.

The Succession Regulation is the latest mixed Regulation, which also addresses conflict of laws aspects. The Succession Regulation concerns

38 Lajos Vékás, 'A nemzetközi magánjogi törvény módosításáról', *Magyar Jog,* Vol. 56, Issue 6, 2009, p. 6; László Burián, 'Nemzeti tradíció, modernizáció és európai jogegységesítés', *Jogtudományi Közlöny*, Vol. 66, Issue 6, 2011, pp. 328–330; Lajos Vékás, 'Egy nemzetközi magánjogi törvény megalkotásának néhány elvi kérdéséről', *Jogtudományi Közlöny*, Vol. 70, Issue 5, 2015, pp. 293–296; Tamás Dezső Czigler, 'Vélemények nemzetközi magánjogi kódexünk 2009. évi módosításáról és az európai polgári eljárásjog fejlődési irányáról', *Magyar Jog*, Vol. 57, Issue 4, 2010, pp. 247–253.

39 New PIL Code, Sections 60–61.

40 Article 15 of the Regulation. The Community and its Member States took part in the negotiations which led to the adoption of the Protocol on the Law Applicable to Maintenance Obligations on 23 November 2007 in the framework of the Hague Conference on Private International Law.

jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and establishes the European Certificate of Succession. It regulates succession relations for deceased testators with effect from 17 August 2015.

4.3 Gaps in EU Conflict-of-law Rules

As we have seen, the vast majority of the specific part of conflict of laws is governed by EU law inspired legislation, at least in the area covered by their scope.[41] The EU's work on the unification of conflict of laws has not yet reached the area of property law, company law, most intellectual property law,[42] the law of persons and the law of names and certain family law issues.[43]

41 It should be noted that in many cases delimitation issues arise, which it is up to case law to resolve. This is illustrated by the 2019 case cited by Szőcs, in which the Hungarian legislator was faced with the question of applicable law. More specifically, whether the adoption has resulted in the termination of the legal relationship of succession between the testator and his or her adopted biological child, adopted abroad by another person. In the case at hand, the testator, who died in 2019, was a Hungarian national with his habitual residence in Hungary, one of whose two biological children was adopted in 1989 in Germany by a German national. Under Article 1(2)(a) of the Succession Regulation, the scope of the Regulation does not extend to the personal status of natural persons or to family relationships and relationships deemed to have comparable legal effects under the law applicable to such relationships. According to the interpretation of Hungarian case law, this exclusion does not apply to the succession effects of legal relationships based on the status of a person or family law. Thus, the legal effects of a particular legal relationship based on the status of a person or family law relationship in the field of succession are already considered to be a matter falling within the scope of the Succession Regulation. Tibor Szőcs, 'A nemzetközi öröklési jog új szabályainak alkalmazása során a joggyakorlatban felmerülő néhány probléma', *in* Zoltán Nemessányi (ed.), *Nemzetközi magánjogi évkönyv 2022*, HVG ORAC, Budapest, 2022, pp. 195–196.

42 The areas covered are the following: the Rome II Regulation in Article 8 deals with intellectual property infringements in general, setting out the applicable law. The European system of design protection was established by Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, which is currently under review: the Commission submitted its proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002.

43 On the territorial and substantive scope of the Regulations and the regulatory gaps created by them: Vékás 2017, pp. 591–592; Mátyás Császár, 'Az uniós jogforrások hatása a nemzetközi magánjog általános részére', *Magyar Jog*, Vol. 60, Issue 11, 2013, pp. 670–672.

It should be noted, however, that even Hungarian national conflict-of-law rules not covered by EU legislation are subject to the influence of EU conflict-of-law trends.[44] In this context, the rise of the habitual residence principle should be highlighted.[45] The trend in the internal conflict-of-law rules of the Member States of the EU towards replacing the connecting factor of nationality by that of habitual residence[46] can be traced back to solutions in international law. The 'conquest' of habitual residence began with the conventions adopted by the Hague Conference on Private International Law and has since been incorporated into EU instruments.[47] Its popularity continues despite the fact that there is no uniform interpretation of the definition, which varies from one legal source to another.[48]

The former Hungarian private international law legislation, adopting the mainstream scientific, codification approach of its time, was based on the principle of nationality. The New PIL Code opens up towards the principle of habitual residence: it provides a definition in the General Provisions[49]

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44 Rules made under the residual power of the legislator also seek to adapt to EU Regulations, both in terms of content and form (*e.g.* structure). Tamás Dezső Ziegler *et al.*, 'The New Hungarian Private International Law Code. A Mixture of Modern and Traditional Solutions', *Yearbook of Private International Law*, Vol. 29, 2017/2018, 2018, pp. 348–350.

45 Cavers highlights the following social phenomena as having stimulated the spread of the habitual residence principle: *(i)* the millions of displaced people who were forced to leave their countries as a result of the two world wars; *(ii)* the 'spread' of dual citizenship; *(iii)* the increase in the mobility of people due to economic pressures. David F. Cavers, 'Habitual Residence: A Useful Concept', *American University Law Review*, Vol. 21, Issue 8, 1972, p. 476.

46 Tamas Szabados, 'EU Private International Law in Hungary: An Overview on the Occasion of the 15th Anniversary of Hungary's Accession to the EU', *ELTE Law Journal,* 2018/2, p. 47.

47 It was first applied in matrimonial matters and in proceedings concerning parental responsibility for children of both spouses in a common-law relationship by Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses. Peter Stone, 'The Concept of Habitual Residence in Private International Law', *Anglo-American Law Review*, Vol. 29, Issue 3, 2000, p. 342. "Habitual residence is the most frequently occurring connecting principle in EU regulations and international treaties dealing with private international law." Draft Proposal of the New PIL Code, Section 3.

48 On the autonomous interpretation of habitual residence, *see* Pippa Rogerson, *Collier's Conflict of laws. The conflict of laws of conflict of laws, Fourth Edition*, Cambridge University Press, Cambridge, 2013, pp. 32–37.

49 "For the purposes of this Act, […] the habitual residence of an individual is the place where, based on all the circumstances of the given legal relationship, the actual center

and appears in the specific rules on several occasions, which is a significant change. However, the principle of nationality has remained the main rule;[50] the rule has not gone so far as to repeal it, unlike, for example, the new Czech private international law regime has done.[51]

To continue, the definition of the law governing legal status of names is another area of conflict of laws where, albeit not yet regulated, but nevertheless strongly influenced by EU law. The CJEU's case law, and more specifically *Garcia Avello*,[52] was the inspiration behind the related 2009 amendment of the Old PIL Code.[53] In drafting the new law, the legislator sought to harmonize the rules with the case law that had emerged in recent years (see *Grunkin and Paul*[54] or the later *Bogendorff*[55]). The New PIL Code provides for detailed and flexible rules: the most striking change is that it gives parties a wide margin of autonomy and allows for a wide choice of law.

Conflict of laws issues related to the cross-border mobility of businesses are not regulated by EU law, but the outcome of two Hungarian-initiated preliminary rulings has strongly influenced the legal environment in this

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of the individual's life is; when determining this, the facts indicating the intention of the individual concerned shall also be taken into account." New PIL Code, Section 3(b).

50 The case law of the CJEU has established that it is contrary to the prohibition of discrimination on grounds of nationality under Article 18 TFEU for a connecting rule to favor nationals of a forum over nationals of other countries. Therefore, the Code stipulates that in determining the personal law of individuals with multiple nationalities, the law to be considered is the one with which the individual has the closest connection, rather than automatically applying Hungarian law, as was done under the old conflict-of-law rules. It is important to note, however, that the principle of nationality as a connecting factor is not prohibited in itself. Vékás 2017, p. 593.

51 However, the law of domicile, which played a prominent role in the Old PIL Code, is no longer a conflict-of-law principle in the New PIL Code.

52 Judgment of 2 October 2003, *Case C-148/02, Garcia Avello,* ECLI:EU:C:2003:539.

53 According to Section 10(2) of the Old PIL Code, "The personal law of a person shall govern the use of his name. At the request of the person concerned, the law of the other State of which he is also a national shall apply to the registration of his name at birth, in which case Section 11(2) shall not apply." Section 11(2) is the rule already referred to, as amended in 2009, providing "[i]f the individual has multiple nationalities, and one of those nationalities is Hungarian, his personal law shall be the Hungarian law, unless the individual has a closer connection with his other nationality."

54 Judgment of 14 October 2008, *Case C-353/06, Grunkin and Paul,* ECLI:EU:C:2008:559.

55 Judgment of 2 June 2016, *Case C-438/14, Bogendorff,* ECLI:EU:C:2016:401.

area. The judgments in *Cartesio*[56] and *VALE*[57] have helped clarify the relationship between EU law and national law as regards the law applicable to companies. Subsequent case law of the CJEU[58] has led to the incorporation principle being largely superseded by the real seat doctrine in the relationship between the company and the host Member State.[59]

5. Conclusions

Over the past twenty years, the world has changed: the social and economic landscape is vastly different. As far as the world of conflict of laws is concerned, EU legislation has had an unprecedented impact on national legislation in the Member States. It should be noted that conflict of laws is a part of the legal order that is not directly affected by political, economic and social change.[60] Conflict of laws norms operate using an indirect, referential method, and they are less socially sensitive compared to substantive legal norms; their economic and social sensitivity thresholds are lower.[61] Nevertheless, the EU legislative environment has forced Hungarian regulation to undergo radical renewal: the ever-changing and expanding range of the 'large and variegated army' (Mádl) competing with our internal autonomous legislation has resulted in the Hungarian internal legislation being undermined. National legislation has become fragmented and vague,[62] challenging and often misleading the practitioner as to the source of the applicable law.[63]

56 Judgment of 16 December 2008, *Case C-210/06, Cartesio,* ECLI:EU:C:2008:723.
57 Judgment of 12 July 2012, *Case C-378/10, VALE,* ECLI:EU:C:2012:440.
58 Judgment of 9 March 1999, *Case C-212/97, Centros,* ECLI:EU:C:1999:126; Judgment of 5 November 2002, *Case C-208/00, Überseering,* ECLI:EU:C:2002:632.
59 Szabados 2018, pp. 54–55.
60 Burián 2011, p. 322.
61 Ferenc Mádl & Lajos Vékás, *Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga*, ELTE Eötvös Kiadó, Budapest, 2018, p. 63.
62 "However, ad hoc amendments (approximating EU law) have not always been based on a uniform principle and have not led to a consistent and technically sound body of norms." Draft Proposal of the New PIL Code, General Explanation.
63 The phenomenon has also been dealt with in several articles, *e.g.* János Bóka, 'A Kúria és az ítélőtáblák joggyakorlata a nemzetközi magánjogról szóló 1979. évi 13. törvényerejű rendelettel kapcsolatban', *Kúriai Döntések*, 2015/6, pp. 655–656; János Bóka, 'A Kúria és az ítélőtáblák joggyakorlata a nemzetközi magánjogról szóló 1979. évi 13. törvényerejű rendelettel (Nmjtvr.) kapcsolatban II. rész – Az alkalmazandó joggal kapcsolatos kérdések', *Kúriai Döntések*, 2015/8, pp. 882–883.

This problem was emphasized among the reasons for the creation of the New PIL Code, and its main purpose was to remove uncertainties. This overview of the impact of EU legislation on national conflict of laws shows that a progressive, multi-layered regulatory system has emerged. This system is constantly evolving and expanding, providing a well-functioning example of European integration and cooperation.