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Habitual Residence in the Context of EU Private International Law

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Abstract

Habitual residence is a connecting factor that is employed to determine which legal system is applicable in cases of transnational legal relationships where a conflict of laws occurs. The term was created as a contrast to the better established nationality and domicile, and its adaptability and flexibility have made its popularity and usage rise, not only in the general Private International Law field, but also within the smaller EU Private International Law community. The issue the term encounters is that, even though it has been employed in Private International Law instruments for over a century, and in the EU for over three decades, it seemingly lacks the definition and reliability necessary to ensure juridical certainty in cross border relations. This essay looks to determine exactly what the term habitual residence means within the context of EU Private International Law, as established by Regulations and European Court of Justice decisions, as well as the problems and solutions that arise from that meaning.

Key words: Habitual Residence, Domicile, Nationality, Conflict of Law, European Union Law, Private International Law, European Union Private International Law.

Resumo

Residência habitual é um fator de conexão utilizado para determinar o sistema jurídico aplicável em casos de relações jurídicas transnacionais onde ocorre conflito de leis. O termo foi criado em contraste com os melhor estabelecidos nacionalidade e domicílio, e a sua capacidade de adaptação e flexibilidade aumentaram a sua popularidade e uso, não só no campo de Direito Internacional geral, mas também dentro da pequena comunidade de Direito Internacional Privado da União Europeia. O problema que o termo encontra é que, ainda que seja utilizado por instrumentos de Direito Internacional Privado há mais de um século, e na UE há mais de três décadas, não tem aparentemente a definição e confiabilidade necessárias para assegurar certeza jurídica em relações transfronteiriças. Este trabalho tenta determinar exatamente o que o termo residência habitual significa dentro do contexto de Direito Internacional Privado da UE, como estabelecido pelos Regulamentos e por decisões do Tribunal Europeu de Justiça, assim como os problemas e soluções surgem desse significado.

Palavras-chave: Residência Habitual, Domicílio, Nacionalidade, Conflito de Lei, Lei da União Europeia, Direito Internacional Privado, Direito Internacional Privado da União Europeia.

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Glossary

ECJ	European Court of Justice
EU	European Union
PIL	Private International Law

1. Introduction

The subject matter of this essay derives, as is probably the case in many dissertations, from a smaller paper written about Regulation (EU) 650/2012 for a Private International Relations class. The Regulation only came into force a month or so after the delivery of the paper in question, and as such the paper in question was a run of the mill analyses of the Regulation and its projected impact in EU law, which was simultaneously predictable and not. This Regulation was meant to streamline the European succession problem, and in certain ways it did, being somewhat innovative in certain areas, but vague and lacking in others. This vagueness was due, in good part, to the term that it chose as the defining connecting factor that decides what country has jurisdiction over the succession. That term was habitual residence, the ubiquitous legal expression that is the focus of our essay.

The expression habitual residence has become quintessential in the private international panorama, finding its way first into EU Law, and eventually into EU Private International Law, as the preferred connecting factor that determines the applicable jurisdiction, specifically in cases of conflict of law. Initially used in Hague Convention of 1896, the term has gained traction within the Private International Law community, being included in multiple Hague Conventions on Private International Law, as well as EU Directives and Regulations. The term is meant to be flexible in a way that is preferred in today's increasingly more mobile EU citizens, thus its reigning position as the current preferred connector to determine the law applicable to personal status in the issue of resolution of conflicts of law of natural individuals. There's only small problem.

Habitual residence is a frequently used term that is hardly ever defined.

It seems difficult, if not impossible, to fathom how a term can be used over and over again in the international panorama with not one specific definition, but somehow that fate has fallen upon habitual residence. The expression is plastered over diplomas spanning over a century, increasingly so with time, and yet left purposefully ambiguous to the point of juridical insecurity; the only truly comprehensive definitions given over time have been given via court decisions or legislative revisions.

The objective of this article is to pinpoint those definitions as given by European Union Law, either by legislation or the European Court of Justice, in the field of EU Private International

Law. The task of figuring out the prevailing definition of habitual residence accepted by the International community at large would be a herculean task too ambitious for an endeavor as limited as ours, therefore limiting our research to the Private International Law sector of the European Union seemed the right decision.

In order to keep some semblance of coherence in a subject that sorely lacks it, this article will start by referencing the field of conflicts of law, and how its resolution has gone from relying on traditional connecting factors such as domicile and nationality, to preferring the relatively new habitual residence. The origin and current uses of habitual residence in international private law in general will be briefly surmised, in a bid to understand where the term came from and why.

After establishing the places from which habitual residence arose, the article will shift its focus to the European Union, initially analyzing where the EU first included this term, to finally approach the usage in both the Regulations and the corresponding ECJ clarifying cases that pertain to Private International Law. The main objective of this essay is to figure out what habitual residence means in within EU Private International Law, the way its meaning can diverge from the one the remaining Private International Law field attributes to it, as well as what the future of the term in the field.

With a bit of luck and a healthy dose of patience, at the end of this essay, and after combing through the history and present condition of habitual residence, we will find the way habitual residence is perceived and employed by the EU in the field of Private International Law.

2. Resolution of Conflicts of Law and Habitual Residence

Private International Law isn't but a systematic name given to conflict of national laws, in the way that both terms relate to private relationships that touch different legal jurisdictions.[1] Thus, situations of conflicts of law occur when one situation has a relevant connection with the private law of more than one jurisdiction, and thus more than one set of legal rules. The connecting factors of such a situation can derive from acts, events, property or people, ultimately dividable between those in which the personal connection is the factor that defines the applicable law, and those in which the state of affairs is the defining factor. [2] As a way to narrow down the scope of our research, we will turn to the personal status matters as the focus of our analyses.

As defined by Professor Adrian Briggs in Conflicts of Law, the connecting factors that determine the law applicable to personal status are: nationality, domicile, simple residence, and habitual residence.[3] These factors look to determine which country the individual in question is the closest to, which determines what law is applicable to the conflict in question. Different jurisdictions employ these connecting factors in different manners, making it impossible to make accurate sweeping generalizations, but experience has showed us that common law countries tend to rely on domicile, while a portion of European civil law countries prefer nationality.[4] [5] [6]

Nationality, as the most basic legal relationship a person has with their country of origin, is a logical connecting factor that ties a person to the country where they are from as supposedly

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[1] (Collier, 2001, p.5) "Two names for the subject are in common use; however they are interchangeable." Professor Collier goes on to say that conflict of law is misleading, because the purpose of the field is to eliminate such conflicts, and that Private International Law is more common in Europe, due to oversimplification of the field.

[2] (Stone, 2006, p.3) Professor Stone determines that the area of PIL addresses problems which arise "(…) in connection with legal relationships governed by private law, where a factual situation is connected with more than one country." He further explains that these situations stem from direct jurisdiction, choice of law or foreign judgements.

[3] (Briggs, 2008, p.22)

[4] (Hill and Ní Shúilleabháin, 2011, p.316) "In England and most common law countries, the traditional personal connecting factor is domicile (...) In contrast, most of continental Europe and other civil law countries have traditionally used nationality as the basic connecting factor, especially for choice of law purposes; the personal law is the law of the country of which the person is a citizen."

[5] Such is the case of Portugal, whose International Private Law has, according to Professor António Marques dos Santos, "the element of connection nationality (as) the most important one relating to matters of personal status of natural people (…)" (original text in Portuguese)
(Marques dos Santos, 2001, p.51)

[6] Even though our analyses won't focus on it, it bears referring that there is no generalizing when it comes to civil law countries, and while continental EU civil law based countries tend to be partial towards nationality, the same cannot be said for all civil law countries. Professor Lima Pinheiro wrote that "The principle of domicile dominates within the systems of Common Law and in the South America States."
(Pinheiro, 2015, p.40)

the country where they belong. The fact that it is easily ascertainable makes it a good connector, since it means that it can be determined without placing the burden of proof on either party of the conflict or having to resort to the help of a court.[7] In fact, "the main reasons for the preference for nationality law are the bigger stability of the nationality connection element, the bigger certainty and the ease in implementation of that connection element, the political interest of the emigration States and the democratic principle."[8] Professor Lima Pinheiro gives a good summary of the biggest pros of nationality as a connection element, continuing to say that since it is not easy to change, nationality has constitutes better continuity of juridical situations of personal status, being able to be easily determined.[9] However, and even though this connecting factor still finds some use in EU law, it is not the most practical of connectors; not only is it difficult to employ in cases of dual nationality and statelessness, but also situations where people retain nationality while losing all effective connections to a country are frequent, rendering it useless as an indicator of the individual's home base.[10] [11] In situations where the people have lost their effective connection with their State of nationality, "(…) the competence of the nationality law is contrary to the idea of closest connection and the interests of the person in case."[12] Considering the ever-growing rates of migration worldwide, it seems more than normal that nationality has faltered and lead the way to other connecting factors, ones that better reflect the reality of each individual's circumstances and better indicate which jurisdiction he is the closest to. Already in 1967, Anton said that:

> *The principle of nationality achieves stability, but by the sacrifice of a man's personal freedom to adopt the legal system of his own choice. The fundamental objection to the concept of nationality is that it may require the application to a man, against his own wishes and desires, of the laws of a country to escape from which he has perhaps risked his life.* [13]

"The general meaning of domicile is 'permanent home'".[14] Domicile, while less set in stone than nationality, is also a somewhat rigid concept that entails more than mere residence. Surprisingly enough, and as Professor Frada de Sousa wrote, "Until the XIX Century, with the

[7] (Cheshire, North and Fawcett, 1987, p.170)
[8] (Pinheiro, 2015, p.42) Original text in Portuguese.
[9] (Pinheiro, 2015, p.43) Original text in Portuguese.
[10] (Briggs, 2008, p.27)
[11] (O'Brien and Smith, 1999, p.35)
[12] (Pinheiro, 2015, p.43) Original text in Portuguese.
[13] (Anton, cited in Morris, 1984)
[14] (Collier, 2001, p.37)

rising of modern European civil codifications, in particular with the adoption of the French civil code of 1804, domicile remained, still in line with statutory thinking, as the dominating connection in various European States, to determine the law that regulated matters relating to the personal status of singular people". [15] Everyone has a domicile, and it is impossible not to have one or to have more than one simultaneously, which made it an appealing connecting factor; the difference between domiciles of origin, dependency, and choice makes it adapt to where the individual in question is permanently living, not only where they are from, and limits it to one place alone, eliminating the possibility of repetition.[16] [17] However, though domicile can change, the rigidity of its characteristics, the need to prove both residence and intent, makes it hard to do so. In fact, according to Professor J. H. C. Morris, "An existing domicile is presumed to continue until it is proved that a new domicile has been acquired.".[18] This means that in order for a new domicile to be accepted, it has to be proved by the party interested in its recognition, and often approved by a court of law. While the requisites make domicile a solid connecting factor, easy to determine if not easy to change, they also make it inflexible to the point of useless. In certain situations, it's not necessarily important to determine where an individual might be interested in residing for the rest of their natural lives and the place they consider home, but the actual place where they lived and had their everyday lives, if only for a period of time that was not meant to be eternal. In those cases, domicile falls short.

Residence is the answer to the shortcomings of both nationality and domicile. In this way, residence can be divided into two distinguishable terms, one more used than the other, and those are ordinary residence and habitual residence.

Ordinary residence is a term seldom employed but still present in the conflict of law field, being more regular in common law jurisdiction such as Britain.[19] The precise meaning of ordinary

[15] (Frada de Sousa, 2012, p.73) Original text in Portuguese.
[16] (Briggs, 2008, p.22) "As a matter of legal definition, every person has a domicile and, subject to what appears below, no person can have more than one domicile at any time."
[17] Domicile of origin corresponds to the domicile of the father (if the parents are married) or the mother (if the parents are unmarried), even if that country does not correspond to that of the child's birth. This domicile can change while the child is still a dependent, becoming a domicile of dependency, which follows the same rules. Domicile of choice is acquired when an individual moves to a country different than that of domicile of origin or dependency, and intends to remain there permanently. In order to fulfil the requirements for domicile of choice, both residence and intent must be taken into consideration.
(Harding, 2014, p.15-19)
[18] (Morris, 1984, p.17-18)
[19] (Cheshire, North and Fawcett, 1987, p.171)

residence is at times difficult to pinpoint, being almost exact to say that is amounts to mere residence; "Ordinary residence does not connote continuous physical presence, but physical presence with some degree of continuity, notwithstanding occasional temporary absences".[20] Ordinary residence is thusly a simple residence, which makes it possible to have more than one simultaneously, something that makes it less definitive than the alternatives, and as such less used.[21]

Habitual residence, on the other hand, has gained popularity in recent decades for its adaptive abilities that simultaneously require a level of certainty but are more flexible to people's ever-changing circumstances. Seen as domicile lite, habitual residence seems to take the best of domicile (the continuous presence in a given location) without the rigidity (the intent), and thus a better alternative to employ in resolution of conflicts of law. This is not to say that habitual residence does not require any intent on individuals, because it does, but while domicile focuses on the intent to remain in one place and never live anywhere else, habitual residence only requires the individual to have intent to live in a place in the present and for the time being.[22] Yet, as a way to distance it from the laxity of ordinary residence, habitual residence invokes a degree of stability and permanence, which extends throughout time, thus seemingly making it impossible to have simultaneously two habitual residences.[23] However, while the degree of permanence could eliminate the issue brought up by ordinary residence of the possibility of more than one residence, there is no consensus on this matter on whether it does or not. [24]

3. The Problem with Habitual Residence

Looking at all connecting factors as a whole, habitual residence seems like the most useful one to be employed as a connecting factor in conflicts of law. It lacks the immutability of

[20] (Cheshire, North and Fawcett, 1987, p.172)
[21] (Morris, 1984, p.35-36)
[22] (Cheshire, North and Fawcett, 1987, p.173)
[23] (Pinheiro, 2015, p.513)
[24] Some authors, Rebecca Probert believe in the possibility of more than one habitual residence simultaneously, while others, like Luis de Lima Pinheiro, J. G. Collier and Adrian Briggs, do not.
(Briggs, 2008, p.34) "It is probably that it indicates only one place (…)"
(Collier, 2001, p.56) "A person may have only one habitual residence but may have more than one ordinary residence at any one time."
(Probert, 2011, p.67) "These differences between the concepts of habitual residence and domicile mean that a person may be habitually resident in more than one place (if he or she consistently maintains two homes)."

nationality, the rigidity of domicile and the laxity of ordinary residence. In spite of this, habitual residence is not without its faults (if it were, this essay would have no reason to be), and they can be found in the very same reason why it's a good criterion in the first place: its lack of clear definition, which can be traced back to the origin of the term.

Habitual residence originated in the Hague Convention on Civil Procedure of 1896. Article 21 of the 1905 Convention on Civil Procedure, the improved version of the 1896 Convention, stated that:

"In all cases, the certificate or declaration of need must be issued or received by the authorities of the habitual residence of the foreigner, or, failing these, by the authorities of his current residence (…)."[25]

After that first Convention, the expression appeared in numerous conventions, be them no longer in use, as is the case of so called "Old Conventions", like the Guardianship Convention of 1902 and the Deprivation of Civil Rights Convention of 1905, as well as the new ones, such as Convention of 1 March 1954 on Civil Procedure. In all of them, the term lacked any definition to speak of. [26] [27] The purposely vague nature of habitual residence has been praised for the way it easily adapts to any and all situations the conventions might solve. Even if it is generally accepted that it is up to the State to determine habitual residence, habitual residence still has an autonomous meaning as pertaining to the Conventions that is independent from its meaning in countries' domestic law.[28]

Yet, at the risk of sounding overzealous in defending legal security, this almost complete lack of definition across the board can do more ill than it does good. As was visible in several cases overseen by EU and national courts, the lack of clarity regarding the expression led to situations where the place of habitual residence is not clear, or even where the courts of two different countries to consider themselves competent to decide on the case.[29]

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[25] Original text in French.
[26] Occasionally, such as in Article 3 of the Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, it has been equated to domicile.
[27] A full list of Hague Conventions on Private Law where the term was employed can be found in Annex I.
[28] (Lowe and Douglas, 2015, p.1040) "(…) the concept is properly considered to have an autonomous rather than a domestic law meaning."
[29] Citing recent examples, in ECJ case C-376/14 both French and Irish Courts considered themselves competent to act, since both considered that the child in question had habitual residence in their country, while in the matter of D

It seemed inevitable that when the term started being employed by EU law, it initially followed the same pattern of unintelligibleness and confusion that has tainted habitual residence from the very beginning.

(A Child - Jurisdiction - Habitual Residence) [2016] EWHC 1689 (Fam) the British Court had to decide who has jurisdiction, the British courts or the French, once again depending on questions regarding a child's habitual residence.

4. European Union Law

4.1. Nationality and Domicile in EU Law

Just as it occurs in the rest of the field of Private International Law, EU Private International Law also uses nationality and domicile as a personal connectors, as well as habitual residence.

Nationality, or citizenship as it is frequently called in Community law, makes several appearances throughout EU Law, many of them as a connector that determines the law applicable to personal status in matters of conflict of law. Even though it is a fairly stable element, the previously mentioned issues that exist in the general field of Private International Law persist in the smaller EU playground. Between the possibility of multiple nationalities, the rarer case of statelessness, and the rigidity that makes it hard to adapt to a person's circumstances, nationality has lost favor as the preferred connection element in EU Private International Law for directly determining jurisdiction. [30] Nowadays, nationality can often be found as a connector in situations where individuals can choose the applicable law, something which in the area of EU Private International Law happens in Regulation (EC) No 4/2009, Regulation (EU) No 1259/2010, and Regulation (EU) No 650/2012, but it can also be used as a main connector, as occurs in Regulation (EU) No 1215/2012. In all three Regulations where nationality is used as an alternative, it is employed side by side with habitual residence, while in the case where it is a main connector, it appears alongside domicile. This seems a wise way of using nationality in the context of conflicts of law; not by forcing it as the most adequate connector in all circumstances, but by letting those who still feel a bigger connection to their state of nationality pick it and its laws as the one with jurisdiction.

Domicile is yet another element which makes a number of appearances in EU Law, being more frequently employed in EU Private International Law instruments than nationality.[31] The rigidity that plagues domicile, its immovability, as well as the difficulty in proving both presence and future intent necessary to determine domicile, make it a less than ideal connector, and yet it can be found in Regulation (EC) No 1346/2000 of 29 May 2000 (as well as the recast Regulation (EU) 2015/848), Regulation (EC) No 44/2001 (along with the recast Regulation (EU) No 1215/2012), Regulation (EU) No 650/2012, Regulation (EU) 2016/1104 and Regulation (EU)

[30] (Mańko, 2013)
[31] Ibidem

2016/1103. Considering the expansion of habitual residence inside EU Law, due to its better suitability and adaptability, the insistence on using domicile may seem strange. Recital 18 of Regulation (EC) No 4/2009 sheds some light on the subject, determining that not only tradition was to blame, but the attachment that some EU Member States have to domicile: "For the purposes of this Regulation, it should be provided that in Ireland the concept of 'domicile' replaces the concept of 'nationality' which is also the case in the United Kingdom (…)". The phrasing seems to almost equate domicile with nationality, which makes sense; for common law countries, domicile has a permanence that is unrelated to physical location, but relates more to the place where they ultimately belong, not specifically the place they reside in. In this way, keeping domicile as a connecting factor along with habitual residence is akin to keeping nationality with habitual residence, something that since they are not equivalent terms, is not redundant, but inclusive.

4.2. Habitual Residence in EU law

It seems that in order to understand the role habitual residence has in the EU norms on resolution of conflict, one must first look at how the EU has dealt with that ubiquitous term habitual residence regarding this subject, and for that we must look at its sources of law. Since habitual residence is not found in the EU's primary source of law (Treaties), we must look first at the secondary (Directives and Regulations), and then supplementary sources of law (European Court of Justice case-law). [32]

4.2.1. The Origin of Habitual Residence in the EU: Regulation (EEC) No 1408/71 of the Council on Social Security (followed by Regulation (EC) 883/2004 and Regulation 987/2009)

In order to ascertain what habitual residence means regarding one specific subject matter in EU Law, one necessarily has to look at the origin of the term and its evolution.

Regulation (EEC) No 1408/71 of the Council of 14 June 1971, on the application of social security schemes to employed persons and their families moving within the Community, was the

[32] (Maisto, 2010, p.45) Regarding the word residence, but also applicable to habitual residence.

first piece of EU law that employed habitual residence as the only connecting factor that determines what law is applicable and what Member State is competent to rule, in this case, matters regarding social security.[33] This regulation was replaced by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004, on the coordination of social security systems.[34] We will not delve into the specifics of these Regulations, or how Regulation (EC) No 883/2004 improved and changed upon Regulation (EEC) No 1408/71 (that would undoubtedly be another lengthy article in itself), but stick to analyzing the way in which they employed and interpreted habitual residence.

Articles 1 of both Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 state that, for the purposes of the Regulations, residence means habitual residence (specified in the latter Regulation as the place where a person habitually resides), and that stay translates to temporary residence. Not much changed from the original to the newest version of the definitions, just a small adjustment to the wording and a different letter preceding it. The subheading equates residence to habitual residence when relating to this Regulation, an unusual move when considering that both terms have distinct meanings. Predictably, this brought on questions regarding what exactly habitual residence entailed, cases brought up to the ECJ as early as 1975 and as late as 2016. Considering that all three regulations enunciated treat the same subject matter and thusly have the same interpretation of the terms, we will analyze cases relating to all of them in parallel.

The very first question of case C-27/75 was regarding the meaning of habitual residence under article 1 (h) of Regulation No 1408/71. Unfortunately, the Court itself didn't address the problem, all the remarks relating to habitual residence belonging to the Commission. Alas, even if not binding, the Commission's opinion relating to "The meaning of the expression 'habitual residence' remains to be established in the context of the regulation concerned" continues to be of interest, and as such we will look at it. Quoting case C-13/73, the Commission said from that case arose the conclusion that "(…) the permanent residence of the worker must be understood as being the place where he 'has established the permanent center of his interests and to which he returns in

[33] Factually speaking, the honor might belong to Regulation (EEC) No 1408/71's predecessor Regulation (EEC) No 3/58 on social security for migrant workers. From court cases' transcripts, we can deduce that Article 1 (h) equated permanent residence to habitual residence.
[34] (Schmid-Drüner, 2016)

the intervals between his tours'".[35] As such, "(…) the conclusion can be drawn that what constitutes 'habitual residence' is a question of fact which must be resolved in each individual case on the basis of principles of interpretation which must be taken into account by the court which rules on the substance." Finally, and borrowing the opinion of Advocate-General A. Trabucchi in Case 13/73), the Commission concluded that

> (…) *the main considerations of fact for the purpose of establishing habitual residence should not be confined solely to the actual length of stay but should also include a* ***degree of permanence and continuity*** *and the extent to which the stay is intentional. These considerations should be assessed from time to time 'in order to determine the extent to which the territorial connection is the rule, due attention being paid to the kind of work performed by the person concerned.*

Here was first established the need to take into consideration the individual circumstances of the case, as well as permanence and continuity.

Case C-76/76 marked the first time where the court itself said that "The concept of 'the Member State in which he resides' must be limited to the State where the worker, although occupied in another Member State, continues habitually to reside and where the habitual center of his interests is also situated.", which means that several factors must be taken into consideration when deciding where one's habitual residence is, such as family and work, but that neither alone might be the deciding factors.[36] As such, habitual residence must take into account "(…)the length and continuity of residence before the person concerned moved, the length and purpose of his

[35] Case 13/73 contained questions about the aforementioned Regulation (EEC) No 3/58. Paragraph 23 of the case explained that "The third question asks for a definition of the term 'permanent residence' which is stated as meaning 'the place where a person has his habitual residence' in Article 1 (h) of Regulation No 3 and thus for the determination of the question whether there must be regarded as a permanent residence any habitual residence within the frontiers of a Member State even when such habitual residence is not in a fixed place but consists of business-canvassing tours carried out by caravan, or whether habitual residence implies some degree of permanence in a given place and whether therefore a worker can be permanently resident only in the Member State where he returns, in the intervals between his tours, to a fixed permanent address and where the registered offices of the undertakings which employ him are also situated.".
The case concerned an individual who pursued his work in several different Member States' territory, and as such had several places of employment and residences. The court concluded that "The answer to the question must therefore be that by 'permanent residence', in the sense in which this term is used in Article 13 (1) (c) (first section) and more extensively defined in Article 1 (h) of Regulation No 3, there must be understood, in the case of a business representative pursuing the kind of activities described in the order of reference of a preliminary ruling, the place in which that worker has established the permanent center of his interests and to which he returns in the intervals between his tours."

[36] Case C-76/76, paragraphs 17, 18, 19 and 20.

absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances."[37]

The relevant Case that followed it, C-102/91, issued an almost perfect template, but the requisites to determine habitual residence:

> (…) *the State in which the persons concerned habitually reside and where the habitual center of their interests is to be found. In that context, account should be taken in particular of the employed person's family situation; the reasons which have led him to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable employment; and his intention as it appears from all the circumstances*.[38]

Case C-90/97 established it best in paragraph 29, where the Court said:

> *The phrase `the Member State in which they reside' in Article 10a of Regulation No 1408/71 refers to the State in which the persons concerned habitually reside and where the habitual center of their interests is to be found. In that context, account should be taken in particular of the employed person's family situation; the reasons which have led him to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable employment; and his intention as it appears from all the circumstances*.

This summary of the relevant factors that help discern habitual residence was so concise in the way it gathered in itself all the previously established factors, that it became the more easily quoted case law on this subject matter; a sort of checklist of information in just one paragraph.

This checklist of elements was systematized in article 11 of the Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009, which laid down the procedure for implementing Regulation (EC) No 883/2004 (recast of Regulation 1408/71) on the coordination of social security systems.

> *Article 11*
>
> *Elements for determining residence*
>
> *1. Where there is a difference of views between the institutions of two or more Member States about the determination of the residence of a person to whom the basic Regulation applies, these institutions shall establish by common agreement the* ***center of interests*** *of*

[37] Case C-76/76, paragraph 22.
[38] C-102/91, paragraph 23 stated that "The Court inferred that, for the purposes of applying Article 71(l)(b)(ii), account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances."

the person concerned, based on an overall assessment of all available information relating to relevant facts, which may include, as appropriate:

(a) the duration and continuity of presence on the territory of the Member States concerned;

b) the person's situation, including:

(i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;

(ii) his family status and family ties;

(iii) the exercise of any non-remunerated activity;

(iv) in the case of students, the source of their income;

(v) his housing situation, in particular how permanent it is;

(vi) the Member State in which the person is deemed to reside for taxation purposes.

2. Where the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence.

This Regulation organized the ideas around the determination of habitual residence, without ever uttering the words. Regulation (EC) No 883/2004 equates residence to habitual residence, and as such Regulation (EC) No 987/2009, which applies directly to the former, addresses habitual residence even though it merely mentions residence. The question of why not then evoke habitual residence when that is what is being described and not mere residence is a pertinent one, though not one answered; it seems much simpler to use the words meant instead of going on a merry-go-round of terms that have similar, but not quite identical, meanings. Occasionally when dealing with the European legislator, the mind does baffle.

After the introduction of Regulation (EC) No 987/2009 and its nifty list of elements, determining habitual residence as relating to social security in the EU has become much simpler, and so not something that should concern the Court as much. However, and because the human spirit is nothing if not creative, we have case C-589/10.

Case C-589/10 brought on the occurrence of someone who argued they had two habitual residences for thirty-three years. The Court's response was that, as pertaining to this piece of

legislation specifically, two habitual residences would not be possible, since it defeated the purpose of the norm. Quoting the case's paragraph 48:

> *Since the system introduced by Regulation No 1408/71 uses the residence of the person concerned as the connecting factor for the determination of the legislation applicable, it cannot be accepted, without depriving the provisions referred to in the preceding paragraph of all practical effectiveness, that a person may have, for the purposes of Regulation No 1408/71, a number of habitual residences in different Member States*.

The Court concluded that at least as far as article 10 of Regulation No 1408/71 is concerned, and for the purposes of the application of the regulation, a person cannot have simultaneously two habitual residences in two different Member States.[39]

Case C-394/13 didn't exactly introduce any novel concepts, but clarified that being registered as a resident from one Member State does not necessarily make that person a habitual resident of that State. Without the connection of habitual residence, norms from both Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 do not apply.[40] This not only indicates that habitual residence must be a reality that is fully demonstrated, but also that it is definitely not equal to mere residence.

[39] Case C-589/10, paragraph 51.

[40] The Court ruled that:
"1) Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008, in particular Article 13 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State.
(…)
2) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, in particular Article 11 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State."

4.3. Habitual Residence in EU Private International Law

The list of EU legislation that, in one way or the other, employs habitual residence is long, so we shall only focus on the Regulations relevant to Private International Law, and thus the ones we will analyze further are the following[41]:

- Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
    - Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
- Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- 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
- 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 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
- 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
- Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation
- 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) 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

[41] (Kramer et al., 2012)

- 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

Unsurprisingly, some of these Regulations have attracted ECJ's attention due to questions on the definition and application of habitual residence, and are nearly the only ones who merited the Court's reasoning on the matter.

4.3.1. Regulation (EC) No 1346/2000 and Regulation (EU) No 2015/848

Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, commonly called Insolvency Regulation, lays out the rules of jurisdiction for insolvency proceedings within the European Union, determining what Member States have jurisdiction over the processes and how they will cooperate during them.

The precise contents of the Regulation do not concern this essay, but the way it employs habitual residence do. Every time the text of the Regulation brings up habitual residence, it is within the same structure of sentence.

"Recital 21 Every creditor, who has his **habitual residence, domicile or registered office** in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. (…)" [42]

As we can see, the Regulation always employs habitual residence together with domicile and registered office, the triad used as one single expression throughout the text. This broadens the expected scope of the Regulation's application, including as many possible creditor locations as the legislator could probably remember; it seems as if the legislator wanted to cover all bases by including several types of residence instead of sticking to just one that might not include every creditor involved in an international commercial relationship. This separation also insures that the terms cannot be confused or muddled up into one; by using habitual residence and domicile separately, the legislator is being quite clear that they are not equals.

The successor of Regulation 1346/2000, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) was a game

[42] The usage of the terms as a triad continues on in Articles 3, 39, 40 and 42.

changer on many issues, managing to keep a few concepts of the previous Regulation intact, while adding some truly unique aspects to the concept of habitual residence. In parts, it did maintain the grand tradition of using habitual residence with domicile and registered office, even the terms were struck from many articles being simply replaced with foreign creditor.[43] This further extends the scope of the Regulation to apply to creditors, even if they don't have habitual residence, domicile or registered office in a Member State of the EU. It also codified something that was a part of the doctrine but not the law, the consideration taken for the debtor's habitual residence and center on interests, instead of focusing solely on the creditor's. [44] The most innovative part of the Regulation, however, lies in article 3, which states:

> *Article 3*
> *International jurisdiction*
> *1.(...)*
> *In the case of any other individual, the center of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.*

This article is unprecedented in two different ways: it gives a clear indication of what habitual residence means, and gives it a specific time requirement. In an unprecedented move, the Regulation stated right off the bat that habitual residence corresponds to an individual's center of main interests, and put a six-month requirement to establish residence. Both clarifications are understandable within the context where they are employed, but they are still bold moves that do much for the sake of juridical certainty.

The center of main interests (known as COMI in the insolvency world), is only briefly mentioned in Regulation No 1346/2000, but it has a prominent position in Regulation No 2015/848; it describes the Member State, and thus the jurisdiction, with which a company has the biggest connection for the purposes of insolvency proceedings that touch several jurisdictions.

[43] Habitual residence, along with domicile and registered office have disappeared from article 3, article 54 (previous article 40) 73 (previous article 42), while being added together to Recitals 63 and 64, article 2 (9) (vi), article 2 (12). Habitual residence, along with domicile and registered office have disappeared from article 53 (previous article 39), article 54 (previous article 40) and article 73 (previous article 42).
[44] Recitals 30 and 31 of Regulation (EU) 2015/848.

Article 3 makes it clear that while companies have a COMI, natural people have their own COMI, the equivalent habitual residence.

The six-month time stamp makes sense from a logical point of view, since it prevents the dreaded forum shopping for the sake of insolvency, but it is also something that has not been attempted before or since. The discussion of whether or not adding a time period requirement takes some of the flexibility away from the term habitual residence exists, and there is some validity to it, because while it becomes more practical, it also removes the connection above time criteria.

After the analyses of both novelties, it is safe to say that while Regulation (EC) No 1346/2000 was fairly basic in regards to the application of habitual residence, Regulation (EU) 2015/848 is a veritable hurricane of innovation, whose precise terms are unlikely to bring many cases to the ECJ to clarify its terms after the greater part of it goes into force on 26 June 2017.[45]

4.3.2. Regulation (EC) No 44/2001 and Regulation (EU) No 1215/2012

Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, better known as Brussels I, established rules that attribute jurisdiction over cases with links to more than one EU country. The Regulation places domicile as the main criteria, with article 2 laying out "Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State" (number 1). Habitual residence is here pushed back to play second fiddle to domicile, a way to further include people who may not have a domicile, but mere habitual residence, in a Member State. All four articles mention habitual residence along with domicile, with the exact same wording being "domiciled or habitually resident", in a way that clearly seeks to include all feasible residences.[46]

[45] Article 92 of Regulation (EU) 1346/2000.

[46] "Article 5
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
Article 13
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring

Only one case pertaining to this Regulation has talked about habitual residence in any meaningful and useful way, and that was joined cases C-509/09 and C-161/10. The judgement of the Court in these cases stated, in its paragraph 49, that "The place where a person has the center of his interests corresponds in general to his habitual residence.". This brings it to par with the previously analyzed definition of habitual residence, which for all its numerous contributing elements, focused heavily on the center of interests element. However, it continues with "(…) a person may also have the center of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.", meaning that the center of interests' category, while important, is not decisive.

Considering that this is the only case on this Regulation that addresses habitual residence, we can deduce that at least superficially it matches to the interpretation given regarding Regulations 1408/71 and 883/2004: habitual residence matches with the center of interests of an individual, but must take into consideration all other elements in that individual's life, such as professional activity.

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), or Brussels I recast, substituted the previous Regulation and changed matters slightly. The previsions regarding maintenance were struck from article 5 (now 7), in accordance to Regulation (EC) No 4/2009, but kept the text of articles 13, 17 and 72, while merely

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jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or

Article 17

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

Article 72

This Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of this Regulation pursuant to Article 59 of the Brussels Convention, not to recognize judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention."

changing the number of the articles (article 13 became article 15, article 17 turned into 19, while 72 remained the same).[47]

4.3.3. Regulation (EC) No 2201/2003

Regulation (EC) No 2201/2003 of 27 November 2003 about the jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

Carrying on the grand tradition of employing terms like they have universal meaning, this is one such piece of legislation that uses the term habitual residence without explaining it.[48] This Regulation, which comes to replace Regulation (EC) No 1347/2000, creates rules to determine what state has jurisdiction to deal with matrimonial and parental responsibility issues, determining in most cases that it should be the Member State where those involved (the spouses in case of matrimonial matters, the child when it relates to parental responsibility) habitually reside.[49] [50] [51] Though the very essence of the Regulation resides in the determination of where the habitual residences of spouses and their children are, inexplicably it offers nothing as far as a solution. To

[47] 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.

[48] Article 2 of Regulation (EC) No 4/2009 offers definitions for eleven terms, describing what each of them mean for the purposes of the regulation, but fails to do so for habitual residence. An odd choice, considering the importance of the term, which is used forty-eight times during the course of the text of the Regulation.

[49] In reality and for the sake of clarity, Regulation (EC) No 1347/2000 already liberally employed the concept of habitual residence without defining it, the term appearing a whopping twenty-three times in the original text. As it is, Regulation (EC) No 2201/2003 didn't so much as create the problem as much as it compounded it, by using the term even more extensively than the previous regulation, it did nothing but worsen the problem, using habitual residence liberally as if the entire European law community is on the same page regarding its meaning.

[50] "Article 3
General jurisdiction
1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State
(a) in whose territory:
- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;"

[51] "Article 8
General jurisdiction
1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized."

uncover that, one must dive into the ECJ cases to determine how the Court has interpreted habitual residence, and whether or not it gave us a meaningful definition we can work with.

As of the moment of writing of this essay, over twenty cases have been tried on the ECJ regarding the application of Regulation (EC) No 2201/2003 and involving (amongst other things) the definition and practical applicability of habitual residence, even if only a few focus on the exact definition and issues surrounding the term. [52]

Case C-523/07 was the first to shed some light on the subject of habitual residence as relating to Regulation (EC) No 2201/2003. The second question of the case addresses the uncertainty of the referring court regarding the interpretation of the concept of habitual residence within the meaning of Article 8(1) of the Regulation. The ECJ states that, even though there is a need for uniform application of Community law, existing case law which clarified the term habitual residence could not be applied there, indicating that habitual residence might have different meanings under different pieces of EU Law.[53] [54] The lack of clear definition in Regulations was clearly not confusing enough, if the court felt the need to give multiple jurisprudential meanings to it. Case C-523/07 did shed some light on the subject, though, stating that the physical presence of the child in a country is not enough to determine habitual residence (paragraph 33), but that the circumstances of the child must be taken into consideration (paragraph 37), setting out a number of indicatives such as degree of physical permanence, as well as social and familiar integration, school attendance, linguistic knowledge, and family situation (paragraphs 38 to 41).[55]

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[52] In chronological order from oldest to newest, cases C-68/07, C-523/07, C-168/08, C-195/08 PPU, C-256/09, C-403/09 PPU, C-211/10 PPU, C-296/10, C-400/10 PPU, C-491/10 PPU, C-497/10 PPU, C-92/12 PPU, C-436/13, C-656/13, C-184/14, C-376/14 PPU, C-404/14, C-498/14 PPU, C-215/15, C-455/15 PPU. We will only expand on those that added new information to the subject.

[53] Case C-523/07, paragraph 34, "According to settled case-law, it follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, in particular, Case 327/82 Ekro [1984] ECR 107, paragraph 11, and Case C-98/07 Nordania Finans and BG Factoring [2008] ECR I-1281, paragraph 17)."

[54] Case C-523/07, paragraph 36, "The case-law of the Court relating to the concept of habitual residence in other areas of European Union law (see, in particular, Case C-452/93 P Magdalena Fernández v Commission [1994] ECR I-4295, paragraph 22; Case C-372/02 Adanez-Vega [2004] ECR I-10761, paragraph 37; and Case C-66/08 Kozłowski [2008] ECR I-0000) cannot be directly transposed in the context of the assessment of the habitual residence of children for the purposes of Article 8(1) of the Regulation."

[55] Case C-523/07, paragraphs:

Thus, the Court defines habitual residence as pertaining to Regulation (EC) No 2201/2003 as: "(…) meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment.". The Court further concludes on the same paragraph that "the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.", and that "It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case."[56] It is basically an open ended definition; it doesn't tell us exactly what habitual residence is, but lets us know what it can be. There are no direct answers and no definitive meanings attributed to the term, but a framework for defining it is given, a list of boxes to tick, but one that can be adapted to every individual situation. A clever solution it may be, but a close shut answer it is not: the wide variety of indicatives of habitual residence enumerated makes it so that more than one Member State can consider themselves as being that of habitual residence of those involved. Thus, the numerous cases that followed this one where doubts still arose regarding the application of habitual residence.

Case C-497/10 followed the steps laid out by case C-523/07, stating that "(…) the Regulation contains no definition of the concept of 'habitual residence'. It merely follows from the use of the adjective 'habitual' that the residence must have a certain permanence or regularity.".[57] The case further adds that, while the Regulation does not give a timeframe that might indicate the aforementioned level of permanence, "(…) it is of paramount importance that the

"37 The 'habitual residence' of a child, within the meaning of Article 8(1) of the Regulation, must be established on the basis of all the circumstances specific to each individual case.
38 In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.
39 In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.
40 As the Advocate General pointed out in point 44 of her Opinion, the parents' intention to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State, may constitute an indicator of the transfer of the habitual residence. Another indicator may be constituted by lodging an application for social housing with the relevant services of that State.
41 By contrast, the fact that the children are staying in a Member State where, for a short period, they carry on a peripatetic life, is liable to constitute an indicator that they do not habitually reside in that State."

[56] Case C-523/07, paragraph 44.

[57] Case C-497/10 PPU, paragraph 44.

person concerned has it in mind to establish there the permanent or habitual center of his interests, with the intention that it should be of a lasting character.". [58] This was the first introduction of the expression center of interests, and one that stuck to the definition of habitual interests, being one of the bullet point criteria used to determine it. [59] The Court also furthered the explanation of habitual residence as it pertains to children, stating that "As a general rule, the environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of." and "That is even more true where the child concerned is an infant. An infant necessarily shares the social and family environment of the circle of people on whom he or she is dependent.".[60] This leads to the conclusion that in order to determine the habitual residence of a child, especially an infant, one must ascertain the habitual residence of the person with physical custody.[61]

4.3.4. Regulation (EC) No 864/2007 and Regulation (EC) No 593/2008

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) and its companion 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) are Regulations that created a harmonized set of norms that determine which law should be applicable to situations of conflicts of law, regarding non-contractual (Rome II), and contractual (Rome I) obligations.[62] Both Regulations employ habitual residence in a dual manner; the regular habitual residence of people, and the unusual habitual residence of corporations.[63] [64]

At first sight, this inclusion causes some surprise. Habitual residence is a deeply human concept, relying not merely on factual observations, but also on unquantifiable aspects such as

[58] Case C-497/10 PPU, paragraph 51.
[59] The degree to which is has actually helped in any practical terms to define habitual residence is, in our humble opinion, debatable, since the concept of "center of interests" is just as lax as habitual residence itself.

[60] Case C-497/10 PPU, paragraphs 54 and 55.
[61] Case C-497/10 PPU, paragraph 55, "Consequently, where, as in the main proceedings, the infant is in fact looked after by her mother, it is necessary to assess the mother's integration in her social and family environment. In that regard, the tests stated in the Court's case-law, such as the reasons for the move by the child's mother to another Member State, the languages known to the mother or again her geographic and family origins may become relevant."
[62] These Conventions were preceded by 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980.
[63] Regulation Rome II: Recitals 18, 20 and 33, as well as articles 4, 5, 10, 11, 12 and 23.
[64] Regulation Rome I: Recitals 21, 25, 28 and 39, as well as articles 4, 5, 6, 7, 8, 10, 11 and 19.

social integration, emotional connections, and sheer will to remain in one place. How, or why, would such a concept be applicable to companies?

The how is in articles 19 and 23 of Regulations Rome I and Rome II, the way requires a history lesson, of sorts. First, let's look at the identical provisions that fully explain what habitual residence means in terms of these Regulations regarding companies.

> Rome I
>
> *Article 19*
>
> *Habitual residence*
>
> *1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.*
>
> *2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.*
>
> *3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract*.
>
> Rome II
>
> *Article 23*
>
> *Habitual residence*
>
> *1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.*
>
> *Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.*
>
> *2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.*

Such an in depth description of habitual residence is unheard of when relating to people in EU Regulations (and, in fact, in Private International Law as a whole), most clarifications existing in recast versions of the Regulations, or ECJ decisions. Even in Rome I and Rome II Regulations, when it relates to people, the Regulations don't do more than reference habitual residence in

passing and assume the meaning is clear. However, due to the rare nature of habitual residence of companies, it was here extensively explained, in order to clear up any misgivings regarding its meaning. The reason behind the notion that companies can have habitual residence remounts back to the Rome Convention of 1980, but before that to a Swiss theory called Characteristic Performance, or Characteristic Contractual Performance, theory. [65] Amongst other things less relevant for the subject matter at hand, the Characteristic Performance theory determined that the applicable law to conflicts was the law of the State where the part who performed the characteristic act had their habitual residence, something applicable to both people and companies.[66] The seemingly strange usage of habitual residence in Regulations Rome I and Rome II came from the need to continue to employ a theory that has since become the norm in the field of EU Private International Law.

4.3.5. Regulation (EC) No 4/2009

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. This Regulation invokes the rules on jurisdiction resulting from Regulation (EC) No 44/2001, stating they should be adapted to the matter at hand. It also uses habitual residence as one of the main connectors that decide jurisdiction, namely in articles 3 and 4:

> *Article 3*
>
> *General provisions*
>
> *In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:*
>
> *(a) the court for the place where the defendant is habitually resident,*
>
> *or*
>
> *(b) the court for the place where the creditor is habitually resident,*

[65] (Fawcett & Torremans, 1998, p.562) "Even before the codification of Swiss private international law, the Swiss courts brought the characteristic performance theory into practice."

[66] Even though, as Professor Mihail Danov put it, "The wording of article 4(1) and (2) leaves no doubt that an important connecting factor for choice-of-law purposes is the habitual residence of the party who effects the characteristic performance." (Danov, 2011, p.144) Furthermore, Professor Frada de Sousa concluded that "The criterion of the subjection of contracts to, in the absence of choice of law by the parties, the law of the State where the party performing the characteristic contractual performance has their habitual residence, would thus be a connecting factor that reproduces in the European PIL plan of contractual obligations, the principle of "country of origin" for which, allegedly, the law of conflict of the internal market characterizes itself." (Frada de Sousa, 2012, p.206) Original text in Portuguese.

or

(...)

Article 4

Choice of court

1. The parties may agree that the following court or courts of a Member State shall have jurisdiction to settle any disputes in matters relating to a maintenance obligation which have arisen or may arise between them:

(a) a court or the courts of a Member State in which one of the parties is habitually resident;

(...)

This Regulation is a prime example of how habitual residence can be used as a main connector and a secondary connector as a choice of court in the same legal instrument, by applying to different parties within the conflict.

4.3.6. Regulation (EU) No 1259/2010

Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, employs the term habitual residence as one of the connectors to personal connectors that determine which law is, or can be applicable.

Article 5

Choice of applicable law by the parties

1. The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

(a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or

(b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or

(...)

The term is further invoked in articles 6, 7, 8, and 14, as well as Recital 19. The only time there is any semblance of attempt as determining habitual residence occurs in Article 14, which states:

Where a State comprises several territorial units each of which has its own system of law or a set of rules concerning matters governed by this Regulation:

(...)

(b) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

Even though this is roughly the same as saying "habitual residence equals habitual residence in a specific place", there so far have been no cases brought up to ECJ that question the wording in this Regulation.

4.3.7. Regulation (EU) No 650/2012

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 is a more recent example of a piece of EU legislation that used the term habitual residence as the connecting factor of excellence between an individual and a Member State. Recital 23 is a perfect summary not only of what habitual residence is, in terms of this Regulation, but also how it might be determined and the elements that should be taken into consideration.

In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.

Recitals 24 and 25 continue to further explain the need to appreciate the entirety of the circumstances of the case, and how to proceed should they prove to be complex. The Regulation, which started out so perfectly clear, delves into a sea of exceptions where a country other than the habitual residence might be chosen as the competent one by the deceased if that is the country of

their nationality or one they have a "closer connection" to, whatever that might mean.[67] Once more, not a perfect Regulation, but a step in the right direction.

Considering the relative newness of the Regulation (which only came into force in August of 2015), no court cases that question or address habitual residence in its context have been concluded in the ECJ.

4.3.8. Regulation (EU) 2016/1104 and Regulation (EU) 2016/1103

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, and Regulation (EU) 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 are twin Regulations which deal with marriage and registered partnership property regimes. These Regulations use similar scales of "connecting factors for the purposes of determining jurisdiction, starting with the habitual residence" of the spouses or registered partners at the time the court is seized.[68] Habitual residence is thusly the connecting factor of excellence employed throughout the Regulations, there is no allusion to even a list of elements or a short summary of the term, as done by previous legislation. Perhaps, considering Regulation (EC) No 44/2001 deals with jurisdiction and enforcement of judgements (in civil and commercial matters), the reasoning there might be analogous here. Or, since one of the Regulations deals with matrimonial matters and the other with mirrored situations, the interpretations of habitual residence given by the court as relating to Regulation (EC) No 2201/2003. Another possibility is that because the Regulations deal, in some portions, with inheritance, then the version of habitual residence given in the Recitals for Regulation (EU) No 650/2012. There is always the chance it could be all three or neither, we don't know because the Regulations don't specifically state it.[69]

[67] Regulation (EU) No 650/2012 also mentions habitual residence in recitals 30, 32, 33 and 51, as well as articles 4, 6, 10, 13, 16, 21, 27, 28, 36 and 83.
[68] Recitals 35 on both Regulations.
[69] We will yield that these interpretations of habitual residence are identical if not the same, but the point regarding the uncertainty remains.

Once the Regulations go into force and start affecting people's lives, we will see if the Court is brought up to decide on it, but for now, and since the Regulations are but a few months old, we must play the waiting game.

4.4. Considerations

The careful reading of Regulations and the corresponding Court cases which seek to clarify the concept of habitual residence, have allowed us to draw some conclusions regarding the subject matter at hand.

The pioneer in employing habitual residence in the EU was Regulation (EEC) No 1408/71 of the Council, in time followed by Regulation (EC) 883/2004, and Regulation 987/2009, regarding social security matters. For these Regulations, habitual residence corresponds to the State in which a person has their center of interests. To determine that center of interests, account the person's employment, reasons why they are in that country, family situation, length and continuity of their residence, and intention to remain in the country should be taken into. These requisites, first stated by the court, were transposed to Regulation (EC) No 987/2009, in a list of elements enunciated in its article 11.

Turning to the specific matters of Private International Law, Regulation (EC) 1346/2000 was not a good beginning for habitual residence in this area. The Regulation employed habitual residence as a connecting factor, but never alone, always intertwining it with domicile. The recast Regulation (EU) 2015/848, kept very little of the original, most importantly equating a natural person's habitual residence to their center of interests (the COMI, which is applicable to companies) and putting a six-month residence to be recognized as habitual residence requirement, that is both bold and unique in the field of EU Private International Law.

Regulation (EC) No 44/2001, about on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, took the center of interests point of view, but has so far left it at that.

Regulation (EC) No 2201/2003 came afterwards and picked up where the previous Regulation left off, adopting a similar stance to that of Regulation (EEC) No 1408/71, but adapted to married individuals and children. It reinforced the idea of habitual residence as the center of interests of someone's life, taking into consideration elements such as degree of physical permanence, as well as social and familiar integration, school attendance, linguistic knowledge, and family situation, as well as the parent with custody, in children's cases.

Regulation (EC) 864/2007 and Regulation (EC) No 593/2008, applicable to non-contractual and contractual obligations, respectively, were unique in their application of habitual residence. The habitual residence of individuals was business as usual (that is to say mentioned and not explained), but the way in which applies habitual residence to companies is fairly different. To start, it applies habitual residence to companies, a feat which in itself is borderline bizarre, since habitual residence is a nuanced concept designed for natural people, and its application to companies something of an oddity. The full explanation of what habitual residence of a company is (the place of central administration or main place of business) feels then normal, because it is something different that would, had it gone unclarified, would have undoubtedly caused more questions than it answered.

Regulation 4/2009, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, followed the lead of Regulation (EC) No 44/2001, adapting the rules it set out, but also employed habitual residence as one of the main connectors that decided jurisdiction, without going into details of what it might mean exactly, clearly counting on the pervasive idea of what the concept of habitual residence means.

Regulation 1259/2010, which implemented enhanced cooperation in the area of the law applicable to divorce and legal separation, followed the trend of using habitual residence as one of the personal connectors, in cases of choice of law, but didn't go further to explain it.

Regulation (EU) No 650/2012, regarding international successions, had a similar approach, but not. The center of interests remained, as did the examination of all relevant facts, especially duration and regularity of the residence, but ultimately focused more on the close and stable connection an individual has with a state, than necessarily a list of boxes to tick.

Regulation (EU) 2016/1103 and Regulation (EU) 2016/1104 employed habitual residence as the personal connector of excellence in determining jurisdiction, and even if they didn't include further clarifications on the term, the fact that they are regulations relating to recognition and enforcement of decisions regarding personal matters (domestic partnerships and marriages), it

seems feasible that the conclusions reached in similar previously addressed matters might be applicable here.[70]

As we can clearly see, not all instruments were made equal, and not all Regulations we just read through have the same degree of definition, or were given clarification by the ECJ, which brings up the questions of how they should be interpreted. Can habitual residence in EU Private International Relations be given the same meaning as in Private International Relations in general, or even the EU as a whole? Spoiler alert, but the answer is no on both accounts.

Regarding the field of Private International Relations as a whole, it's important to remember the autonomy of the terms and provisions employed in EU law, of which habitual residence is not immune. This means that the term has autonomy in EU law, meaning one cannot draw interpretations from Member State's national laws, or even other sources of international law.[71] [72]

The meaning of habitual residence must come from EU law when applicable to it, which narrows down the subject's research field. Paragraph 45 of case C-497/10 explained it best:

> *According to settled case-law, it follows from the need for a uniform application of European Union law and the principle of equality that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question*.[73]

[70] Regulation (EC) No 44/2001 regards jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, while Regulation (EC) No 2201/2003 and Regulation (EU) No 650/2012 deal with personal family matters.

[71] (Rogerson and Collier, 2013, p.32) "Terms in EU legislation have to be given an autonomous meaning if there is no explicit reference to national law."

[72] On the flipside, it also means that whatever habitual residence might entail in EU law has no impact on its meaning in national legislation.

[73] A conclusion drawn from various cases that analyzed questions regarding different pieces of EU legislation:

- Case C-327/82 related Commission Regulation (EEC) No 2787/81 of 25 September 1981 fixing the export refunds on beef and veal (Official Journal 1981, L 271, p. 44)
- Case C-98/07 (relevant paragraph 17) dealt with questions regarding Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes
- Case C-523/07 (relevant paragraph 34) regarded 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.

Essentially, habitual residence, as well as a number of other terms, has its own separate meaning, not only in EU law, so no, habitual residence cannot be given the same treatment within the EU as it has outside of it.

But what about inside the EU? Can the interpretation of habitual residence as pertaining to one EU Regulation be transported to others? The short answer is no. The long answer was given by the ECJ in case Case C-523/07, Paragraph 36, where it said that "The case-law of the Court relating to the concept of habitual residence in other areas of European Union law (…) cannot be directly transposed in the context of the assessment of the habitual residence of children for the purposes of Article 8(1) of the Regulation." The Court made it clear that the conclusions reached regarding the concept of habitual residence in different areas cannot be easily applicable to each other. In this case, the concept of habitual residence reached in other areas cannot be directly transposed to Private International Law.

At first glance, this decision from the ECJ can seem to limit the interpretation of habitual residence to what is written specifically about it in each Regulation and respective court case. However, in the Research Handbook on EU Private International Law, the authors drew from the conclusions reached in Case-523/07, and concluded that, even though the concept of habitual residence reached in other areas of EU Law could not be directly transposed to others (in the specific case, to Brussels IIA), there was no reason why the rulings pertaining to one specific Regulation on private international law could not be analogously applied to other instruments of private international law. [74] This seems to follow the EU's *modus operandis* regarding the extensive interpretation of the law, which makes it easier for everyone involved, not only law makers and courts, but also those applying the laws in real time; by allowing an area of law to share common denominators, it eliminates the need to spell out terms every time, or to burden the court with questions that might have already been answered in analogous cases. In cases where such analogy makes logical sense, and unless specifically stated in either the body of the law or the Court, we fully agree with this interpretation of the matters, in no small part because it opens the field of habitual residence wide open and allows for a more complete analyses of the term and its meaning within the field of EU PIL.

[74] (Stone and Farah, 2015, p.291)

So, after our analyses of legislation and case law on habitual residence in EU Private International Law, we can conclude a number of things. While the term habitual residence is a purposefully open concept, devoid of too many descriptives in any legislation in order to make it easier to adapt to the circumstances of each situation, a lack of definition that has and possibly will continue to lead to situations of uncertainty, a more or less concise definition of the concept in regards to EU Private International Law has emerged.

Habitual Residence is the place where someone resides with a degree of permanence and stability, the center of their main interests, a place where they have a close connection and a degree of settlement, and it should be determined taking into consideration all the circumstances of their life, such as duration and regularity of the presence, as well as reasons for the stay, professional and personal affairs, and integration in society and family. This loose definition and way of ascertaining it in every situation seem to clarify the term and give it a level of certainty that insures juridical certainty.

Given the seeming stability that habitual residence currently enjoys in EU Private International Law, as well as the increase in its usage in all areas of EU Law, it seems like the term is on the rise to become the choice for personal connector of excellence. Yet, and because it would be remissive if some of the shortcomings, or uncertainties, that still plague habitual residence were not mentioned, we will briefly address them.

Certain issues, like the possibility of having two simultaneous habitual residences or not come from the general panorama of Private International Law, where most scholars seem to believe it is a possibility. However, in EU Law, as demonstrated by the Court in case C-589/10, which settled that, as pertaining to Regulation No 1408/71 specifically, two habitual residences would not be possible, since it defeated the purpose of the norm. Since this reasoning cannot be directly applicable to other areas, such as EU Private International Law, the question remains unanswered. Professor Geert Van Calster wrote that "The EU's autonomous concept of habitual leads to a singular 'habitual residence' which is not necessarily the case, for instance, in English Law.", in the context speaking directly about Regulation (EC) 864/2007 and Regulation (EC) No 593/2008, and thus EU Private International Law.[75]

[75] (Calster, 2016, p.221)

The employment of nationality when determining habitual residence can also be worrisome. In Case C-523/07, regarding Regulation (EC) No 2201/2003, the Court used nationality as one of the criterion for determining habitual residence, along-side with "the place and conditions of attendance at school, linguistic knowledge and the family and social relationships". This usage, along with almost every EU Private International Law diploma of adding nationality as an alternative for habitual residence, shows the bias that continental Europe still has for nationality. Nationality helping decide what habitual residence is makes very little sense, even threatening to alter the very essence of the term, but considering that the inclusion of nationality as a sign of habitual residence is not yet something recurrent, we can set it aside as a non-immediate concern.

Admittedly, these are minor issues, which may very well be resolved in the near future or may, specifically in the case of nationality, degenerate in a way that decharacterizes habitual residence as we currently recognize it. As we are not in the business of futurology, the answers to these questions shall, for now, remain unanswered.

5. Conclusion

When addressing habitual residence regarding international child abduction, Professor Thalia Kruger said "Habitual residence is hard to define and there is no global agreement on a common definition.".[76] The sentence was sandwiched between two paragraphs that in turns exult the importance of habitual residence in that field and decry the issues its instability brings, essentially in making it difficult to ascertain what habitual residence is meant to indicate in the first place.

This is basically the entirety of habitual residence in a nutshell: it's a wonderful and flexible term, whose flexibility becomes its downfall and can ultimately render it purposeless. In an effort to keep it flexible, the majority of early attempts at including habitual residence as a connector that determines the law of personal status. Indeed, a lot of its instability can be pinpointed to the vagueness of the law, the way the European legislator initially strived for ambiguity at the cost of juridical certainty. The original Regulations analyzed in this paper didn't do more than mention habitual residence, without so much as a passing descriptor to aid its application.

Regulation (EC) 864/2007 and Regulation (EC) No 593/2008 are an interesting contrast to that initial *laissez-faire* attitude. The Regulations introduced the concept of habitual residence of a company, something which had up until that point not existed in EU Private International Law, but general doctrine. It seems natural that a concept which has never been used will be explained upon the first time it was employed, to clarify the subject and prevent further doubts. While this is an intelligent move on the part of the Council, it bears questioning why they didn't do this to the habitual residence of individuals in general. The term may be clarified now, in 2016, 35 years after it was first written down on a EU Regulation, but it took decades to get to this point, something which might have been avoided by some clearer legislation.

There is no denying that the EU has taken long strides in the clarification and proper implementation of habitual residence as a connecting factor. Through decades of increasingly more complete Regulations, as well as jurisprudence that clarifies how to apply the term and which criteria can be used to determine, the EU has managed to simultaneously keep the term as open as

[76] (Kruger, 2011)

it can and surreptitiously add meaning and content to it, enabling it to adapt to the situations, but also giving them guidelines.

So it seems like the EU has reached a comfortable point regarding its views of habitual residence. Recent Regulations have started using the term less indiscriminately, employing the it in accordance to established principles, and sometimes going to greater lengths to explain or add to the term, instead of merely mentioning it without care. Even though there are certain aspects regarding habitual residence that the ECJ can still decide on, such as the possibility of having more than one habitual residence for the purposes of EU Private International Law and within the respective Regulations, when it comes to the basics of the term, the Court has probably clarified habitual residence and its criteria nearly as much as it can without adding a minimum permanence time stamp to it, which seems unlikely to happen considering how unique and unlikely to be made an example of Regulation (EU) No 2015/848 is, or restricting the criteria, which it also doesn't seem inclined to do.

Habitual Residence, in terms of EU Private International Law, equals the center of main interests of an individual, a place where they reside permanent and stably with a degree of settlement, where they have a close connection to, and it should be determined taking into consideration all circumstances of that individual's life. Unless the EU allows the term to be decharacterized, and as long as it continues to add to it, it seems like habitual residence has at last found stability within the Law that employs it.

Annexes

Annex I – Habitual Residence and the Hague Conventions on Private International Law

The term habitual residence can be found in the following Hague Conventions on Private International Law:

Convention of 1 March 1954 on civil procedure

Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants

Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions

Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions

Convention of 25 November 1965 on the Choice of Court

Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations

Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

Convention of 4 May 1971 on the Law Applicable to Traffic Accidents

Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons

Convention of 2 October 1973 on the Law Applicable to Products Liability

Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations

Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations

Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes

Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages

Convention of 14 March 1978 on the Law Applicable to Agency

Convention of 25 October 1980 on International Access to Justice

Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition

Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods

Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons

Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

Convention of 13 January 2000 on the International Protection of Adults

Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

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