The Gap between Legal Disciplines, Blind Spot of the Research in Law: Remarks on the Operation of Private International Law in the EU Context

By Jean-Sylvestre Bergé, Professor at the University of Lyon, Fellow at the Institut universitaire de France[*]

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The European Union law offers itself as a new legal context in which the constructions of private international law are now massively deployed. In addition to the pre-existing national contexts, the various pre-established international or transnational environments, the European Union is likely to profoundly change the substance and the conditions for the implementation of the law on the status of aliens, conflicts of laws, conflicts Jurisdictions and the recognition of decisions, acts and situations born abroad.

The changes brought about by the emergence of this new European legal framework are far from having delivered all their manifestations. The three generations of European law which have so far succeeded do not suffice to shed light on all the areas of shadow left behind by the two major legal areas of the European Union, namely the internal market space and the area of freedom, security and justice.

But the movement is on the way, which suggests dialectical games which can reasonably be supposed to be well established today.

These dialectical reports show at the first level a confrontation of the methods and solutions of private international law and the legal system of the European Union where the irreducibility of the two subjects of European law and private international law suggests a cross-game of influence on each other.

Otherness of European law and private international law

Toughness of European law on private international law - The reporting methods of approach between the constructions of European law and those of private international law are strongly conditioned by the profound otherness between subjects. Any analysis

[*] jsberge@gmail.com - www.universitates.eu

which begins to assimilate or absorb a construction of European law or private international law by the other is doomed to failure. A lawyer who deals with situations in this double context of European law and private international law must admit that his legal environment is declined in the plural in the long term: no legal construction of European law or private international law has a priori vocation to deliver solutions in ignorance of the other.

The first step towards an approach of European law and private international law to legal situations translates into an irreducibility of European law to the constructions of private international law. Whenever a jurist is confronted with an European construction, he must accept that he is outside the traditional territory of private international law. The reason for this strangeness of European law comes from a major consideration: private international law has largely been built on the distinction / opposition between the national and the foreign so that the existence of a "European reality" obliges the internationalist to integrate a totally new dimension. It is as if the jurist, accustomed to count up to two (national and foreign), now had to integrate a third (European) dimension. This latter dimension is not to be confused with the international dimension which, in private international law, does not seek so much to add to the national and foreign dimensions as to bring them together. Is international, the situation that presents elements of foreign element or the rule that applies especially to these situations of foreign origin. In both cases, internationality is defined by the presence of a foreign element. To define it, it is necessary to refer to the national element. The main aim of the international dimension is therefore to confront national and foreign dimensions under the same name.

With the European dimension, the approach is very different. It is necessary to consider that the European element is added to the national and foreign element. It offers a third dimension which does not aim to unite the two previous ones. It compels the jurist to distinguish a third category of situations. To the national and foreign ones, the European situations are now added.

This European dimension is of considerable scope with the development of the European Union. There are many manifestations of this European reality, which is external to the constructions of private international law and must now be considered.

The first manifestation of this European dimension is the existence of a European legal system which has been added to national and international legal systems.

The assertion of a new legal order (ECJ, 15 Feb. 1963, Case 26/62 Van Gend en Loos), the presence of a European supranational court (Court of Justice), a European law Institutions, Charter of fundamental rights, international conventions binding on the EU, regulations, directives, decisions) produce considerable upheavals on classical constructions of private international law. The main notions of private international law - the applicable national law, the competent court, the legal order of the forum or the legal order of the lex causae or the court of origin, national or foreign public order (etc.) - are purely different to the assertion of the existence of a European law, a European judge and a European legal order. We cannot without harm apply the legal constructions imagined for the juridical institutions of national dimension to the legal constructions of European dimension. For example, the substitutability relationship, which governs many of the rules of private international law intended to govern conflicts between national laws (a national law applicable to the detriment of all others) and national judges (a competent national judge to the detriment of all the others) is not operational with regard to European law. It is necessary to imagine that other legal constructs intervene to think of the relations specific to European law or, more broadly, the relations between European law and national law.

What applies in general to European law (law, judicial system and legal order) applies in particular to a whole series of European achievements. European freedoms of movement (people, goods, services, capital), the affirmation of European citizenship, the creation of European industrial property titles, a European commercial society, the very conception of civil justice of European public order, all these achievements are irreducible to the frameworks of traditional analysis of private international law. For each of these subjects, the lawyer has no choice but to apprehend, as such, a new European legal reality, without being able at the outset to tackle the constructions of private international law which have not been European achievements.

In other words, the lawyer must admit that *prima facie* European law is irreducible to the constructions of private international law.

But we will see the reciprocal is also true.

Toughness of private international law with European law - Private international law is also irreducible to the construction of European law. Its otherness makes it impossible to assimilate it entirely to European constructions. This otherness manifests itself

principally. Private international law, conceived as the banter of relations between national legal orders, cannot be absorbed by European law, since it has not removed national law, that of third States to the European Union, but The Member States.

This point of analysis is extremely important because it questions European construction in its very essence. The latter is generally presented under the seal of primacy (ECJ, 15 July 1964, Case 6/64, Costa v. Enel). European law exists because it takes precedence over the national constructions of the Member States. Without being false, the assertion is cruelly lacking in precision. European law only takes precedence over its spatial, material and temporal sphere of application. This area is necessarily limited. The European legal order, unlike the national legal systems, does not have a full range of powers. It is subject to a principle of specialty. It therefore suffers from incompleteness, in the sense that it is inherently incomplete.

This state has very strong repercussions on its relations with national laws. Contrary to popular belief, European law rarely eliminates national law, which continues to play an essential role in complementing and implementing the European rule.

The incomplete nature of European law can be applied equally to European construction as a whole and to its more specialized achievements. European law, the European judge and the European legal order have been added to national laws, national judges and national legal orders. Similarly, European freedoms of movement (people, goods, services, capital), the affirmation of European citizenship, the creation of European industrial property titles, a European commercial society, the very conception of justice of a European dimension or a European public order, are not such as to eliminate their national equivalents purely and simply.

New relationships are established between objects of European dimension and those, most often with a national dimension. In the latter case, private international law retains the place it has always held to define the relationship between national laws and between national judges. Private international law is not reducible to European law. It survives him in a clear way.

Recommended method: the dual approach - This double irreducibility of European law and private international law prevails, methodologically, an important consequence. Since neither of the two structures has eliminated the other, a double legal approach to situations is necessary whenever these situations are likely to fall under both European

and private international law. In these working hypotheses, the analysis of situations cannot be exhausted by the reference to a single legal construction. We must manipulate the two and naturally articulate them.

To do this, a useful distinction can be made between "European law - source" and "European law - object" of private international law.

The expression "European law which is the source of private international law" means, in the usual way, the process of Europeanisation of the subject matter of private international law. The intervention of regulations, directives, international sources binding the European Union, codification and European jurisprudence of private international law thus mark the most natural meeting point between European and private international law.

More singular is the figure of "European law subject of private international law". This expression refers to all the assumptions in which a realization of European law takes place in the constructions of private international law. The situation may arise where the right of aliens distinguishes between a foreigner and a foreigner who is a national of a third State, where European law is directly or indirectly the subject of a conflict of laws, Conflict of jurisdictions brings to the fore a justice of a purely European dimension and where the recognition of judgments, acts and situations also has a specifically European dimension. In all these cases, which will be illustrated in the next two sections, the question arises of the application of the methods of European law to private international law and of the application of the methods of private international law to European law.

Methods of European law applied to private international law

European standardization, unilateralism and equivalence - To be uniform, European law must be free as much as possible of national particularities. It carries the ideal of its uniform application throughout the European territory very high in the scale of its ambitions. This uniform range is not absolute. On many subjects, European law must deal with irreducible national particularities, for lack of European law to have the capacity to propose uniform alternatives. But where it exists, the objective of uniformity characterizes European rules, whether they relate to conflict of laws rules or substantial rules.

As regards the conflict of laws rules, we shall see how important the difficult task of

codification and uniform interpretation of the subject of European private international law is in the development of an autonomous European law, less and less dependent on national particularities.

As regards substantive rules, the development of a uniform European law has strong repercussions on private international law. Two phenomena are at work: the development of unilateralist methods and the play of the mechanism of equivalence.

The European unilateralist movement has been studied (see, in particular, the magisterial thesis of S. Francq (in French), The spatial applicability of Community secondary law in relation to the methods of private international law, Bruylant, 2005). Whenever European law lays down a substantive rule of uniform application throughout the European territory, there is a strong temptation to settle the question of its spatial scope of application unilaterally. How could it be otherwise? Substantive European law is not immediately amenable to the bilateral rule of conflict of laws for the simple reason that the latter was not intended for that purpose. It is intended to apply to conflicts between national laws. The passage between the national law and the substantive European law is not immediately obvious. If it intervenes, it is usually incidentally or in a second stage, to adapt the bilateral rule whenever it is confronted with a material rule from a supranational source.

The parallel thus established between the uniform European material rule and the unilateralist method (of defining its scope of application) does not however suffer from any generality. Material European law is plural, as is substantive national law. It commands solutions of a great diversity. We must therefore avoid any hasty conclusion that the question, often little expounded by European texts, of the spatial domain of the material rules contained in them is contained in a single model.

A ruling (CJCE, 10 Dec. 2002, C-491/01, BAT) illustrates the point. Manufacturers of tobacco products established in the United Kingdom had lodged an application with the English courts for a judicial review of the intention and / Obligation 'of the United Kingdom Government to transpose Directive 2001/37 / EC (now repealed and replaced by Directive 2014/40 / EU) on the approximation of the laws relating to the manufacture, presentation and sale of tobacco products. By raising, primarily, different means of invalidity against it and, in the alternative, a means of interpretation. The second question referred by the national court concerned the scope in international relations of an Article 7 of the Directive. That article, which might have the effect of affecting private law

relationships, for example a contract for the manufacture of cigarettes in the European area for export to third countries, provided, in essence, as of 30 September 2003, it was prohibited to use on the packaging of tobacco products texts, names, marks and figurative or other signs indicating that a particular tobacco product is less harmful than the others (Eg "light cigarettes"). In particular, the English judge questioned whether: "Article 7 of Directive 2001/37 / EC of the European Parliament and of the Council applies ... only to tobacco products marketed in the Community European Union or also to tobacco products packaged in the European Community and intended for export to third countries?" (P.25). The Court of Justice, having found that the very wording of Article 7 did not allow the question to be settled (paragraphs 204 and 205), examined both the context (points 206 to 210) and the objectives of the Directive (points 211 to 214). At the end of that analysis, it considered that, like the rules on the labeling of tobacco packages (Article 5 of the Directive), which applied only to products distributed within the Community, and in contrast to the rules on the maximum content of noxious substances in cigarettes (tar, nicotine, carbon monoxide), which applied interchangeably to products manufactured, packaged or marketed in the Community (Article 3.1 of the Directive), article 7 of the Directive was limited in scope to tobacco products marketed in the European area (points 215 and 216). Consequently, all products packaged in the Community for export were exempt from the prohibition in art. 7 of the Directive. This solution called for four observations (see for a brief analysis of the decision, RCDIP 2003, 536, Obs. M.- N. Jobard-Bachellier and J.-S. Bergé): 1 ° all European directives are not mandatory In the international order, (2) the directive may have a variable scope according to the provisions in question; (3) the scope of the Directive can be delimited at a European level, without relegation at the transposition stage of the Directive; (4) the Directive does not deprive the Member States of any margin for appreciation in this field if their action is in conformity with the rules of the Treaty.

The emergence of a uniform European substantive law has another important consequence on the traditional game of rules of private international law. This other consequence concerns the question of equivalence, which has been much less studied than the preceding one, at least from this angle. Indeed, if European law provides a uniform solution in two Member States of the European Union, the relations between the laws and judgments produced by these two States in this field are necessarily affected.

The first illustration concerns the conflict of laws in the presence of two national laws transposing the same European directive. The scenario is as follows: two Member States have transposed into their national legislation the same European directive, a situation of conflict of laws arises between the national laws of these two States and the question arises whether the common origin of the two texts Nationals in conflict can neutralize the conflict because of a known analysis in private international law and on the equivalence of national laws. This working hypothesis, which to our knowledge has not yet developed its own jurisprudential development, at least at European level, makes it possible to approach certain provisions of European legislation which draw the consequences, in private international law, an assumed equivalence between the national laws of the Member States. In positive law, that is how one can read in particular Article 3.4 of the Regulation "Rome I" (No. 593/2008 / EC) which provides: " Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement". The last element of the sentence postulates an equivalence between the European rules implemented in the State of the judge seized and in any other EU State (compare the neighboring wording proposed by the Rome II Regulation (No 864 / 2007 / EC), Article 14 (3). It stifles a potential conflict between the national laws of the Member States which are supposed to implement the imperative European rule in order to better guarantee the application of this imperative European right threatened in its application by the choice by the parties to the contract of the law of a third State, provided, of course, that such national implementation does not bear a national margin of appreciation (in the case of a transposition of a directive beyond its scope, see proposed analysis further from the case Unamar: ECJ 17 October 2013, case C-184/12). This type of wording, in which the European rule on applicable law is underpinned by an equivalence between the national laws of the Member States, was also conceived for the proposal for a Regulation on the Common European Sales Law which is never entry into force **(**European Parliament resolution proposal and the Council on a common European sales law - COM (2011) 635 final). The text of the proposal maintained a certain ambiguity on the issue of enforcement of consumer protective mandatory provisions. In the system in force in the Rome 1 regulation, it is known that in several cases the consumer cannot be deprived of

the protection provided by the law of the country where he has his habitual residence, notwithstanding the choice of A law of another State (Article 6 § 2 of Regulation No 593/2008 / EC). To avoid a conflict between the law of the country of habitual residence of the consumer and the common European selling law chosen by the parties, the proposal for a regulation stated that the comparison of the two rights was neutralized (See, in particular, Explanatory Memorandum, page 13 and recitals 11 and 12 of the proposal for a Regulation). The existence of a common European rule in the different Member States produces an equivalence effect which neutralizes the traditional conflict of laws rule.

The second illustration concerns the equivalence of the judicial protections granted to litigants in the various Member States of the European Union. In European systems for the recognition of foreign judgments (see, for example, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil matters and commercial matters (Brussels I bis), article 36 et seq.), It is known that the reference to the procedural public policy of the requested State is sometimes limited, especially in the case of the defaulting defendant in the proceedings in who has not sought to exercise all the legal remedies available to him in that country and which nevertheless intends to contest the validity of the decision rendered in the light of the procedural public order of the requested State. The Court of Justice (see, ECJ, 25 May 2016, C-559/14 Meroni) and, according to a motivation of its own, the European Court of Human Rights endorsed the device (ECHR Gde c., May 23, 2016, Appl. No. 17502/07, Avotins v. Latvia) presumed equivalence of protection in the country of origin and In the host country. Evidence to the contrary may be related to a manifest lack of protection of the rights involved. But when the presumption plays, it results in an application of the procedural mechanisms provided by the country of origin of the decision rendered and to the detriment of the competing mechanisms of the requested country. This presumed equivalence of protections is clearly linked to the emergence of a standard of protection for the right to a fair trial in Europe. The existence of this European standard thus neutralizes the conflict between two potentially different national contexts for the implementation of protection of fundamental rights. European law thus has an influence on the methods of private international law.

Legal objects of European dimension and triangular relationships **-** The European

Union created legal objects with an European dimension. The European law, the European judge and the European legal order have already been cited as general examples. More specifically, European freedoms of movement (people, goods, services, capital), the affirmation of European citizenship, the creation of European industrial property titles, a European commercial society, the very conception of civil justice with a European dimension, a European public order, etc.

These European-dimensional objects sometimes show a triangular relationship between, on the one hand, the newly created European object and, on the other, a relationship between the laws or judges of the national legal systems (for a presentation of these relations in terms of "diagonal conflict", see J. Heymann (in French), Private international law in the test of European federalism, Economica, 2010, spec 159 et seq., And the bibliography cited in note 1, 117). This connection concerns the question of the methods of European law applied to private international law whenever the rule of private international law is shaped by the existence of an object of European dimension.

The illustrations of this type of situation are quite numerous. Without claiming to be exhaustive, there are a few striking cases in which attempts are made to diversify approaches beyond the examples - often the same ones - that it has become customary to refer to in private international law.

The first case to be considered refers to those objects of European dimension which take care to designate the national law applicable to them. National law plays a necessary complementary role whenever the European rule is not able to deliver autonomously all the legal rules governing the institution thus created at European level. For example, it is expected that the European company is subject to the law of the Member State designated by the Regulation (art. 3.1 of Regulation (EC) No 2157/2001 of 8 October 2001 on the company's status EU) or the European patent with unitary effect is subject to national law of the member State designated by the European regulations (art. 7 of the Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 setting implementing enhanced cooperation in the area of the creation of unitary protection conferred by a patent). These references to national law deal with the relationship between the legal object of European dimension and the potentially conflicting national laws. They resolve the hypothesis of a triangular conflict in which several national laws are intended to apply concurrently to the European legal object.

The second case concerns the influence exerted by the European rules of free movement

on the interplay of traditional relations between the rights of the Member States. The question has arisen in a somewhat disorderly manner, at random from the cases which have presented themselves to the Court of Justice. Whether the cross-border exercise of national intellectual property rights (for example, ECJ, 20 January 1981 aff. 55 and 57/80 Musik-Vertrieb v. GEMA), mobility of individuals (for example, posted workers until the matter is governed by a European directive: ECJ, 23 November 1999, Case C-369/96 and C-376/96 Arblade) or legal persons (for example, of national companies: CJCE 9 March 1999, C-212/97, Centros), the question arose as to whether the freedoms of movement exert an influence on the solution of the conflict of laws. To answer this question, we must distinguish two difficulties. A first was to determine whether the play of European freedoms could have a disqualifying effect on the set of ordinary mechanisms of private international law. The answer to this question has hardly been questioned. European law on freedom of movement sometimes plays as an exceptional mechanism which aims to exclude the national law otherwise applicable. This mechanism has been theorized (see in particular: M. Fallon, J. Meeusen, International Private Law in the European Union and the exception of mutual recognition, Yearbook of Private International Law 2002, p. 37). The purpose of a European dimension, by the freedom of movement, plays a role disqualification of the law otherwise applicable under the conflict rule, forcing the lawyer to display the *lex causae*. Another problem is whether it is possible to bring in a new conflict rule this situation. We will examine this hypothesis further.

The third case concerns the interference effect induced by European citizenship on the traditional game of private international law mechanisms. Under profile cases, made both in the field of the status of foreigners that the conflict of laws, the question arose whether the assertion of European citizenship was not likely to radically change the reasoning usual modes in private international law. The first judgments on the subject have largely fueled this analysis (see in particular in the field of conflict of laws: ECJ, 2 October 2003, Case C-148/02 Garcia Avello semblance offer European citizens a choice of the applicable law on surnames, on the grounds of the status of foreigners; ECJ, 8 March 2011, case C-34/09, Zambrano, literally challenging the national migration policies on behalf of European citizenship of minor children with parents originated from a third country). But case law has occurred since has shown more restraint, suggesting a simple arrangement of traditional solutions, given the existence of a European citizenship (on the first topic, see in particular:. ECJ, 14 October 2008, case C-353/06 Grunkin Paul; on the second, see

in particular ECJ, 15 November 2011, Case C-256/11, Dereci).

***European public areas and mutual recognition* -** The last European dimension which is likely to have a strong influence on private international law mechanisms is the establishment of common European spaces in which the mutual recognition mechanism occupies a cardinal instead.

These European common areas, we said, two in number: the internal market and the area of freedom, security and justice. Both have set up numerous devices such as to permit the movement of judgments, official acts and situations across the European territory. This movement often uses the legal process of recognition. Member States are thus in the position of having to accept the decisions, acts or situations born in one of the Member States take effect on all the other national territories, even though their territories, the decision, act or situation in question does not normally intended to produce such an effect.

The recognition is now the subject of considerable debate in the doctrine of private international law. The important question is whether it is likely to present itself as a competing legal system of those traditionally at work in private international law, particularly the conflict of laws (see lately on the subject, all collected contributions (in French) P. Lagarde (ed.), the recognition of situations in private International law, ed Pedone 2013; comp P. Lagarde (in French), the method of recognition she is the future of private international law, inaugural conference session? private International law, 2014, RCADI (Volume 371), 9; J. Basedow, The law of Open Societies - private Ordering and Public Regulation in the Conflict of law, Brill Nijhoff, 2015, p 321) .

It seems certain that such discussions, which opened in the early 2000s, would never have been possible without the concomitant development of the European legal space. All Europe has produced as mutual recognition arrangements (on which include: W. Van Ballegooij, The Nature of Mutual Recognition in European Law, Intersentia, 2015) has exercised a strong influence on the conduct and terms of these doctrinal debates in private international law.

This is not the least of the lessons observed that the creation of new legal areas of European dimension is likely to fundamentally transform the discipline of private international law.

Methods of private international law applied to European law

Distinction of internal and external dimensions and private international law - European law is not resistant to the application of methods of private international law. This application is controlled by various distinctions or various legal mechanisms.

A first distinction is between internal and external dimension of European law. In its internal dimension, European law can be brought, as we have seen, to change the construction of private international law (see previous section). In its external dimension the situation is different. The question is, indeed, whether in its external relations, EU law does not include a status equivalent to that of a national law which reports to the national laws of third countries are normally subject to the mechanisms of international law private. The statement must be verified for all the constructions of private international law.

On the grounds of the status of aliens, the status of third-country nationals within the European Union or the status of European citizens in third countries are governed by traditional mechanisms of treatment of aliens. These mechanisms are, for some of them, Europeanized (eg Directive 2003/109 / EC of 25 November 2003 concerning the status of third country nationals who are long term residents; Council Directive 2004/114 / EC of 13 December 2004 on the conditions of admission of third-country nationals for purposes of studies, pupil exchange, unremunerated training or voluntary service; Directive (EU) 2016/801 of the European Parliament and the Council of May 11, 2016 on the conditions of entry and residence of third country nationals for the purposes of research, education, training, volunteering and exchange of students or educational projects and programs work together). But in all cases, they fall under the category of classical own rules to foreigners and do not fundamentally alter their legal status. The only case somewhat unusual is that he must report situations that mix the presence of European citizens and third-country nationals. In these cases, we must arrange the rules in the internal dimension of European Law (including the right to move and reside European citizens governed by Articles 20 ff. TFEU and Directive 2004/38 / EC of the European Parliament and Council of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of the member States) and those concerning the legal status of third-country nationals (see, on the situation of the minor child, European citizens, parents third-States, including case law Zambrano (ECJ, 8 March 2011, aff. C-34/09) and Dereci (ECJ, 15 November 2011, Case C-256/11) reported

above; see again recently on this subject that can make a full assessment of the situation: ECJ, 13 September 2016, Case C-165/14 and C-.304/14, Marin & CS).

In the field of law, conflict relationship between the law of a third State and the European law covering *priori* the attributes of a traditional conflict of laws between different national laws. For example, the involvement of a liability for defective products in a factual situation located in a third country and a Member State will usually conflict, the law of a Member State implementing a European Directive (Directive 85/374/EEC of 25 July 1985 on the approximation of laws, regulations and administrative provisions of the Member States concerning liability for defective products) and the law of a third country governing such liability. The rules governing these conflicts of law may equally by European sources (eg, regulations Rome I, II or III, prev.), International (eg, a Hague convention binding a Member State or to which party EU) or national. The conflict of law situation is not immediately affected by the presence of a European hardware legislation, since the conflict stages this European law and the law of a third country. Except to place in the field of madatory laws (see case below), there is no reason to treat the situation differently from that which characterizes a conflict between two national laws, in the absence of legislation European right equipment.

Regarding the conflict of jurisdictions, the legal treatment of conflict between, on one hand, the jurisdiction of a third State and, secondly, the jurisdiction of one or more Member State falls within the ordinary processing this type of conflict, without the proper European rule conflicts between the courts of Member States having to interfere directly. The national private international law of Member States or conventional law of the Member States (eg for France, Franco-Moroccan Convention of 1981 on the status of persons and the family and judicial cooperation) and / or the European Union (for example, the Lugano Convention of 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters or the 2005 Hague Convention on choice of court agreements) are intended to govern this type of situation. If risk of cumulative application of European rules and international situations intra and extra-European, rules are generally appointed to distinguish between situations that fall under the European regulation and those subjects to international regulation (example, see in particular Art. 26 of The Hague Convention of 2005 on choice of Court agreements, which provided, inter alia, the specific set of rules for regional integration organizations for situations that are attached to it).

The recognition in the EU of decisions, acts and situations falling within the third country in conjunction with the question of efficiency in third countries, decisions, actions and situations occurring in a Member State fall under the ordinary mechanisms of private international law. Own solutions to the European area, notably based on a principle of mutual recognition does not have ongoing with third countries, unless they are extended by agreement or by decision (see, eg, with regard to relations between EU and EFTA Member States, the Lugano Convention of 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

Distinction activities / actions and private international law **-** European law of the internal market has worked to liberalize several important economic activities. He coined for it to make such rules to the Trans-European exercise of these activities. The question arose whether these solutions had an impact on the construction of private international law. For example, questioned the direct or indirect influence exerted by the compatibility test barriers to trade on the designation of the applicable law in the sense that classical means the law of conflict of laws. When the European rule obstructs the application of the law of the host country of a person, commodity, service or capital the ground that it poses a condition equivalent to that defined overabundant by law of the country of origin, we wondered if this rule does not contain a conflict of laws rules "hidden" for the country (see in particular on this subject with many bibliographic references proposed, M. Ho-Dac (in French), the law of the home country law of the European Union, Bruylant, 2012).
This type of questioning is based on the idea that European law would seek to trivialize the distinction between the rules applicable to activities (access to the activity and exercise conditions), which are primarily public law, and rules acts (contracts by which persons, goods, services, capital flows) which more readily under private law. There are reasons in this regard. Many, indeed, European coordination tools that also deploy well for public institutions than private law. This transversal way of understanding the issues is particularly found in the fact that European law is of "activity" the main purpose of its intervention. In private international law, it is known attachment to the acts, facts, persons and property but certainly not the activities. Due to a high proportion of law of conflict of laws, whole sections of the transnational activity were abandoned by the discipline in international administrative law (approval, authority control) or to international criminal law (punishment of offenses against professional regulation). With

European law, we wondered if this partitioning was always appreciated. Better yet, some new principles have emerged and exerted a cross influence on the incorporation of a given situation at a given state legal order.

And demonstrates, by example, the Directive on electronic commerce (Directive 2000/31 / EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of services of the information society, in particular electronic commerce in the domestic market). This text, full of ambiguities, poorly written and that has spilled much ink has no other ambition, in the words of Article 3 of asking the principle that the provider must comply with the applicable provisions in his country of origin for all regulation within the scope of the Directive and as such likely to regulate his actions. The question is thus raised whether the Directive contained a conflict of laws rule. To this question, the Court of Justice has twice responded (ECJ, 25 October 2011, aff. C-509/09 and C-161/10, *eDate Advertising*) if the country of origin principle could have an impact on spatial applicability of the rules of private law of the country, it did not imply, however, the adoption of a conflict of laws rule requiring the application of the one law of the country.

This analysis joins the prevailing interpretation that the country of origin principle is not strictly speaking a concurrent conflict of laws rule of that which exists in contract (lex contractus) or tort (lex loci delicti). It is more likely a principle that is brought to exert influence on private international law as well as on any other area of law. This principle, called "internal market" in the Directive, plays an essentially corrective role. It involves a search of justifications may sit the intervention of a law other than that which normally governs the provision in his home country.

This solution shows that European law if it clearly influences the construction of private international law (see the analysis proposed in the previous section) is not reducible to them. Private international law, its methods and solutions, survives the assertion of the internal market principle for the main reason that the impact of the internal market principle the rules that govern the activity of the provider and the rules of international law private acts are mainly interested in the provider. Sometimes friction may occur between these two bodies of solutions, especially when a private law rule relating to the activity or a rule of public law governs the actions. But the distinction between the activities and actions is maintained and with it, the duality of legal arrangements. In other words, methods of international law continue to apply to matters regulated by legal statements specifically European.

Mandatory rules and European and national public policy - Mandatory rules and international public policy are major institutions of private international law. In the European legal landscape, the question arises whether these legal mechanisms survive the development of European police law and European public order. In other words, European law is it capable of feeding constructions of private international law or is it overcomes the existing framework to define its own solutions?

The answer to this question is ambivalent. This is largely due to the versatility with which the Court was seized of these issues, both in the field of police laws (see, for example, comparison of solutions made in Ingmar (ECJ 9 November 2000 aff. C-381/98) and Unamar (CJEU October 17, 2013, aff. C-184/12) cases) and in terms of public order (see, for example, comparison of solutions made by Krombach (ECJ, 28 March 2000, aff. C-7/98), Maxicar (ECJ, 11 May 2000, aff. C-38/98), Diageo Brands (ECJ, 16 Jul. 2015 aff. C-681/13) and Merroni (ECJ, 25 May 2016, aff. C-559/14) cases). Judge not specialized in private international law, the European court often sows confusion in minds. Its decisions are not always comprehensible and private international law jurist does not hide his embarrassment at these jurisprudential developments.

Given this overall situation, two readings can be offered.

The first is to observe that European law occupies a special place in the application of national mandatory rules (police laws or international public policy), which takes in the way he tries to hold together the mandatory provisions of different Member States. Traditionally, private international law, there are two ways of producing the mandatory rules of a country: the immediate method of police laws and the foreclosure method of public policy exception, if in both cases, the judge clearly marks a preference for the mandatory rules of the forum when they conflict with mandatory provisions issued by a foreign law. European law does not cover a single state but more territory, has developed a real ability to reason detached and comprehensive manner across all mandatory provisions, without discrimination between them. In a given situation, it is natural to envisage the competing and potentially cumulative application of several national laws, even if they are mandatory or police, where the phenomenon is still more exceptional traditional private international law. The clear majority of illustrations which can be given in this regard falls mainly on public law. They also concern most often the conflict of laws only through a conflict of authorities that EU law seeks to resolve by distributing, per

predetermined criteria, the concurrent jurisdiction of different national authorities, each applying its own law in principle. This is the case for example in the areas of insurance, banking, broadcasting or for the movement of drugs or cultural property. Closer to the private international law issues, an example deserves special attention. It concerns the cross-border activities to provide services involving temporary post of employees. Two rules coexist relevant to the application of national mandatory provisions: the Rome I Regulation (prev.), Which provides in Article 8 that the contract of employment cannot in principle derogate from the mandatory provisions of the law of the country where the employee usually work notwithstanding a temporary posting in another country and Directive 96/71 / EC amended the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services provides in Article 3 that the provider company posting employees in another member State is required to respect certain mandatory provisions of the law of the host country (work periods, minimum paid leave, minimum wage), regardless the law applicable to the employment relationship. By combining these two items, European law creates the conditions for coexistence of two sets of mandatory rules. The reasons for this include cohabitation with the dual objectives: the Rome I Regulation seeks to protect employees while meeting a requirement of own proximity to private international law; the Directive pursues an aim of healthy competition and overcome the social dumping practices that take advantage of the conditions offered by less restrictive regulations. But the fact that the solution remains technically original in private international law. Two sets of statutory provisions are made to be without that one seeks to prevail over one another. For example: the employee usually working in France, temporarily employed in Spain in the framework of the provision of services can not work beyond the maximum time set in Spain (solution of the Directive) or beyond from that defined by French law with the mandatory provisions continue to apply normally to his contract (Regulations solution "Rome I"). This is far immediacy of solutions or predatory generated by traditional law of conflict of laws by the mandatory provisions.

The second observation is the relationship between the overriding mandatory rules and public order of European dimension and mandatory rules and public order national. In its case-law cited above, the European Court has shown a strong tendency to want to control the defining elements of a European mandatory to the detriment of the deployment of mandatory national considerations. This Europeanization of reasoning is the desire of the

European legal system to forge a doctrine in this area. Here we see the same phenomenon as the one that led to the Europeanization of all private international law rules to the detriment of existing national or international solutions. This posture is only one step in European integration. It's a safe bet that the way, the European Court is faced with the need to take greater account of national (and international) mandatory rules. The unlikely event occurs necessarily where the consideration of a national mandatory appears necessary to fill the gaps of a European device. This renewed state of things will be more respectful of private international law constructions.

Through these developments, it appears that private international law can hold up - that is potentially own - in the construction of the legal order of the European Union.

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