Conflicts and coordination of family statuses : towards their recognition within the EU?

Romano, Gian Paolo

CONFLICTS AND COORDINATION OF FAMILY STATUSES: TOWARDS THEIR RECOGNITION WITHIN THE EU?

Gian Paolo ROMANO

KEY FINDINGS

- Family law continues to vary considerably across the Member States. The rules on *conditions* to celebrate marriage, to register a partnership, to obtain divorce or annulment of marriage, to adopt or be adopted, to acknowledge, disavow or establish fatherhood, to give birth through surrogacy or other forms of reproductive assistance, are all left to the domestic legislations of the Member States. The *effects* that flow from those « family statuses » in terms of rights and obligations of the « status holders » – as between themselves and as against third parties – are also shaped by domestic law.

- When it comes to *private international law*, a number of existing or proposed EU Regulations provide for international jurisdiction, law applicable and recognition of decisions relating to *effects* of those statuses, such as Maintenance Regulation, Brussels IIa, Succession Regulation and soon Matrimonial Property Regulation and Regulation on Property Consequences of Registered Partnerships. By contrast, little has been done in the field of the *creation*, and intra-EU *recognition* of creation, or *termination*, and intra-EU *recognition* of termination, of those family statuses, which issues are still under the control of the individual Member States. The only exception is divorce and separation, which are covered by Rome III Regulation when it comes to applicable law, and, when it comes to jurisdiction and recognition, by Brussels IIa, which also deals with annulment of marriage, but still allows Member State A to issue a divorce decree while permitting Member State B not to recognize it, albeit on limited grounds.

- As long as the European Union (« EU ») continues to allow Member State A to confer a family status to two individuals while allowing Member State B (and C, D…) not to recognize it, the EU is in fact paving the way to « *intra-EU conflicts of family statuses* ». Those « *limping family relationship* » may generate inextricable « *conflicts of legal rights and obligations* » across the EU which not only have the potential of undermining the benefits of the EU Regulations on effects, but may encourage litigation, create confusion and chaos in the private law sphere of the individuals and favour self-justice behaviours. This state of affairs is not only inconsistent with the idea of Member States being « *united in diversity* », their *legal diversity* resulting here not in *unity* but in *division and discord*, but also with the objective to establish an « *area of freedom, security and justice* », the exercise of the fundamental freedoms being hindered. The result of these conflicts is hardly compatible with human rights, as the ECHR suggested in a number of rulings on cross-border adoption and surrogacy. More generally, while legal pluralism may be a source of wealth and fuel human progress, legal conflicts are contrary to the very essence of Law and Order.

- This note discusses four possible pathways that the EU may be willing to take in order to avert intra-EU conflicts of family statuses or alleviate their adverse consequences for the individuals concerned. The *first* is about coordinating the effects of two inconsistent family statuses in order to avoid conflict of rights and obligations. The *second* is about preventing the conflict of statuses by requiring mutual recognition by all Member States of a family status created by one of them. The *third* is about bringing together the competent authorities of two or more Member States and having them participate in a kind of co-decision process. The *fourth* is to gradually develop EU legislation on creation and termination of family statuses and have it administered by EU authorities whose acts are no longer subject to recognition but are binding on Member States.

1. This note – which has been prepared in the framework of a workshop titled « Adoption: Cross-Border Issues » – purports to share some ideas on how the Member States may coordinate their action in order to spare EU citizens and EU residents conflicts between inconsistent family statuses and conflicts of legal rights and obligations arising from them. As a matter of fact, not only are those situations, sometimes referred to as «limping relationship» («*statuts boiteux*»), inconsistent with the objective to create an «area of freedom, security and justice», but they also have the potential to hinder the exercise by the affected EU citizens and EU residents of the fundamental freedoms on which the EU is premised.

2. This note will first define a *family status*, explain how it works (I) and remind what is the current stand of the EU legislation in this respect (II). It will then move to briefly show the incompatibility of conflicts of family statuses and their effects with fundamental principles of EU law (III) and will finally discuss some of the pathways that the EU may be willing to embark on to prevent those conflicts or alleviate the adverse consequences that they may generate for EU citizens and EU residents (IV).

I. HOW A FAMILY STATUS WORKS: CONDITIONS AND EFFECTS

3. This note deals with **family law areas** such as marriage, including same-sex marriage, registered partnership and child-parent relationship, including all types of filiation: legitimate, natural (« out-of-the-wedlock »), adoptive and resulting from reproductive technologies, such as surrogacy.

4. For the purposes of this note, a « **family status »** is the status that is conferred upon the individuals who apply for it (or one of whom applies for it: see point 8 below) and satisfy the relevant formal and substantive requirements. For example, « *marital status* » is the status of a person who is married to another person, « *child status* » is the status of a person who (legally) is a child of another person, who in turn has « *parental status* » with respect to that person, and so on. The person holding a particular family status will hereinafter be referred to as « **(family) status holder** ». Most – although not all – of the family statuses affect the « civil status » (« *état civil* ») of the status holder.

> The marital status affects the « *état civil* » of the spouse, just as the status of registered partner, adoptee or adoptive parent, and divorcee. The French PACS (« *pacte civil de solidarité* ») does not affect the « *état civil* » of the status holders or « *pacsés* » although it also gives rise to a family status within the meaning of this note.

5. A family status **arises** and **comes to an end** (1). It generates a bundle of **substantive rights and obligations** for the status holders, which are the « effects » of that particular status (2).

1. FAMILY STATUS: *CREATION* AND *TERMINATION*

6. A family status is generally **sought** by one or two persons, who *apply* for it, and granted by **a public authority** after making sure that the applicant or applicants satisfy the conditions to be awarded that particular status. The public authority can be *administrative* such as a civil servant or a notary public, or *judicial.*

7. The authority is generally **administrative** if two persons seek together the conferment of the family status, in which case there is no conflict of claims between the interested parties or, as the case may be, particularly in the case of children, their representatives.

> Marriage is generally celebrated by a *civil registrar*, both applicants wishing to obtain marital status, although in some countries (e.g. some Muslim countries) it is a tribunal who solemnizes it. Registered partnership is also, as a rule, concluded before and registered with a *civil servant*, although the French PACS is registered with a *tribunal.* Acknowledgment of fatherhood (« *reconnaissance de paternité* ») may be effected through a *civil registrar* or a *notary public* or both, depending on the legal systems. When jointly prompted by the partners, dissolution of registered partnership may also, in some countries, be performed by a notary public or even a *qualified lawyer* (who is performing a public function).

8. If the public authority is *judicial*, it can exercise **contentious** or **non-contentious** (sometimes referred to as « voluntary ») jurisdiction (« *juridiction gracieuse* », « *freiwillige Gerichtsbarkeit* », « *giurisdizione volontaria* »). In **non-contentious proceedings**, there is either *joint application* by both interested parties or one of them applies for the status concerned and the other acquiesce. In **contentious proceedings**, there is a *claimant*, who applies for the family status, and a *respondent* who resists such a claim and seeks to avoid the conferment of the status both on him or herself and the applicant.

> *Divorce* is generally pronounced by a *judicial* authority. Spouses may jointly apply for it, in which case proceedings are non-contentious. But if one of the spouses petitions for divorce against the other who resists the application, proceedings become *contentious* and the parties become *litigants*. This is also the case for a paternity action brought by the allegedly biological child against the allegedly biological father to the extent that latter resists the claim.
>
> *Adoption* also normally results from a *judicial* order although a number of administrative authorities are, as a rule, also involved in the proceedings. The adoption proceedings may be *contentious* to the extent that, typically, the biological parents (or one of them) oppose(s) the conferment of the adoptive parents status on to the applicants, or *non-contentious*, when all individuals involved – adoptive parents and, depending on the legislation, biological parents – agree to the adoption.

9. The family status may be **identical for both status holders**, such as for spouses or registered partners, or different for both and symetrical, such as between a parent and his or her child.

Madame Dupont, French national, and *Signor* Bianchi, Italian national, who are married to each other, have mutual rights and obligations of essentially identical nature. Following acknowledgment of fatherhood, *Pan* Sczegola *senior,* a Polish national, earns the status of father of *Pan* Sczegola *junior,* who in turn is awarded the status of natural child of *Pan* Sczegola *senior*. *Pan* Sczegola *senior* in his capacity as father has rights and obligations towards his child *Pan* Sczegola *junior* that are different from the rights and obligations that his child has towards him.

10. Any and all family statuses are, sooner or later, bound to come to **an end** (including through *death*: see below, point 11). Termination may take the form of *annulment* (sometimes labelled as *revocation*) or *dissolution*. Annulment is said to generate effects *ex tunc* whereas dissolution is said to generate effects *ex nunc*. The distinction, however, is not always clear cut.

- As a result of *annulment* (or revocation) of a status, a **prior family status** is generally resumed by the individuals concerned.
- As a result of *dissolution* (other than through death) of the status holder, most effects are generally terminated but some of them may be maintained, although sometimes to a lesser extent or for a limited duration.
- A family status may also be « softened » without being terminated, with some of the effects being removed and the remainder maintained, as in case of *judicial separation* of spouses *ex mensa et thoro*.

  If an action for *paternity disavowal* succeeds, the claimant is no longer father of the respondent, who in turn is no longer child of the claimant, i.e. the *parental status* as well as the *child status* are terminated.

  Some legislations allow for *revocation* of an *adoption*, as a result of which the adoptee loses the status of adoptive child of the adopted parent(s), and conversely.

  Through *dissolution* of a *registered partnership*, the status of registered partner comes to an end.

  Spouses who are judicially separated still enjoy marital status but they are liberated from some of the consequences of that status, such as the fidelity obligation. If marriage is terminated through *divorce*, the parties become *divorcee* but one of them may still have to pay support to the other. If marriage is terminated through *annulment*, the parties generally resume the status of *unmarried*, although some of the effects of marriage may be maintained, typically in case of good faith of one spouse or both (so-called « *mariage putatif* »).

11. Death of a status holder terminates all his or her family statuses. As to the surviving status holder, death gives rise to another status, that of a surviving spouse (or widower), or surviving child (or orphan), that is typically relevant for succession or adoption purposes.

2. FAMILY STATUS: *EFFECTS*

12. The family status generates **a bundle of substantive rights and obligations** as *between the parties* and *as against third parties and public authorities*. Those rights and obligations are the **effects** of the status. As a matter of fact, a family status is *defined* by the effects that it generates in the sphere of the status holders. Some of the effects arise immediately on conferment of the family status while others arise after the passage of time or if and when an additional event occur.

Mutual obligations of fidelity and moral and material assistance between spouses arise as a result, and at the time, of celebration of marriage without any further conditions. The entitlement of a spouse to obtain nationality of the country of which the other spouse is citizen may flow from both valid marriage *and* a period of residence in the country concerned (3 years, 5 years, etc).

13. Some of the effects are **public law effects**, i.e. arise as against public authorities, such as the right to obtain the **nationality** of a country, to benefit from **tax advantages** or **particular pension schemes**, entitlement to **family regrouping**, etc.

If the marriage between *Madame* Dupont and *Signor* Bianchi is solemnized in France and is recognized in Italy, *Madame* Dupont and *Signor* Bianchi will be regarded as spouses for the purposes of both French and, as the case may be, Italian tax or social security legislation. *Madame* Dupont may further be entitled to Italian nationality, although Italy is free to make application for Italian nationality by a foreign spouse of an Italian citizen conditional upon a residence requirement.

14. Family statuses also generate **private law effects** and this note will essentially be concerned with private law effects. Some of those effects consist in mutual rights and obligations arising as **between the status holders**, while some of them may arise between one status holder (or both) and **a third party.**

For example, *Madame* Dupont in her capacity as spouse of *Signor* Bianchi is entitled to receive compensation for moral damages from the third party who is responsible for the accident that has left *Signor* Bianchi incapacitated (to the extent that the relevant provisions make such a right dependent on the *marital* status).

15. Another important effect flowing from a family status is to **prohibit** the status holder from acquiring a family status that is held to be **incompatible** with that status.

If *Herr* Steiner, a German national, and *Kurios* Anthopoulos, a Greek national, have their same-sex partnership registered in Germany, *Herr* Steiner is not permitted to marry *Frau* Lein, a German national (nor any other woman on Earth) in Germany nor in any other Member State (nor in any other country) that has recognized the registered partnership between *Herr Steiner* and *Kurios* Anthopoulos, because the status of registered partner of a person is, according to German law, incompatible with, and prevents conferment of, the status of spouse of another person (or the same person).

If *Signor* Bianchi *senior* is, legally (although not biologically), the father of *Signor* Bianchi *junior*, because *Signor* Bianchi *senior* is the husband of *Madame* Dupont, who is the mother of *Signor* Bianchi *junior*, the status of child of *Signor* Bianchi is incompatible with the status of child of *Monsieur* Leclerc, although latter is the biological father of *Signor* Bianchi *junior*. As a consequence, *Monsieur* Leclerc cannot acknowledge *Signor* Bianchi *junior* as his natural son as long as *Signor* Bianchi *junior* possesses the status of legitimate son of *Signor* Bianchi *senior*.

II. THE CURRENT LEGAL FRAMEWORK WITHIN THE EU

16. There is no common EU *substantive* rules with respect to the areas of family law covered in this note (1). When it comes to *private international law*, the rules relating to the *creation* or *termination* of the family statuses are essentially still domestic, with the important exception of divorce, separation and annulment of marriage, which are covered by two EU Regulations. On the other hand, the private international rules (whether on international jurisdiction, law applicable and recognition of decisions) relating to *effects* flowing from most of the family statuses are provided by a set of existing or proposed EU Regulations (2). This situation is likely to generate *conflicts of family statuses* and may result in *inextricable conflicts of legal rights and obligations* for the EU citizens and EU residents involved (3).

1. NO COMMON EU SUBSTANTIVE RULES

17. The **substantive requirements** that the applicants for a particular family status need to satisfy in order to obtain that status as well as the **procedure** they have to follow and the **authority** which has the power to assess those requirements and to award them the family status, are determined by **domestic law** of the Member States. The **substantive effects** flowing from those family statuses are also determined by domestic law.

18. In other words, there is no EU substantive law on *marriage*, no EU substantive law on *adoption*, no EU substantive law on *divorce,* no EU substantive law on *acknowledgment of paternity* or *disowal of paternity*… There is no **European adoption** pronounced by a European authority and having effects across the whole of the European Union. There is no **European marriage,** which may be celebrated by a **European authority** and has simultaneous effects across the whole **European Union**. There is a French, Italian, Spanish, Lithuanian, Hungarian, Greek set of rules on conditions to get married, a French, Italian, Spanish, Lithuanian, Hungarian, Greek set of rules on conditions to adopt and be adopted, etc.

> Today, *Madame* Dupont and *Signor* Bianchi are only permitted to marry through a *mono-national* (i.e. of one country only) civil servant, either a French *officier de l'état civil* or an Italian *ufficiale dello stato civile* or the corresponding authority of any other Member State with which they may have a connection deemed sufficient by that Member State to empower its authorities to solemnize marriage if the applicants satisfy the relevant requirements. Otherwise stated, *Madame* Dupont and *Signor* Bianchi cannot have their union celebrated by **a civil servant of the European Union**. They can only rely on either a *French* « *acte de mariage* » or on an *Italian* « *atto di matrimonio* » (or the corresponding act of another Member State), **they have no right to seek and obtain an** « **EU act (or certificate) of marriage** » which is effective simultaneously in France and Italy as well as across the whole of the EU territory without having to go through a recognition process.
>
> Today, if *Madame* Dupont and *Signor* Bianchi reside in Germany and they want to **adopt** a child, there are no EU substantive rules on adoption and no EU authorities having the power to pronounce an EU adoption order. *Madame* Dupont and *Signor* Bianchi have either to comply with German substantive rules or with Italian substantive rules or with French substantive rules or with all of them, depending on the relevant conflict rules; the adoption order will be a French adoption order (or an Italian adoption order or a German adoption order) pronounced through a French authority (or an Italian or German authority); and the French adoption order is not simultaneously valid in the whole EU, it is not binding on the Italian

authorities nor on the German authorities, those Italian and German authorities being still permitted to deny recognition of the French adoption order (also see below, point 23).

2. PRIVATE INTERNATIONAL LAW: DOMESTIC RULES WHEN IT COMES TO CREATION OR TERMINATION WITH THE EXCEPTION OF DISSOLUTION OF MARRIAGE, BUT EU RULES WHEN IT COMES TO EFFECTS

19. When it comes to private international law, a distinction should be made between *creation or termination* of the family status, on the one side (2.1), and the *effects* flowing from that status, or its termination, on the other (2.2).

2.1. Creation or termination of family statuses

20. It is appropriate to further distinguish between rules on *international jurisdiction* (a), *applicable law* (b) and *recognition* (c). There are no common EU rules on any of those issues, with the exception of *dissolution, separation or annulment* of marriage (d).

21. **a) International jurisdiction or competence.** There is **no common EU rules** on *international jurisdiction or competence* of the domestic authorities of the Member States to examine a request for adoption and issue an adoption order, to solemnize marriage, to register a partnership, to adjudicate on a paternity dispute, to approve and allow implementation of a surrogacy agreement, etc.

> If *Madame* Dupont and *Signor* Bianchi want to get married, there is no EU legislation providing that the authorities of the Member States are competent, for example, based on domicile or residence or nationality of one of the spouses. It is for each Member State to determine the *connections* which they deem sufficient to confer such power on their authorities.
>
> If the allegedly biological child, who is a Lithuanian national living in Latvia, of *Pan* Szczegola, who is a Polish national living in Poland, wants to files a paternity action against *Pan* Szczegola, there is no EU legislation providing that the authorities of the Member States are competent to hear paternity disputes based on domicile of defendant or domicile of claimant or nationality of claimant or defendant. There are *Lithuanian* rules on international jurisdiction with respect to paternity disputes, *Latvian* rules on international jurisdiction with respect to those disputes, *Polish* rules on international jurisdiction with respect to those disputes, etc.

22. **b) Applicable law**. Nor are there any common EU rules on *law applicable* to substantive and formal requirements to obtain the marital status or the registered partner status, to adopt and be adopted, to acknowledg, disavow or claim paternity, etc.

> If *Madame* Dupont and *Signor* Bianchi want to get married, it is for France or for Italy or for the United Kingdom or for Lithuania to say which law applies to the capacity to marry. It is for Lithuania or Poland or Germany (depending on the forum) to say which law applies to the substantive requirements to bring paternity action, and so on.

23. **c) Recognition**. Once a family status has been created in a Member State, the question as to whether or not the family status is **recognized** in other Member States is left for the legislation of each Member State. **There are no common EU rules on mutual**

recognition of family statuses which requires recognition or lays down common rules providing for common grounds for non-recognition.

The Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of **Marriages** is only in force in two Member States, the Netherlands and Luxembourg. The 2007 Convention on the recognition of registered partnerships (French: *Convention sur la reconnaissance des partenariats enregistrés*) is a multilateral convention, drafted by the *International Commission on Civil Status* which provides the acceptance in other countries of any form of registered partnership, which is not a marriage. Having being ratified only by Spain, it has not entered into force.

If *Madame* Dupont and *Signor* Bianchi have their marriage solemnized in France, then there is no **EU legislation** applying to the question as to whether or not the marital status that they have acquired in France should be recognized in Italy or in Germany or in Spain. This question is governed by Italian – German or Spanish – rules on recognition or non recognition of marriages celebrated abroad.

If *Pan* Szczegola acknowledges a child in Poland before the Polish competent authorities, there is no EU legislation requiring recognition by Lithuania of the child status and parental status that have been validly created in Poland nor EU legislation setting out the grounds justifying such refusal of recognition.

The 1993 Hague Convention on Inter-Country Adoption is in force in **all Member States**. The scope of application of this instrument is, however, **restricted** and does not extend, for example, a) to adoptions of the *child of the spouse or partner or cohabitee* nor b) to adoptions by *unmarried couples* (whether cohabitees or not) nor c) to adoptions by *same-sex couples* (including married or registered partners) nor d) to adoptions of *adults* (as in the *Negrepontis* case: see point 46 below) nor e) to adoptions of children who are *physically present* on the territory of the State of habitual residence of the parent, such as *refugee children*[1]. In addition, the Convention is not applicable f) when the country of **habitual residence of the child is not a State Party**, which is the case of **half of the sovereign countries** of the globe (Russia, almost all African countries except for a few of them, such as Burkina Faso and Zambia, etc).

For example, an adoption by a German national of the natural child of his Italian wife (wherever the child resides) falls outside the 1993 Hague Convention, an adoption by two English heterosexual cohabitees of a Bulgarian child also falls outside the Convention, and so does an adoption by a French woman of a Syrian refugee child who is physically present in France or an adoption by a Greek orthodox bishop of an adult pronounced in the United States (as in the *Negrepontis* case: see point 46) or an adoption by two Italian ladies living in the United Kingdom as a couple of any child whatever his or her nationality and his or her country of residence, etc. In each of those cases, because the adoption proceeding is not covered by the 1993 Hague Convention and is in fact a *domestic* (rather than *inter-country*) proceeding, if the adoption is pronounced, the question as to whether or not this adoption and the family statuses that it creates are recognized in a Member State, including a Member State who has a strong connection with the child or the parent, is not governed by the 1993 Hague Convention but by **its domestic rules on recognition or non-recognition of foreign adoptions**.

[1] See for example A. Bucher, in A. Bucher (ed.), Commentaire Romand, Loi sur le droit international privé – Convention de Lugano, Helbing Lichtenhahn, 2011, p. 610-611.

The 1993 Hague Convention seeks to ensure that an adoption pronounced in a State Party is recognized in the other State Parties. And yet Article 24 still provides that « *the recognition of an adoption* ***may be refused*** *in a Contracting State only if the adoption is manifestly contrary to its* ***public policy****, taking into account the best interests of the child* ». In other words, **a State Party is still allowed by the 1993 Hague Convention to pronounce an adoption and another State Party is still allowed, based on its own public policy, not to recognize this adoption and not to recognize the family status that the adoption has conferred to the individuals involved.** To be sure, the State involved in the intercountry proceedings (i.e. State of residence of the child or of the applicants) other than the one whose authorities have pronounced the adoption will generally not withhold recognition, its authorities having had the possibility to oppose the adoption at an early stage. However, another State which also has a strong connection with the child or the applicant(s), such as the **State of nationality of the applicant or the child,** and whose authorities were never consulted in the course of the inter-country proceedings (the 1993 Hague Convention does not provide for any direct involvement of the State of nationality of the applicant or of the child) will still be free, based on the 1993 Hague Convention, not to recognize the adoption and the family status that flows from such adoption in the State Party of origin.

> If an Italian woman permanently living in the United Kingdom wants to adopt a Peruvian (or a Bulgarian, or a Romanian, etc.) child through the 1993 Hague Convention, and the Peruvian (or the Bulgarian, or the Romanian, etc.) authorities pronounce the adoption, the UK will most certainly recognize the adoption because the UK was actually involved in the adoption proceedings, which was an *inter-country* proceedings. But Italy, the national State of the adoptive mother, where the civil status registry of the adoptive mother is kept, and **which was not involved in the inter-country proceedings, remains free, based on Article 24 of the 1993 Hague Convention, to deny recognition of the foreign adoption and not to inscribe it in the Italian civil status registry** due to the fact that adoption by a single person is not allowed by Italian law (although the European Convention on Human Rights may compel recognition: see the *Wagner* case, point 46 below).

24. **d) Exception**: **divorce, separation and annulment of marriage.** The only exception – although of considerable practical relevance – is termination of marital status through **divorce, separation and annulment of marriage.**

- The *international jurisdiction* to hear an application for divorce, separation and annulment of marriage as well as the *recognition* in a Member State of a decision rendered in another Member State in one of those ares are governed by the « **Brussels IIa Regulation »**[2], which is in force in all Member States except Denmark.
- The *law applicable* to divorce and legal separation (not annulment of marriage) is designated by the « **Rome III Regulation »**[3], which implements « enhanced cooperation » among the 14 Member States which are bound by it.

> Recognition or non-recognition in Italy of a divorce pronounced in France is governed by Brussels IIa Regulation (articles 21 et seq.) If marriage between

[2] Council Regulation (EC) 2201/2003.
[3] Council Regulation (EU) 1259/2010.

Madame Dupont and *Signor* Bianchi is celebrated in the UK and then annulled in the UK, recognition or non-recognition in France or Italy of the English annulment order is also governed Brussels IIa Regulation.

If *Madame* Dupont files for divorce in France or in Italy, the law applicable to the grounds for divorce is determined in Italy and France by the Rome III Regulation and is principle the same except for the possibility of the Member State whose law is not that designated by this Regulation to rely on its own public policy (article 12) and apply its own law.

2.2. Effects of family statuses

25. The legal landscape looks different when it comes to the *effects* flowing from a family status, particularly the mutual rights and obligations of the status holders as between themselves and as against their successors. Private international law with respect to those effects is, to a significant extent, governed by existing or proposed **EU Regulations or Hague Conventions** (a). The effects that are still left to the domestic private international law of the Member States are only a few (b).

26. **a) Effects covered by existing or proposed EU legislation and Hague Conventions.** Private international law relating to maintenance, parent and child relationship, matrimonial property, patrimonial consequences of registered partnerships and succession is or will soon be covered by EU Regulations. This is true for both *international jurisdiction, law applicable* and *recognition of foreign decisions*.

- **Maintenance.** International jurisdiction and recognition of maintenance orders are governed by the « **European Maintenance Regulation** »[4]. As regards the law applicable to maintenance rights and obligations, the Maintenance Regulation refers to the the **2007 Hague Protocol** (article 15).

  If *Monsieur* Dupont and *Signor* Bianchi acquire the status of same-sex spouses, the question as to whether and to which extent *Monsieur* Dupont is entitled to maintenance from *Signor* Bianchi, and conversely, is determined based on the law designated by 2007 Hague Protocol which is binding on France and Italy. The Maintenance Regulation determines which authorities (French or Italian or French and Italian, etc.) have the power to hear those maintenance disputes as well as the grounds based on which Italy may refuse recognition of a French maintenance order, and France may refuse recognition of an Italian maintenance order.

- **Child/Parent Relationship**. Once the parental and child status has been established (whether through birth, adoption, acknowledgment, judicial establishment, and so on) the consequences in terms of rights and duties of the parent or the parents towards the child as well as the rights and obligations that each of the parents has as against the other are governed by the law designated through the **Hague Convention 1996** which is in force in **all Member States** (in Italy as of 1er January 2016).

  Once the child and parental status of *Pan* Szczegola *senior* and *Pan* Szczegola *junior* has been established (through acknowledgment of fatherhood or a paternity action), the law applicable to rights and duties in terms of custody or access are determined by the Hague Convention 1996. The question whether the applicant for access right may be brought before the Polish court or the Lithuanian court or the Latvian court is determined by Brussels IIa Regulation, which is in force in Poland, Lithuania, Latvia and all other Member States.

[4] Council Regulation (EC) 4/2009.

Brussels IIa Regulation also governs recognition of Lithuanian child custody and access orders in Poland, and the other way round.

- **Matrimonial property and patrimonial effects of registered partnership**. The law applicable as well as the international jurisdiction and recognition of decisions relating to **patrimonial effects** of marriage as well as of registered partnership are likely to be defined uniformly by two European instruments that are in preparation[5].

  If *Herr* Steiner and *Kurios* Anthopoulos are registered partners in Germany, it is the proposed EU Regulation on property consequences of registered partnership that will determine which courts have power to hear disputes relating to property consequences between them, which law applies to those consequences and which are the grounds permitting Greece not to recognize a German decision on this issue, and conversely.

- **Succession.** The effects of a particular family status when it comes to **inheritance** are governed by the « **European Succession Regulation »**[6] which also covers the three traditional issues of jurisdiction, governing law and recognition of decisions but also extends to the novel area of recognition of the « European Succession Certificate ».

  It is in principle the Succession Regulation that determines the law applicable to the succession of *Signor* Bianchi, including the question whether or not *Monsieur* Dupont is a legitimate or forced heir of the deceased (« *héritier légitime* », « *erede legittimo* », ou « *réservataire* », « *legittimario* ») and for which portion.

27. **b) Effects not covered by existing or proposed EU legislation**. There is no EU legislation, whether existing or proposed (to the best of our knowledge), on **general** or ***personal effects*** of marriage (« *effets généraux du mariage* », « *allgemeine Ehewirkungen* », « *effetti personali del matrimonio* ») or on the impact that a particular family status may have on the **family name** of the status holder(s). As a result, international jurisdiction, applicable law and recognition of public acts or decisions relating to those areas of family law are still in the realm of each Member States to govern.

Once *Madame* Dupont is married to *Signor* Bianchi, there is no EU Regulation that says for to which extent they have fidelity and assistance obligation (other than through spousal support, which is covered by the Maintenance Regulation) and which are the consequences of their violations, or whether each of the spouses has the power to conclude alone an act which is in the objective interests of the family and is binding on both spouses, nor is there an EU Regulation that designates the law applicable to the consequences that marriage has on the *family name* of the spouses.

3. CONFLICTS OF FAMILY STATUSES AND THEIR CONSEQUENCES

28. The current situation allows for *conflicts of family statuses* to arise within the European Union (3.1). The conflict of family statuses may in turn generate conflicts of substantive rights and obligations, which conflicts may ultimately have no *legal solution* and result in *legal chaos* for the individuals who are caught up in those conflicts (3.2).

[5] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of *matrimonial property regimes* COM(2011) 126, Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the *property consequences of registered partnerships*, COM(2011) 127 of 16 March 2011.
[6] Regulation EU 650/2012.

3.1. Possibility of conflict of family statuses

29. A conflict of family statuses is the situation where two individuals have, in the eyes of one country with which they have a strong connection, a particular family status but, in the eyes of another country with which they also have a strong connection, they have another status which is regarded by the substantive legislations of both countries as **incompatible** with the first.

30. The **« intra-EU conflict of family status »** is a situation where, in the eyes of a **Member State A**, two individuals have a particular family status, and, in the eyes of a **Member State B**, they have another family status which is incompatible with the one in A. The most common source of intra-EU conflict of family statuses is when a family status conferred by a **Member State A** (which one may call the *« Member State of creation »* **or** *« Member State of origin »* of that family status) **is not recognized in Member State B** (« *Member State of non-recognition* »).

> If the family status is awarded by a judicial decision of Member State A – that is generally the case when it comes to divorce, adoption and establishment of paternity – non-recognition of the family status may be the direct result of non-recognition of the judicial decision that has conferred it. The causes of non-recognition may the traditional grounds justifying refusal to recognise a decision, such as substantive and procedural public policy, breach of due process rights, and so.

31. As long as a Member State is allowed to create a particular family status and confer it to two individuals and another Member State is allowed not to recognize such family status, **an intra-EU conflict of family statuses is bound to arise.**

- A conflict of family statuses may arise even in the **area covered by the only instrument that exists on this subject matter**, which is **Brussels IIa Regulation**. As a matter of fact, this EU Regulation does not oblige Member State B to recognize the divorce – and the subsequent family status of divorcees – issued in Member State A. Article 22 of Brussels IIa Regulation still lists **a number of grounds** which would permit Member State B not to recognize divorce. If a Member State A issues a divorce decree and a Member State B does not recognize the divorce, an intra-European conflict of statuses between Member State A and Member State B (and potentially other Member States) arises.

  > If a divorce between Mrs O'Connor, an Irish national, and Mr Svensson, a Swedisn national, is pronounced in Sweden based on unilateral application made by Mr Svensson, Ireland can still refuse to recognize the Swedish divorce decree based on one of the grounds listed in Article 22 of Brussels IIa Regulation. If the Swedish divorce is not recognized in Ireland, Mrs O'Connor and Mr Svensson are still *spouses* for Ireland while they are already *divorcees* for Sweden. This is a *Swedish/Irish conflict of family statuses.*
  >
  > If the marriage between *Madame* Dupont and *Signor* Bianchi has been annulled through an Italian annulment of marriage but the annulment decision is not recognized in France based on one of the grounds listed in Article 22 of Brussels IIa Regulation, *Madame* Dupont and *Signor* Bianchi have unmarried status in Italy while they still have marital status in France. This is « *limping marriage* » and « *limping termination of marriage* ».

- Conflicts of family statuses are even more likely to arise with respect to **family statuses that are not subject to any EU legislation**[7]. In the field of **celebration**

[7] This is without prejudice to what has been said above, point 23, with respect to inter-country adoption.

(as opposed to termination) of marriage, registered partnership and creation (through adoption, surrogacy, acknowledgment or establishement of paternity) **or termination of filiation** (contestation or disavowal of fatherhood) a Member State is, as law stands today[8], permitted by EU law, which is silent on this point, to give rise to a family status and a Member State with which the two individuals have already at the time of conferment or will have at any subsequent time a connection is permitted **not to recognize this status.**

> If *Herr* Steiner and *Kurios* Anthopoulos register their partnership in Germany and their same-sex partnership is not recognized in Greece, then they will be caught in a **German-Greek conflict of family statuses**: they have, in the eyes of Germany, the status of *registered partners*, in the eyes of Greece, the status of *single*.

> If Mr and Mrs Smith, who live together as a couple but are unmarried – the adoption by an unmarried couple falling outside the 1993 Hague Convention on Inter-Country Adoption: see point 23 above – have adopted a child without the consent of the biological mother, who turns out to be a Romanian named Mrs Ungureanu, and Romania does not recognize the UK adoption order on that ground, the minor concerned is child of Mr and Mrs Smith in the eyes of the UK whereas he is child of Mrs Ungureanu in the eyes of Romania. That's a **UK-Romanian conflict of statuses** and particularly of motherhood.

32. An intra-EU conflict of family statuses may also arise due to the different position that two Member States may take with respect to recognition or non-recognition of a status conferred by a **third State**. If two individuals having connections with Member State A and Member State B apply for and are awarded a family status in a Third State C, and if Member State A recognizes such a status while Member State B does not, an intra-EU conflict of family statuses arises.

> Mr Smith, a UK national, and *Madame* Dupont, a French national, married with each other, have recourse to a surrogate mother in California, who delivers a baby. The birth certificate established in California reports that Mr Smith and *Madame* Dupont are the parents of the child. If the UK recognizes such birth certificate and the underlying parents-child legal relationship, whereas France does not, a French-British conflict of family status arises.

3.2. Adverse consequences flowing from intra-European conflicts of family statuses

33. A family status being *defined* by the substantive rights and obligations that it generates in the sphere of the status holders, an intra-European conflict of family statuses threatens to result in a **conflict of substantive rights and obligations for the individuals concerned.** It is appropriate to distinguish between *law applicable* to effects (a) and recognition of *foreign decisions* relating to those effects (b).

34. **a) Law applicable to effects**. Even if the **law applicable** to a particular effect (maintenance, marital property, succession, etc.) **is the same** from the point of view of **two Member States**, due to their being bound by EU Regulation governing those effects, each of the Member States whose authorities may be seized of a question relating to those effects may be tempted to implement the law designated by the relevant EU Regulation **by applying the status that the individuals have within its own legal system.**

[8] And except for the existence of the 1993 Hague Convention on Inter-Country Adoption: see point 23 above.

35. For example, if the law applicable to *succession* is that of Member State B of non-recognition, the Member State A of origin may be tempted to apply the law of Member State B without taking into account the non-recognition of the family status created by Member State A. Conversely, if law applicable to succession is that of Member State A of origin of the family status, Member State B of non-recognition of that status will be tempted to regard the status that the individuals concerned have or used to have in the eyes of Member State B as relevant for the purposes of succession.

36. The **disagreement** between Member State A and Member State B as to which is the applicable family status for the purposes of succession as well as for the purposes of any other set of effects flowing from a family status or the absence of termination of that family status will result **in legal uncertainty**, because the individuals have prior to litigation no idea of **what their mutual rights and obligations are**, as well as in **incentives for litigation and race to the courthouse** (« forum shopping »). This defeats the purposes of having Regulations providing uniform rules of law applicable to rights and obligations arising out of family relationships which is to contribute to legal certainty and, as a result, to reduce litigation.

> *Monsieur* Dupont and *Signor* Bianchi are married in France but their marital status is not recognized in Italy because Italy regards same-sex marriage of an Italian national abroad as contrary to public policy. If *Signor* Bianchi dies intestate, the applicable law is determined both in France and in Italy by the Succession Regulation. ***Monsieur* Dupont is the *surviving spouse* in the eyes of France whereas he has *not* the status of surviving spouse in the eyes of Italy because he had no status of *spouse* in the first place.** Let us stipulate that *Signor* Bianchi leaves no children nor parents but a brother and a sister. If the law governing the succession of *Signor* Bianchi is Italian law because habitual residence of *Signor* Bianchi was in Italy (article 21 of the Succession Regulation), then the French authorities may be willing to apply the provisions of the Italian *Codice civile* relating to succession of the surviving spouse and award the whole assets of *Signor* Bianchi to *Monsieur* Dupont, whereas the Italian authorities will most probably apply the provisions of the Italian *Codice civile* relating to succession of a person leaving no surviving spouse, children or parents and award the whole assets to *Signor* Bianchi's brother and sister.
>
> After *Signor* Bianchi's death, **there is no certainty as to who** (*Monsieur* Dupont? the deceased's brother and sister?) **is entitled to inherit his assets**. This ultimately turns on whether *Monsieur* Dupont is regarded as being the surviving spouse or not: **France says *yes* and Italy says *no***. This situation of uncertainty may encourage *Monsieur* Dupont to run to the French judge and *Signor* Bianchi's brother and sister to run to the Italian judge, i.e. **encourages litigation, *forum shopping* and *forum running*.**

37. **b) Recognition of foreign decisions as to effects.** Even if there is no possibility of two courts being seized of the matter simultaneously, the Member State A of the creation of a family status may refuse to recognise a decision of Member State B which in turn failed to recognize the family status that was created by Member State B and ruled on the dispute regardless of that status. This is bound to generate *a conflict of public policies,* with each of Member State A and Member State B refusing to recognize the decision of the other for failure to take the « good » family status into account and being prepared to adjudicate anew. This **may generate a conflict of adjudications and of legal systems between Member State A and Member State B.**

38. As EU law stands today, **there is virtually no possibility of having this conflict of adjudications and of legal systems between Member States settled by a higher**

authority. This means that the individuals concerned have no legal way to determine their dispute and identify their rights and obligations. The Member States and, more importantly, the EU is committing a **denial of justice** towards those individuals. The result is that the individuals may be inclined to resort to **self-justice** and **state-of-nature behaviours.**

> Let us assume that part of the assets left by *Signor* Bianchi is in France and part of them is in Italy. If the brother and sister of *Signor* Bianchi bring an action before the Italian authorities and obtain a decision awarding title of all assets to them and the Italian decision is presented in France for recognition and enforcement, France can, on application of *Monsieur* Dupont, deny recognition because of the French public policy. *Monsieur* Dupont may then start proceedings again in France and obtain a decision awarding the whole assets to him. If *Monsieur* Dupont also has assets in Italy, the brother and sister of *Signor* Bianchi may try to obtain the delivery of those assets by way of compensation for not having being allowed to secure possession of French assets to which they were entitled based on the Italian decision. **The conflict between *Monsieur* Dupont and the brother and sister of *Signor* Bianchi is not settled *by law*** because there is no legal way of resolving the French-Italian conflict of legal systems which is in turn triggered by French-Italian conflict of family status.
>
> If the UK regards a person as a child of Mr and Mrs Smith, who have adopted the child through a UK adoption order, and Romania regards that person as a child of Mrs Ungureanu, her biological mother, because Romania fails to recognize the UK adoption order, then, regardless of whether UK law applies or Romanian law applies, Mrs Smith may apply for custody in the UK and the UK judge is willing to award custody to Mrs Smith but this custody order is unlikely to be recognized in Romania and, if it is not, Mrs Ungureanu may apply for custody in Romania and a Romanian judge will likely award custody to Mrs Ungureanu. This is a **UK/Romanian conflict of custody orders** flowing from a UK/Romanian conflict of statuses which in turn flows from the fact that UK has pronounced an adoption order that Romania has failed to recognize.

39. **c) Same status but with different persons.** As indicated above (point 15), one of the effects of a family status is to prevent conferment of **another family status** which is incompatible with the first one. Now, if Member State A has created a status and Member State B fails to recognize it, Member State B may be willing to allow one of the individuals concerned to apply for and be awarded another status (typically with a third individual) incompatible with the one initially conferred by Member State A, and Member State A will in turn deny recognition of that new status. The question as to what are the legal rights and obligations arising out of those inconsistent statuses **will likely spiral out of control of the Member States and the outcome will be legal chaos.**

> *Monsieur* Dupont and *Signor* Bianchi get married in France. If their marriage is not recognized in Italy, *Signor* Bianchi is, for Italy, still *unmarried*. **Being unmarried in the eyes of Italy, Italy may be tempted to allow him to get married to *Signora* Rossi** (or to any other woman) **in Italy** (just as Greece may allow him to get married to *Kuria* Anthopoulos to the extent that Greece also fails to recognize the French marriage). If he does, *Signor* Bianchi will actually be married to *Monsieur* Dupont for France and to *Signora* Rossi for Italy. In a way, he will be a cross-border « bigamous » individual. The consequences of all this in terms of rights and obligations between *Signor* Bianchi, *Monsieur* Dupont and *Signora* Rossi will be **chaos and confusion.**

III. INCONSISTENCY OF CONFLICT OF FAMILY STATUSES WITH PRINCIPLES OF EU LAW

40. Eliminating the differences among the **substantive** legislations of the Member States on *conditions* and *effects* of marriage, adoption, kinship, divorce, paternity, and so on, is neither feasible in the foreseeable future nor desirable, because it is not strictly necessary to prevent the kinds of conflicts discussed above for the individuals concerned. But all players involved – the Member States and the European Union – should make sure that this diversity does not cause inextricable conflicts.

41. If the motto of the European Union is « ***united in diversity*** », which in French is « *unie dans la diversité* », « *unie* » being presumably referred to the Union, while the Italian version sounds « *uniti nella diversità* », « *uniti* » being ostensibly referred to the **Member States**, the situation of conflicts described above is certainly not that of a *diversity resulting in unity and harmony,* but that of a *diversity generating conflict, discord and division* between the Member States as to the rights and obligations of the EU citizens and EU residents who have acquired a family status in Member State A which is not recognized in Member State B. **While *legal pluralism* may be a source of wealth and fuel human progress, *legal conflicts* are contrary to the very essence, and defeat the very purpose, of Law and Order**.

42. As a result, each and all of the Member States should have an interest in sparing their citizens and residents the hardship, confusion and disorder resulting from those situations of conflicts (unanimity being required within the Council in order to take steps concerning « *family law with cross-border implications* »[9]). Each and all of the Member States should be concerned with advancing the interests of Law and Order and contributing to the prosperity of their citizens and residents. As to the EU, it has not only the **power** but increasingly a **duty** towards the EU citizens and EU residents to prevent or resolve those conflicts, whose threat or existence is hardly consistent with the objective of creating an « *area of freedom, [security] and justice* »[10] (1) as well as with the *human rights* (2).

1. INCONSISTENCY WITH THE OBJECTIVE OF CREATING AN AREA OF *FREEDOM, (SECURITY) AND JUSTICE*

43. **Justice.** The conflict of family statuses and of the disorder and confusion they have the potential to create in the sphere of the affected individuals threatens to cause injustice to those individuals.

- If a dispute arises between those individuals as to whether or not some specific rights and obligations have arisen between them, and Member State A of creation of the family status says that the individuals have those rights and obligations while Member State B denying recognition of that family status says they do not have those rights and obligations, this may, as we have seen (points 36-38), ignite litigation between the individuals and encourage « *race to the forum* ».
- To the extent that each of the Member States A and B will refuse recognition of the decisions made by the other on the ground that the other Member State's judge has not applied the status that the individuals possesses in its own view, a conflict of adjudications is bound to arise and this conflict is not resolved by the law and may result in denial of justice (« *déni de justice* »; « *Rechtsverweigerung* »), which is itself an injustice. Such a conflict will then, as we have seen (point 38), be solved through

[9] Article 81(3) TFEU.
[10] As Article 67(1) of the TFEU provides.

mechanisms other than legal mechanisms, that is self-justice and law of the jungle behaviours.

44. **Freedom.** Existence of conflicts of family statuses run counter to the objective of shaping an area of *freedom*, to the extent that this freedom includes the **fundamental freedoms** on which the European Union rests, and particularly the **freedom of persons** – of *movement*, of *establishment*, of *exercising a profession*, of *purchasing and moving assets*. Indeed, those who have acquired a family status in Member State A may prefer not to move or transfer assets to Member State B to the extent that Member State B fails to recognize that family status and pave the way to a conflict of family statuses, i.e. to confusion and disorder in the personal and financial sphere of the individuals concerned.

This has been recognized and proclaimed by the European Court of Justice in the ***Grunkin-Paul*** case with respect to the area of surnames[11]. The Court of Justice held that the fact for a child who has obtained a particular family name in Member State A (Danemark) based on the substantive law of this Member State **not to have this family name recognized** in Member State B (Germany) with which the child also have « strong links » (point 27) represents an obstacle to the **freedom of movement of this child.** The Court of Justice has also emphasized the « **serious inconvenience** » (point 29) caused to the child as a result of the differences in the surname resulting from the « documents, attestations, certificates and diplomas » issued by both Member States (point 27).

Now, it would seem that the « inconvenience » that results for a person from having being awarded by Member State A the status of a child of another person (through adoption or surrogacy, for example) and not having that status recognized in Member State B with which he or she has significant ties **is even more « serious » in terms of one of the core elements of his identity, i.e. the critical question of who is his father and who is his mother.** As the ECHR has indicated, « an essential aspect of the individual's identity is at stake as soon as filiation is involved »[12] and that « the right to privacy, which implies that everyone has the possibility to establish the substance of its identity, including its filiation » (translation is ours[13].

As to *Signor* Bianchi and *Monsieur* Dupont, they may decide not to move from France to Italy even if they both may have been offered some attractive professional positions in Italy for fear that the marital status they have acquired in France is not recognized in Italy and that they may be faced with inextricable difficulties. *Signor* Bianchi may also prefer to move all his assets to France rather than leaving some of them in Italy to reduce the possibility of any litigation arising between *Monsieur* Dupont and his own brother and sister to secure his assets upon death.

If a child is born through surrogacy in the UK to a Hungarian mother and a Hungarian father while they were both residing and working in the UK, they may prefer not to move back to Hungary for fear of causing the child to lose status in Hungary and of losing themselves paternity and maternity rights.

[11] ECJ, 14 October 2008, C-353/06.
[12] « *un aspect essentiel de l'identité des individus est en jeu dès lors que l'on touche à la filiation* » (26 June 2014, *Mennesson v. France*, point 80).
[13] « *le droit au respect de la vie privée, qui implique que chacun puisse établir la substance de son identité, y compris sa filiation* » (26 June 2014, *Labassée v. France*, point 27).

2. INCONSISTENCY OF CONFLICT OF STATUS WITH HUMAN RIGHTS

45. The conflicts of statuses have also, on a number of occasions, been held to entail consequences which are **contrary to human rights of the individuals concerned**. To be true, this has so far taken place in the children area, both regarding **adoption** – *Wagner* case[14] and *Negrepontis* case[15] – and **surrogacy** – *Mennesson* and *Labassée* cases[16]. But it is easy to anticipate that the Strasbourg Court will in the near future reach the same conclusion in other areas of the family law.

46. In each of those cases, the Strasbourg Court held that refusal by a Member State (Luxembourg, Greece and France) to recognize the child status and the parental status that had been validly conferred abroad according to the substantive law of the country of origin resulted in violating the rights of the child and the parents to respect for their family life. Interestingly, in all those cases, the State having created the controversial status was **extra-European** (Peru, Michigan, California and Minnesota). There is good reason to believe that if failure by a Member State to recognize a family status created in a **Third State** already qualifies as a **violation of human rights** within the meaning of the European Convention of Human Rights to which the Third State is not a party, this is even more so – and the violation is in principle, and all things being equal, even **less justified** – if a Member State fails to recognize a status validly conferred by another Member State, both Member States being party to the European Convention of Human Rights.

> In the *Wagner* case, the adoption was of a *minor,* the adoptive parent being an unmarried woman. The adoption was pronounced in Peru and Luxembourg had refused to recognize it on the ground that that the adoptive mother was a citizen of Luxembourg and that the substantive law in Luxembourg prohibits adoption by an unmarried woman. While the recognition had been requested for the purposes of registering the legal status in the relevant civil status registry as well as for purposes of nationality, the ECHR also mentioned other effects, such as *succession* (point 29 of the decision).
>
> In the *Negrepontis* case, the adoptee, Mr Giannisis, was an *adult* and the adoptive parent, Mr Negrepontis, an unmarried man who happened to be a bishop of the east orthodox Christian church. The adoption was pronounced in the State of Michigan (U.S.) and neither the adoptee nor the adoptive parent had taken steps to have that status recognized in Greece. After Mr Negrepontis died, a dispute arose as to whether Mr Giannisis was allowed to carry the family name of the deceased and, more importantly, as to who was entitled to the deceased's fortune. The brothers and sisters of the deceased claimed they were his legitimate heirs *ab intestato* due to Mr Giannisis having, in the eyes of Greece, no status of adoptive child, the adoption established in the U.S. being not recognizable in Greece. Mr Giannisis argued that he did have the status of surviving child in the eyes of Greece and, therefore, he was entitled to the whole estate. Greek judicial authorities, including the Supreme Court, declared that the Michigan adoption order did not qualify for recognition in Greece. The Strasbourg Court concluded that failure by Greece to recognize the status of adopted child, including for the purposes of succession, amounted to a violation of the European Convention on Human Rights.

[14] ECHR, 28 June 2007.
[15] ECHR, 2 May 2011.
[16] ECHR, 26 June 2014.

IV. PATHWAYS TO PREVENT INTRA-EU CONFLICTS OF FAMILY STATUSES OR ALLEVIATE THEIR CONSEQUENCES

47. A number of **pathways** are available **in order to avert intra-EU conflicts of family statuses or alleviate their adverse consequences for the individuals concerned**. Each of those pathways has its *strengths* and *weaknesses* – and it is impossible to explore here all of the predictable ones in detail. The solution that may be the best option in a particular area of family law may not prove the most desirable in another area. Also, not all of those approaches may be technically implemented in all of the areas of family law.

48. We will discuss **four** of those methods or strategies: the first is about coordinating the effects of two inconsistent family statuses so as to avert conflicts of rights and obligations (1); the second is about preventing the conflict of statuses by requiring mutual, compulsory recognition by all Member States of a family status created by one of them (2); the third is bringing together the competent authorities of two or more Member States and have them participate in a kind of co-decisions mechanisms (3); the fourth is to progressively develop an EU substantive legislation on creation and termination of family statuses and have it administered by EU authorities whose decisions are binding on all Member States (4).

1. OPTION 1: ALLOWING CONFLICT OF STATUSES BUT COORDINATING THEIR EFFECTS

49. The first option rests on a two-fold premise:

- on the one hand, Member State A is allowed to **create** a family status based on its own substantive law while Member State B is allowed **not to recognize** it based on its own family law policy, which means that the individuals concerned have a family status for Member State A and another family status for Member State B;

- on the other hand, when it comes to **private law effects**, coordination is achieved by requiring each Member State to give effect to the status that the individuals concerned have **in the eyes of the Member State whose law is applicable to those effects.** As a result, if applicable law is that of *Member State A of creation* of the family status which Member State B has failed to recognize, Member State B has to apply the non-recognized status for the purposes of those effects; conversely, if the law applicable is that of *Member State B of non-recognition*, Member State A should defer to the status that the individuals have in the eyes of Member State B and therefore not give effect, for those limited purposes, to the status that its authorities have validly created.

  > France remains free to grant *Monsieur* Dupont and *Signor* Bianchi the possibility of entering into same-sex marriage and Italy remains free not to recognize this marriage. Failure by Italy to recognize this marriage means for example a) that *Signor* Bianchi will not be reported as « married » (« *coniugato* ») in the Italian civil status registry (« *registro dello stato civile* »), b) that *Monsieur* Dupont will not qualify for Italian nationality based on marital status, which he does not possess, c) that *Monsieur* Dupont and *Signor* Bianchi may not be regarded by the Italian authorities as spouses for tax or social security purposes, etc.

But when it comes to **private law effects** (maintenance, marital property, succession, family name, etc.), the *French status* (that of spouses) will prevail, including before the Italian authorities, when French law applies to those effects, while the *Italian status* (that of non-spouses) will prevail, including before the French authorities, when Italian law is applicable to those effects, and the German status (whether Germany recognizes the French same-sex marriage or fails to recognize and support the Italian position) will prevail, including before the Italian and French authorities, when German law is applicable to those effects.

- For example, if *Signor* Bianchi dies intestate and his succession is governed by **Italian law**, because *Signor* Bianchi had his last habitual residence in Italy (based on article 21 of the Succession Regulation, which would prevent *Signor* Bianchi to choose French law), French authorities will have to regard *Signor* Bianchi as having no surviving spouse for the purposes of the distribution of his estate upon death. As a consequence, in the potential dispute between *Monsieur* Dupont and *Signor* Bianchi's brother and sister, French authorities will have to find for the *Signor* Bianchi's brother and sister.
- If the succession of *Signor* Bianchi is governed by **French law**, typically because *Signor* Bianchi had his last habitual residence in France, then the Italian authorities will have to accept that, for succession purposes, *Monsieur* Dupont is the surviving spouse and they will have to uphold his claim to inherit the whole of his assets, thereby excluding *Signor* Bianchi's brother and sister from the succession.
- If *Signor* Bianchi and *Monsieur* Dupont have moved to **Germany** and *Signor* Bianchi dies intestate with habitual residence in **Germany**, then German law applies to his succession. Now, if Germany recognizes the marital status of *Signor* Bianchi and *Monsieur* Dupont, then German, French and Italian authorities will have to apply the status of surviving spouse and distribute the assets accordingly.

To the extent that the Regulations applying to effects of a family status allow the **parties to choose the law applicable** – as is increasingly the case: Succession Regulation, Maintenance Regulation, Proposals for Matrimonial Regime provide for some measure of *optio iuris* – and the law of the Member State of creation of a family status is included among those laws which may be chosen by the parties, **those EU conflict rules allowing for party autonomy would contribute, under this Option 1, to preventing conflicts of family statuses** (see example under point 52 below).

50. This approach also and *a fortiori* requires Member State B of non-recognition to give effect to **any foreign judgment** of Member State A of creation based on the family status created in A and on the substantive law of A. In other words, **Member State B is no longer permitted to oppose recognition based on public policy due to the fact that the status created in A has not been recognized in B.**

If a French judgment awards and transfers the whole estate of *Signor* Bianchi to *Monsieur* Dupont based on French law, which is applicable according to the Succession Regulation, and part of *Signor* Bianchi's assets are in Italy, the Italian exequatur judge will not be permitted to deny recognition of the French decision on the ground that the same-sex marriage between *Signor* Bianchi and *Monsieur* Dupont was denied recognition in Italy.

51. Although complex to implement, Option 1 attempts to preserve and harmonise the right of a Member State to create a family status and the right of another Member State not to be bound by a family status that offends its own concept of family law. Steps are taken only to the extent that is strictly necessary to **avoid inextricable conflicts of legal rights and obligations** whose threat encourages litigation and whose occurrence ultimately creates confusion, disorder and chaos for the individuals.

> In each of the three scenarios stipulated above (point 50), there is **no conflict of rights and obligations** when it comes to determining who has title over the assets of the succession. *Monsieur* Dupont as well as *Signor* Bianchi's brother and sister will benefit from a **reasonable certainty and predictability** as to their rights and obligations with respect to those assets. *Monsieur* Dupont knows, in the first scenario, that he has no legitimate claim over *Signor* Bianchi's assets and he is unlikely to be willing to start judicial proceedings to secure them. The brother and sister of the deceased know, in the second scenario, that they have no legitimate claim over their deceased brother's estate and they are unlikely to file an action against *Monsieur* Dupont but will spontaneously hand over to him those assets that are in their possession. **Litigation is reduced and so are the costs of justice for the French and Italian taxpayers.**

52. The price to pay for embracing this approach is **a measure of incoherence** as to the outcomes because, with respect to *some* effects, two individuals have a particular status, whereas with respect to *other* effects, they have an incompatible status.

> Let us assume that *Monsieur* Dupont and *Signor* Bianchi have chosen French law as applicable to their matrimonial property regime (which the Proposed Regulation on Matrimonial Property Regimes – see point 26 above – will certainly allow them to do). If *Signor* Bianchi dies intestate having his habitual residence in Italy, then *Monsieur* Dupont will be regarded as *spouse* (in the whole of EU) for the purposes of distributing *marital property* whereas he will be regarded as not being a *surviving spouse* (in the whole of EU) for the purposes of *succession*.

53. If this approach is adopted, it would be advisable – and indeed arguably *necessary* – to prevent Member State B of non-recognition from allowing one or both of the individuals concerned or other individuals to seek and obtain from its authorities a family status which is incompatible with the non-recognized one, otherwise, as seen above (point 39), chaos in the private sphere of individuals can quickly become irreversible. As a consequence, Member State B of non-recognition may be required to report in its civil status registry that the person has acquired a family status in Member State A, although that family status has not been recognized in B.

> Even if Italy is free not to recognize the status of married of *Signor* Bianchi and *Monsieur* Dupont, Italy should nonetheless be prohibited to allow *Signor* Bianchi to marry *Signora* Rossi in Italy as long as the marriage between *Signor* Bianchi and *Monsieur* Dupont is not dissolved (in France or in any other country for which *Signor* Bianchi and *Monsieur* Dupont are married).
>
> If fatherhood and motherhood of Mister Smith, a UK national, and *Frau* Steinbeck, an Austrian national, with respect to a child born through surrogacy in the UK is not recognized in Austria, the Austrian authorities should nonetheless be prevented to allow the creation of incompatible child status, and for example to put the child for adoption by parents other than Mister Smith and *Frau* Steinbeck.

2. OPTION 2: MAKING MUTUAL RECOGNITION OF FAMILY STATUSES COMPULSORY

54. The second approach is technically easier to implement, although it may be viewed as impinging more intrusively on the sovereignty of the Member States. According to that approach, the family status validly created in a Member State A is binding not only on the authorities of that Member State but **also on the authorities of Member State B as well as of all other Member States.**

> Whoever is validly married in France earns marital status in the whole of EU; whoever is validly adopted in the UK, has adoptive child status in the whole of EU; whoever is validly registered partner in Germany enjoys registered partner status in the whole of the EU; whoever is parent of a child born through surrogacy in Greece is legal parent of that child in the whole of the EU; whoever is divorced in Sweden has the status of divorcee in the whole of the EU, etc.
>
> This means that **Brussels IIa Regulation would also need to be revised** as it still allows Sweden to issue a divorce decree while allowing Ireland not to recognize this divorce (although on limited grounds) nor the status of divorcees that Sweden conferred to the parties at the Swedish proceedings (see above, point 31).

55. As a result, once a Member State A has awarded a family status to two individuals, the Member State B with which the individuals also have a strong connection **will lose the option not to recognize that family status**. Mutual recognition **becomes compulsory or mandatory** and ultimately is no longer a true recognition in the traditional sense of the word, which involves the possibility for the « State addressed » or « requested State » to assess the judgment or public act and the relationship that it has established and not to recognize it, in part or in whole. Once they have acquired a status in Member State A, the individuals will both enjoy it and have to comply with all the mutual obligations that it generates in Member State B in principle for all effects that this status is capable of generating.

> Once the partnership between *Herr* Steiner and *Kurios* Anthopoulos is registered in Germany, Greece will, under this alternative approach, have no choice but to recognize the status of registered partner in respect of maintenance, succession, property consequences, and so on. On the other hand, if *Herr* Schmidt, German national, and *Kuria* Nikolopoulos, Greek national, have recourse to *surrogacy* in Greece, the filiation established through surrogacy in Greece will have to be recognized in Germany in respect of all effects flowing from that status (custody, access, family name, maintenance, succession, and so on).

56. In order for this Option 2 to be acceptable, however, Member State A should be prevented to give rise to a particular family status if the individuals concerned **have no sufficient geographical connection with it.** This is important to avoid « **legal tourism** » (*same-sex marriage tourism, surrogacy tourism, adoption tourism*, etc.) that has little to do with the principle of freedom of persons as encapsulated in the EU founding documents and DNA, and will unnecessarily undermine the freedom of a State to equip itself with the substantive family-law legislation that reflects its own values without advancing the freedom of another State to allow individuals having a connection with it to benefit from its own substantive family-law legislation and the legal facilities it offers.

> For example, it would not be unreasonable to prevent Italian same-sex couples having no connection with France but wishing to get married from being able to spend two-days in France and getting married there. Nor would it be unreasonable to prevent French couples having no connection with Greece to resort to surrogate

mothers in Greece and travel there to obtain the delivery of the baby (cp ECHR, *Mennesson*, point 62).

57. The particular connection that is sufficient to allow a Member State A to create a family status **may be different** depending on the areas of family law involved.

- The connection required may be *stronger* (and typically consists of a combination of two connecting factors) when it comes to some **controversial institutions** that some Member States allow and other Member States are strenously opposed to, such as *same-sex marriage*, *surrogacy* and *adoption by homosexual couples*.
- The connection required may be *lesser* when it comes to institutions that are **common to all Member States** even if the substantive requirements are different, such as heterosexual marriage, divorce, acknowledgment of fatherhood, establishment of fatherhood through paternity action and disavowal of paternity.

  When it comes to *same-sex marriage*, EU legislation may, in order to allow a Member State to celebrate it and confer the relevant status to two applicants, require nationality *and* residence of one of the applicants or nationality of one applicant *and* residence of the other or residence of *both* applicants and it can also require a *qualified residence* (six-month residence or one-year residence or two-year residence). Regarding *surrogacy* or *adoption by same-sex couples*, EU legislation may require residence of both intended parents or nationality of one of them *and* residence of the other, etc. On the contrary, when it comes to *heterosexual marriage* or adoption by *heterosexual spouses*, nationality *or* (not « *and* ») residence of one of both spouses may be sufficient.

58. To ensure that the required connection is really satisfied, the Member State other than that whose authorities have been requested to create the status and which also have a connection with the parties (and which will be required to recognize the status if and when it is created) **may be allowed to submit its observations and to challenge satisfaction of the relevant conditions, including the required geographical connection.** In case of disagreement between the authorities of the Member States on whether the connection is satisfied, the **matter may be referred to an EU higher authority whose decision will be binding on the authorities of the Member States**.

Let us stipulate that the EU legislation embracing this Option 2 requires the two applicants none of whom has the French nationality to be both habitually resident in France and to have been so for a minimum period of one year. *Signor* Bianchi, Italian, and *Signor* Rossi, also Italian, file with the French « *officier de l'état civil* » an application for marriage. The French « *officier de l'état civil* » may be required to contact the Italian authority (« *ufficiale dello Stato civile* ») who, once the marriage is celebrated, will be tasked with inscribing it in the Italian civil-status registry and inform them of the application for same-sex marriage. The Italian authority may have the possibility of **submitting its observations within a specific time-limit**, for example 30 days (which may be the same as for the *bans de mariage*) and, typically, argue that *Signor* Rossi is actually resident in Italy and does not qualifies for same-sex marriage in France. In case of **disagreement** between the French authorities, who are of the view that the required connection with France is fulfilled, and the Italian authorities, who are of the opinion that the required connection is not fulfilled, an EU authority may be seized of the matter and decide in a way that it will be binding on both French and Italian authorities.

59. A mid-way solution between Option 1 and Option 2 would be to require Member State 2 to recognize the status created in Member State 1 but **only after a period of time** starting from the creation of the family status (one year, two years etc.).

3. OPTION 3: HAVING TWO (OR MORE) MEMBER STATES PARTICIPATE IN THE CREATION OR TERMINATION OF STATUS THROUGH CO-DECISIONAL MECHANISMS

60. A third alternative is about having the Member States that present a connection with the individuals to **participate in the decision whether or not to create the particular family status** for which those individuals (or one of them) apply. Rather than allowing Member State A to give rise to that status and allowing Member State B to subsequently deny recognition of that status, typically based on public policy, this option suggests that it may make more sense to require the authorities of Member State A to **inform** the authorities of Member State B about the application that has been filed with them and to allow the authorities of Member State B to **submit their observations** as to whether or not conferring that status comports with the interests of the persons involved or **whether the recognition may be problematic**.

- If both the authorities of Member State A and Member State B *agree* that the status should be awarded to the applicants, then the status will be created in B and will be binding on both Member State A and Member State B which took part in the creation process as well as on any other Member State with which the individuals, at the time of creation of the status, had no connection and which had no title to be involved in the process of conferment of that status. If they both agree that it is better not to award that status, that status will not be created by the authorities of Member State A (and, obviously, will not have to be recognized in Member State B).

  In case of a **proposed surrogacy agreement** filed with the UK authorities by two Italian citizens living in London and involving a proposed surrogate mother also living in the UK, the UK authorities may have to contact the Italian authorities of the nationality of the intentional mother and father (as well as of the « intentional child ») and inform them of the proposed agreement between the applicants and the surrogate mother. The Italian authority will then have the possibility of **stating its views** and, for example, take position **against** the implementation of the proposed agreement. The UK authorities will have to take into account those views and may, for example, **refuse** to authorise implementation of the surrogacy. If the Italian authority does not oppose the implementation of the agreement, then the UK authorities may decide to authorise implementation. If a baby is born as a result of it, and in the UK act of birth he or she is indicated as child of the intentional mother and father, Italy would have no longer the option not to recognize this status, Italian authorities having being consulted and having not opposed to it. **Any other Member State** with which the child or the parents may subsequently develop a particular connection, typically by a subsequent transfer of domicile or residence, would **also be bound** by, and compelled to give effect to, that status.

- If the authorities of Member State A and Member State B *disagree*, the result may, depending on the particular areas involved, be a) either to prevent the creation of the family status or b) to permit the creation all the same and compel Member State B to recognize that status, or c) to have the disagreement settled by an EU authority.

If the UK authorities want to authorise implementation of the agreement notwithstanding the opposition of the Italian authorities, *one option* would be to allow them to do so and require the Italian authority to respect and recognize the parent-child relationship that will arise. **Article 11(8) of the Brussels IIa Regulation** provides for a similar « co-decisional » mechanism where the *Member State of refuge*, in the case of a cross-border parental child abduction, is allowed to state its views against the return of the child and the *Member State of the habitual residence* has to take into account those views although it retains the « last word » and, as a consequence, may require the return of the child all the same. An *alternative option* would be to require the UK authorities to submit the disagreement between the UK and the Italian authorities before an EU authority the decision of which would be binding on both Member States.

61. This kind of « **co-decisional process** » – or « **collaborative process** » – is not feasible nor desirable in all areas of the family law but may be feasible and desirable in some of them, typically in some areas of children law where the authorities concerned have to proceed based on the « best interests of the child », which allow them to exercise a measure of discretion, predictability being a less cogent concern. An interesting model in this respect is the **1993 Hague Convention on Inter-Country Adoption,** whose basic scheme and purpose is to bring together the authorities of two States, that of the residence of the child and that of the residence of the applicants, and have them *agree* on the adoption process so as to avoid a situation where a State pronounces an adoption and the other State will not recognize it, i.e. so as to **avoid a conflict of family statuses for the individuals concerned.**

It is true that, as recalled above (point 23), Article 24 of the 1993 Hague Convention on Inter-Country Adoption still allows a State Party not to recognize the adoption pronounced in another State Party on public policy grounds based on the interests of the child (based on *its own* view of the interests of the child). But the possibility for the State Party of residence of the applicants to invoke this non-recognition ground **is seriously curbed** by the fact that its authorities took part in the process and had all opportunity to raise any objection based on their own legislation and to stop the process based on their own public policy. On the other hand, any other State Party whose authorities were **not involved** in the cross-border proceedings – typically the State of nationality of the adoptive parents or of one of them or the State of nationality of the child – or any other State party with which the adoptive child and the adoptive parents may develop a subsequent bond (typically by moving their domicile there) is still permitted, under the 1993 Hague Convention, not to recognize the adoption based on its own public policy and thereby to create a limping relationship.

4. OPTION 4: ENACTING EU LAWS ON CREATION AND TERMINATION OF FAMILY STATUSES AND SETTING UP EU AUTHORITIES TO ADMINISTER THEM

62. Option 4 is a **long-term** perspective. It is going to require a significant transformation of the current landscape, which makes it hardly implementable in the near future. It is about shaping and enacting **EU *optional* legislation** about conditions to be awarded a family status as well as, preferably, to set up **EU authorities** – EU *administrative* authorities, such as **EU civil registrars** (« *officiers de l'état civil européens* »), and EU *judicial authorities* – which would be tasked with administering this EU substantive legislation and confer the relevant family status if the requirements that such legislation

provides are fulfilled by the applicants. The **procedure** to be followed before the EU authorities would also be laid down by EU legislation.

> One model in this respect is the **Unified Patent Court**, which will start operations in a few years, and will consist of a central division in Paris and sections in London and Munich (article 7(2) of the « Unified Patent Court Agrement ») as well as a number of regional and local divisions (Nordic division for Sweden, Lithuanian, Latvia, etc., an Italian division for Italy, etc.). So EU civil registrars and EU family court may have a central division or office (with some sections) and a number of regional and local divisions or offices.

63. This EU legislation would be *optional* in that **it will not replace the substantive legislations of the Member States**. The EU legislation would provide an *option* typically for the individuals having contacts with more than one Member States. Those individuals will no longer have to resort to *mono-national law* and *mono-national authorities* of one only of the Member States with which they have connections but could rely **on an EU law and EU authorities.**

> *Madame* Dupont and *Signor* Bianchi would no longer be forced to choose between either a French marriage or an Italian marriage but they would be able to rely on an **EU marriage.** They would have the option to have their marriage solemnized by the central, regional or local *officier de l'état civil de l'Union européenne* (in Paris or in Milan, etc.). The marriage, once celebrated by the EU civil registrar following the procedure also laid down by EU legislation, would **obviously exist both in France and Italy and in all Member States**. The same would be true for *Monsieur* Dupont and *Signor* Bianchi to the extent that the EU substantive legislation would permit same-sex marriage. No conflict of statuses would be permitted to arise.

64. Needless to say, this would thus have to be done gradually. **Adoption may possibly be an area from where to start.**

- This is so, on the one hand, because the cross-border character of family relationship is yet more frequent in the adoption law – the child often coming from a country other than that of the applicant(s) – than in the area of celebration of marriage or of the establishment of paternity.
- On the other hand, because the Member States seem to be more acutely aware of the harm that may result for the child if a Member State **is left free to issue an adoption order and another Member State is left free not to recognize it**, which harm has indeed been repeatedly underscored by the European Court of Human Rights[17].

  > Wishing to adopt a child, Mrs Svensson, Swedish national, and *Senhor* Pessoa, Portuguese national, a married couple living in the Netherlands, would be entitled to resort to **EU adoption** handled by EU authorities scattered across the EU territory. The procedure may for example be started with the local or regional division of the EU family court responsible for Portugal or the Netherlands or Sweden or with the central division in Brussels. The substantive requirements would be governed by EU legislation which would have to determine whether unmarried couples may adopt, minimum age, etc. The Portuguese and the Swedish protection authorities and governmental agents would be allowed, if they so wish, to intervene in the procedure. If the adoption were pronounced by the EU authority, it would be binding on all Member States, including Portugal, Sweden and the Netherlands. **No refusal to recognize**

[17] ECHR, 3 May 2011, n. 56759/08, *Negrepontis,* ECHR, 28 June 2007, n° 76340/01: see above, point 47.

would be possible. The Member States concerned would no longer be permitted to disagree on whether or not the individuals concerned have the status of adoptive parent or of adoptive child. The conflict of status would be averted.

The changes that this system will bring about over the current scheme of the 1993 Hague Convention on Inter-Country Adoption are significant.

- Under the 1993 Hague Convention, the State of habitual residence of the applicant(s) essentially applies its **own *mono-national* substantive law** (sometimes – but it is rare – in addition to the mono-national substantive law of a foreign country as designated by its conflict of law provisions) **to the question whether the applicant(s) is or are entitled to adopt** (whether an applicant alone is allowed to adopt, what's the minimum and maximum age of the applicant(s), whether there has to be a minimum or maximum age gap between the applicant(s) and the child, etc: Art. 5 a) and 17 d) of the Convention)[18]. On the other hand, the State of habitual residence of the child essentially applies its **own mono-national substantive law** to the question whether the **child is adoptable, including whether consent of some persons or institutions is required** (of the child him- or herself, of the biological parents, etc.), how this consent, if necessary, should be expressed, and, if consent is withheld, whether and under which circumstances, adoption may be pronounced all the same (see Art. 4 a), c) and d of the Convention), except for the compliance with some formal and substantive provisions which are laid down by the 1993 Hague Convention itself (e.g. Art. 4 *d)* 2), 4 *d)* 4)[19]. In addition to being complex, application of two mono-national domestic sets of legal provisions may result in discouraging applicant(s) from adopting.

  For example, an unmarried heterosexual couple of Italians (or Brits or French and so on) living **in Italy** or an unmarried Luxembourg (or Portuguese, or Spanish, and so on) woman living **in Luxembourg** are, today, prevented from adopting a Romanian child (or a child of any residence or any nationality) through 1993 Hague Convention because Italian or Luxembourg law is, based on the 1993 Hague Convention, applicable to the question whether the applicant(s) are good candidates for the adoption and the answer provided by Italian law, which prohibits adoptions by cohabitees, and Luxembourg law, which prohibits adoption by single woman, **is that they do not qualify for adoption**. To the extent that the EU substantive adoption law that is discussed under this Option 4 **would be more liberal** than the one that is in place in some of the EU Member States as to the question of *who is entitled to adopt*, **a significant number of intra-EU adoptions would be possible under this Option 4 whereas they are impossible under the current legal framework**.

- As repeatedly indicated above (points 23 and 61), the 1993 Hague Convention still allows a State Party not to recognize, based on its own public policy, the adoption pronounced in another State Party, **which would no longer be possible if the adoption order were issued by a European – as opposed to mono-national – authority.**

[18] See for example A. Bucher, in A. Bucher (ed.), Commentaire Romand, Loi sur le droit international privé – Convention de Lugano, Helbing Lichtenhahn, 2011, p. 615, n° 29.
[19] See A. Bucher (note 18), p. 617, n° 36.