What is private international law good for in the EU?

In this course, I propose to reflect upon this very simple, though fundamental, question.

During the last 15 years, the EU has largely occupied the field of private international law (i.e. conflict of jurisdiction and conflict of laws; hereafter PIL). Since the year 2000, about 15 regulations have been enacted in the field of conflict of jurisdiction, conflict of laws and civil cooperation. Following the piecemeal approach, the EU is now considering a “codification” of PIL. The EU Parliament in particular is supporting the project, as a way to simplify citizen’s life in the EU (see for instance, the workshop recently organized by the JURI commission of the Parliament: “Cross-border activities in the EU – Making life easier for citizens”, reference hereunder)

PIL thus certainly is an object of harmonization. And the accelerated development of the “area of justice, liberty and security” rests, for a good part, on the enactment of PIL instruments.

The development of PIL in the EU is, in some respects, surprising. PIL is not “attractive” in political terms: it is technical, esoteric and highly complex. In regard of these flaws how can it be that PIL has become so fashionable in the EU?

Answering this question brings one to consider the functions of PIL. If PIL is becoming a field of harmonization and truly, a field of expansion of the EU, it must be because it can perform specific functions, which are of importance for the EU. We will spend a few hours together inquiring about the identification of these functions and about their potential specificity in the EU. Indeed, considering the functions of PIL in the EU raises the question whether PIL in the EU is something different from PIL at the national level or at the international level in less integrated entities (for instance in the The Hague Conference on PIL).

What are thus the truly European functions of PIL?
Session 1 – The EU and PIL: Commonalities and Realities

1. What do the EU and PIL have in common?
A group discussion on the object, purposes and method of PIL and of object, purpose and methods the EU as an integration system

2. PIL in the EU as an object of harmonisation
A first inquiry into the functions of PIL in the EU: beyond the limits of the legal basis, we will try to assess how the EU institutions have approached PIL and identified its added value. This can best be done by observing reality: regulations enacted on the basis of Art. 81 TFEU (formerly Art. 65 EC) reflect the EU (or the EU legislator’s) conception of what PIL is about and the purposes it can serve in the EU.

Readings for session 1

- Art. 2 & 3 TEU
- Art. 81 TFEU
- Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon), Case 120/78, ECR 1979, 649
- Conclusions of the Council of Tampere abstract

You need to have an overview of the following Regulations (take a look at them):


Read in particular:

- Recitals 1 to 6 and 15 & 16 Brussels I bis; recitals 6 & 16 Rome I; recital 6 Rome II.

Readings to go further

Session 2 – United in diversity: PIL as a third way?

During this session, we will question whether PIL can serve the integration project. PIL, as a tool for addressing normative diversity, could provide a soft integration method, respectful of pluralism. Yet this hypothesis needs to be confronted to reality. We will observe if/how PIL is used as an integration method, especially in the field of the internal market where integration is most obviously at stake. Striking examples show how normative competition is prompted by the ECJ. Those cases lead us to address a few questions:

1. Are those cases dealing with conflict of laws issues in the classic sense: i.e. conflict between rules of private law of different Member States?
2. Do they implement some kind of new conflict of laws rule or method?
3. Is there a limit and/or a way out of normative competition?
4. Does PIL further or limit normative competition? And how?
5. Is there a democratic issue in all this?

Keep those questions in mind when doing the readings.

Readings for session 2

- Centros, Case C-212/97, ECR 1999 1-1459
- Arblade & Leloup, Case C-369/96 and C-376/96, ECR 1999, I-8453
- Sayn Wittgenstein, Case C-208/09, ECR 2010, I-13693

Readings to go further

  http://scholarship.law.duke.edu/dlj/vol8/iss2/1/
Session 3 – PIL as European/Global Governance?

In so far as PIL can “order” pluralism (does it?) and support an integration project, it offers some kind of governance tool for the EU. But beyond the EU integration project, PIL could potentially also help the EU taking its share in the global governance debate. In this session, we will inquire whether PIL can be a useful tool for facing the problems of the world and/or implementing EU values and policies in a globalized society.

Questioning the role of the EU as a global actor and the usefulness of PIL in this respect will lead us to face the following questions:

1. Is PIL apt to convey values? And if yes, how?
2. Are the current PIL instruments conceived as governance tools?
3. Is there a PIL method for global governance?

Readings for session 3

- Art. 6(3) Rome II : read the provision and apply it to the facts of the following case: CDC, C-352/13. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CC0352&qid=1431437514997&from=EN
- Art. 7 Rome II : read the provision and apply it to the facts of the Shell cases : enclosed
  For more details on the cases, see: https://milieudefensie.nl/english/shell/courtcase
  FYI: here is a press article on a similar litigation in the UK: http://www.theguardian.com/environment/2015/jan/07/shell-announces-55m-payout-for-nigeria-oil-spills

Readings to go further

- S. Francq, “The Scope of Secondary Community Law in the Light of the Methods of Private International Law – or the other way around?”, Yearbook of Private International Law, 333-378 [2007].
- H. Muir Watt , « Private International Law Beyond the Schism », Transnational Legal Theory 2011, 347 Available at: https://halshs.archives-ouvertes.fr/hal-00973084/document
- H. Schepel, “Private International Law as a Regulatory Tool for Global Governance”, paper presented in the workshop organised by the JURI Committee of the European


- B. Van Vooren, S. Blockmans, J. Wouters, The EU’s Role in Global Governance – The Legal Dimension, OUP 2013