

*THE INTEGRAL CHARACTER OF EUROPEAN UNION PRIVATE
INTERNATIONAL LAW*

*The interaction among rules on jurisdiction, conflict-of-laws, recognition and
enforcement of decisions and cooperation among authorities.*

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Abstract

The European Union, when dealing with a civil relationship having an international feature, tends to give rise to an integral private international law discipline, by setting forth uniform provisions concerning all the areas traditionally covered by private international law – jurisdiction, conflict of laws, recognition and enforcement of decisions, as well as cooperation among authorities.

Such rules are contained either into two distinct, although inextricably linked, instruments – traditionally the first one dedicated to the issues of jurisdiction and recognition and enforcement of decisions, the second one containing conflict-of-laws provisions –, or in a single, all-encompassing instrument.

The research purports to highlight the distinctive features, the functions as well as the limits of the integral character of European Union private international law.

The first part is devoted to the analysis of the different methods of coordination among legal systems elaborated by legal scholars. Furthermore, it deals with the re-construction of the object and purpose of private international law, as well as of the interaction among the functions pursued by the latter, in the framework of two paradigmatic national experiences – the Italian and the German one.

The second part of the research concerns the analysis of the integral approach adopted by the European Union when creating uniform private international law instruments.

In this respect, it is possible to isolate three main functions pursued by the integral approach, within the framework of EU private international law.

First, the integral character purports to confer order in a fragmented and sometimes disorganic legislative scenario. Such a goal is mainly pursued, in the European perspective, through two different techniques: a) the use of notions common to the different uniform private international law instruments; b) the use of functional notions, i.e., notions contained in a regulation called to fulfill only one of the functions of private international law, for the interpretation of which it is necessary to refer to rules contained in a different instrument, dealing with another private international law function.

Secondly, the integral approach to private international law constitutes a factor promoting mutual trust between the Member States as well as between those individuals who, within the framework of the area of freedom, security and justice, set up cross-border private relationships. The interaction among functions allows, in this respect, a higher degree of certainty and predictability, enhancing mutual trust and contributing to the transnational mobility of individuals and facilitating trade.

Thirdly, the integral character of private international law seems to have a protective function for those individuals – such as the deceased and the minor – who can't – yet, or any longer – validly express their wills.

Finally, the research deals with the limits of the sole integral approach of European Union private international law. It seems, in this respect, necessary to overcome the traditional opposition between the traditional conflictual method – in its integral dimension promoted by the European Union – and the recognition method. Only a synergic strategy between uniform private international law rules – having an integral character – and the recognition method, allows to best fulfill the objectives pursued by the European Union through the creation of instruments in the field of judicial cooperation in civil and commercial matter.