

PRIVATE INTERNATIONAL LAW ON RIGHTS IN REM IN THE EUROPEAN UNION
DERECHO INTERNACIONAL PRIVADO SOBRE DERECHOS REALES EN LA UNIÓN EUROPEA
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RIGHTS *IN REM* AND PROPERTY DISPUTES IN FAMILY RELATIONSHIPS

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I. INTRODUCTION

Addressing matters relating to rights *in rem* in immovable property as an autonomous concept in EU Private International Law (PIL), within Regulation (EU) 1215/2012 (Brussels I *bis*)¹ and its predecessor rules, is a complex task. This has highlighted in the case law of the Luxembourg Court since the Brussels Convention of 1968. On the one hand, the Brussels Convention of 1968 is based on the order not to make an extensive interpretation of the exclusive jurisdiction that it contains, since its exclusive nature entails, in turn, that it is an exception to the normal functioning of the general rules of jurisdiction provided for in the regulatory text. And, on the other hand, while it does not define what is to be understood by rights *in rem*, it states that the actions in matters concerning rights *in rem* in immovable property under Art. 24 Brussels I *bis* include those which seek «to determine the extent, content, ownership or possession of immovable property or the existence of other rights *in rem* therein and to provide the holders of those rights with protection for the powers which attach to their interest»².

This complexity is also compounded by the fact that we are faced with an incomplete European Private International Law system in matters relating to rights *in rem*³. This is characterised by a lack of explicit provisions on rights *in rem* in movable property in the Brussels I *bis* and the absence of a European regulation on the law applicable to rights *in rem*.

Whereas this system has been sustained over time and has been saved through requests for preliminary rulings, the staggered introduction of regulatory instruments on specific material sectors, such as *mortis causa*

¹ Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). *OJ* No. L 351 of 20 December 2012.

² Judgments of 3 April 2014, *Weber*, C-438/12, ECLI: EU:C:2014:212, paragraph 42; of 17 December 2015, *Komu and Others*, C-605/14, ECLI: EU:C:2015:833, paragraph 26; of 16 November 2016, *Schmidt*, C-417/15, ECLI: EU:C:2016:881, paragraph 30, of 10 July 2019, *Reitbauer and Others*, C-722/17, ECLI: EU: C: 2019:577, paragraph 44 and of 11 November 2020, *Ellmes Property Services Limited*, C-433/19, ECLI: EU:C:2020:900, paragraph 24. Arenas pointed out that this «no hace más que retrasar la definición de qué se ha de entender por derecho real; aunque tampoco puede decirse que sea completamente inútil; puesto que seguramente nos permite determinar que no todas las acciones en las que aparezca involucrado un derecho real serán objeto del foro exclusivo». R. ARENAS GARCÍA, «Competencia en materia de derechos reales sobre bienes inmuebles y competencia en materia contractual en la jurisprudencia del Tribunal de Luxemburgo. Sentencia TJ de 11 noviembre 2020, asunto C-433/19», *La Ley Unión Europea*, no. 89, 2021.

³ See C. PARRA RODRÍGUEZ, «La competencia judicial en materia de derechos reales mobiliarios, ¿una cuestión olvidada por el Reglamento Bruselas I bis?», *Anuario Español de Derecho Internacional Privado*, no. 23, 2023, pp. 351-372.

succession (Regulation (EU) 650/2012)⁴; matrimonial property regimes (Regulation (EU) 2016/1103)⁵ and property relations in registered partnerships (Regulation (EU) 2016/1104)⁶, accentuates both the previous complexity and the intricacy to come. The reason is that these regulations are built on rules that exclude the nature of rights *in rem* from their material scope of application, while the creation, acquisition and transfer deriving from the subject matter they regulate (e.g. matrimonial property regime) fall within the material scope of these instruments⁷.

The desired outcome is to advance in the development of instruments to fill these gaps through proposals that provide an autonomous concept of a right *in rem* (which to date has not been achieved by the CJEU), beyond establishing what does and does not fall within the category of actions relating to rights *in rem*⁸. But there is also a need to address the delimitation *within* (in the same instrument and its predecessor/successor rules, depending on how it is approached) and *among* instruments (in which different instruments come to be related) regarding the material scope of application of EU Private International Law regulations, in which the role of the different levels of coherence adopted by PIL scholars, shows that these are interrelated, depending on the focus used to examine them⁹.

From this approach, the principle of coherence is manifested differently according to the delimitation on the regulatory instrument in

⁴ Regulation (EU) 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. *OJ* No L 201 of 27 July 2012.

⁵ Council Regulation EU 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. *OJ* No L 183 of 8 July 2016.

⁶ Council Regulation EU 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships. *OJ* No L 183 of 8 July 2016.

⁷ See JIMÉNEZ BLANCO, P., *Regímenes económicos matrimoniales transfronterizos. Un estudio del Reglamento (UE) no. 2016/1103*, Valencia, Tirant lo Blanch, 2021, pp. 63-65 and I. ESPÍNEIRA SOTO, «Derechos reales en el Derecho internacional privado. Incidencias de la aplicación de los Reglamentos de la Unión Europea en la actividad notarial», in FONT I MAS, M., SERRANO DE NICOLÁS, A., VÁZQUEZ MORAL, P., (dirs.), *Derechos reales en el Derecho internacional privado de la UE. Aspectos jurídico-prácticos desde la perspectiva notarial*, Madrid Marcial Pons, (in press).

⁸ The efforts of the *European Group for Private International Law* and the *European Association of Private International Law* to this effect should be highlighted.

⁹ As noted by Crawford and Carruthers: «As the cohort of instruments grows, there may be found both vertical and horizontal continuity of interpretation, as for example, where a provision in an applicable law instrument ('the Rome family') clearly derives from a provision in a jurisdiction instrument ('the Brussels family'), and may benefit from the interpretation accorded thereto in successive jurisdiction instruments». E. CRAWFORD, J. CARRUTHERS, «Connection and Coherence Between and Among European Instruments in the Private International Law of Obligations», *International & Comparative Law Quarterly*, vol. 63, 2014, p. 2.

which we are focus. Taking as a starting point the delimitation *within* the Brussels I *bis*, in principle, we are involved with a «principio de coherencia esencialmente interpretativo»¹⁰ and it may have greater prominence in the delimitation *among* instruments when acting as a «principio informador del plano legislativo»¹¹. That is to say, e.g., if we consider Regulation (EU) 2016/1103, we will see that the definition of matrimonial property regime provided is aligned with the impact (regarding case law interpretation) that it has had, not on this instrument but on the Brussels Convention of 1968. This points towards varying evolutionary nuances, depending on the levels of coherence that are taken into consideration, which would result in either vertical or horizontal conceptual coherence. In addition, the argumentative technique used methodologically by the CJEU shows how it seeks either to strengthen «continuist» approaches or to depart from them in order to provide a stronger or weaker response through cases and on a case-by-case basis.

In this context, the CJEU has undertaken the difficult task of establishing a delimitation within disputes that may arise in family relationships, with a special focus on those referring to property issues. In order to analyse it, this article searches to pay attention to the argumentative technique used in the CJEU case law and to include an approach based on coherence through the literature review based on reference scholar studies of Crawford and Carruthers (2014)¹², Basedow (2016)¹³, Sánchez Lorenzo (2018)¹⁴, Bonomi (2020)¹⁵ and Fontanellas Morell (2020)¹⁶ (in chronological order).

¹⁰ Sánchez Lorenzo argues that it is essentially an interpretative principle: «En cierto sentido, el principio apunta a la necesidad de una interpretación sistemática de las distintas normas de Derecho internacional privado, que deberán ser comprendidas las unas por las otras, de forma que se garantice la unidad y la máxima eficacia de todo el sistema jurídico. Desde este punto de vista, el principio de coherencia apunta esencialmente al intérprete y, por tanto, se decanta en la jurisprudencia. De ahí que la cuestión prejudicial sea la piedra angular del principio de coherencia». S. SÁNCHEZ LORENZO, «El principio de coherencia en el Derecho internacional privado europeo», *REDI*, vol. 70, no. 2, 2018, p. 19.

¹¹ However, in other areas such as those concerning consumers and workers, it has also had an impact when acting as a principle informing the legislative domain in Brussels I *bis*, since the CJEU's case law has been introduced in the development of the regulatory text. S. SÁNCHEZ LORENZO, *ibid.*, pp. 19-20.

¹² E. CRAWFORD, J. CARRUTHERS, J., *op. cit.*, note 9, pp. 1-29.

¹³ J. BASEDOW, «Coherencia del Derecho internacional privado de la Unión Europea», *Anuario Español de Derecho Internacional Privado*, no. 16, 2016, pp. 53-77. Spanish Translation by B. S. JIMÉNEZ GÓMEZ.

¹⁴ S. SÁNCHEZ LORENZO, *op. cit.*, note 10, pp. 17-47.

¹⁵ A. BONOMI, «Coherence and Coordination among the EU Private International Law Regulations in Family and Succession Matters», in FORNER I DELAYGUA, J. J., SANTOS, A. (eds.), *Coherence of scope of application: EU Private International Legal instruments*, Gêneve, Schulthess, 2020, pp. 27-42.

¹⁶ J. M. FONTANELLAS MORELL, «Coherence between European Instruments of Private International Law on Matters concerning Succession and Matrimonial Property Regimes», in FORNER I DELAYGUA, J. J., SANTOS, A. (eds.), *ibid.*, pp. 121-153 and J. M. FONTANELLAS MORELL, «La co-

II. RELEVANCE OF THE SCOPE OF APPLICATION *RATIONE MATERIAE*

The common denominator in the course of the CJEU case law is that in none of the cases to date in, which property relationships were in dispute in the strictly family context, has it been necessary to determine whether or not the action or measure in dispute concerned rights *in rem*. As Fontanellas Morell noted, this was needed in the context of *mortis causa* succession in *Kubicka*¹⁷, in which the Court has been asked whether the transfer of the ownerships assets to the legatees upon the opening of succession was a matter included in the scope of application of Regulation (EU) 650/2012, as the content or mode of transfer of a right *in rem*, or whether it was a matter that depended on the nature of the right *in rem* and was therefore excluded from the material scope of application of said regulation (Art. 1.2 k)¹⁸.

For now and in general, in cases in which the delimitation is within RBI bis, it has been necessary to delimitate the scope of the actions to be included in «matters relating to rights *in rem* in immovable property» (Art. 24.1 Brussels I *bis*) in order for the exclusive international jurisdiction of courts to be invoked or not, since its introduction in the Brussels Convention 1968. In light of this case law, as will be outlined below, the CJEU contemplates the *building block* methodology and holds that, in addition to the aspects relating to the action, the action itself must be included in its scope of application. Consequently, actions concerning rights *in rem* that appear to be connected with matters excluded from its scope of application, such as, as far as the present study is concerned, “rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage” (Art. 1.2 a) Brussels I *bis*), are excluded.

As noted in none of the cases dealing with the property relationships of spouses or unmarried partnerships has the CJEU ruled on the need to discern whether recourse ought to be had to rules on rights *in rem* or to rules on property rights arising out of a matrimonial relationship or comparable to marriage. This is without prejudice to the fact that in the Member States the courts have already had to deal with delimitation aspects *ratione materiae* of the Brussels I *bis* and the

herencia entre los Reglamentos 650/2012 y 2016/1103 (2016/1104)», in SERRANO DE NICOLÁS, A. (coord.), *Los Reglamentos UE 2016/1103 y 2016/1104 de regímenes económicos matrimoniales y efectos patrimoniales de las uniones registradas*, Madrid, Marcial Pons, 2020, pp. 191-221.

¹⁷ Judgment of 12 October 2017, *Kubicka*, C-218/16, ECLI: EU: C: 2017:755. J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, pp. 136-137.

¹⁸ See S. ÁLVAREZ GONZÁLEZ, «*Legatum per vindicationem* y Reglamento (UE) 650/2012», *La Ley Unión Europea*, no. 55, 2018.

Regulation (EU) 2016/1103 in relation to rights *in rem* and the matrimonial property regime that will promote preliminary rulings in the future. E.g, the Order of the Audiencia provincial Barcelona (Provincial Court, Barcelona) No 256/2021, which concludes that the division of the spouses' assets should not be confused with the liquidation of the matrimonial property regime, which leads to the conclusion that such a division is not within the material scope of application of the Regulation (EU) no. 2016/1103 but is within the scope of application of the RBIbis. Accordingly, Art. 24 RBI bis applies for the determination of international jurisdiction¹⁹. Another one, related again with international jurisdiction, is the Judgment of the Court of Appeal of Amsterdam of 13 June 2023²⁰, in which the court had to rule regarding the division of an immovable located in New Zealand between spouses who had agreed upon the exclusion of marital property. In the opinion of the Court if the spouses made an agreement with respect to a certain asset and opt for a property relationship as a result of or in connection with their marriage, the parties' claims therefore fall within the material scope of the provisions of Regulation (EU) 2016/1103²¹. It could be add as an interesting question that in its effort to justify the international jurisdiction of the Dutch courts, that even if the parties' claims fell outside the material scope of the Regulation (EU) 2016/1103, adopts to the solution to apply, in light of the lack of legal provisions on this point, the provision of art. 4 RBI *bis* when the immovable property is located in a third State²².

For the time being, the CJEU it has focused exclusively on determining whether or not the question at issue is excluded from the material scope of application in relation to the exclusion contained in Art. 1.2 a) Brussels I *bis*. Nevertheless, it should be mentioned at this point that this opportunity arose in the *Iliev* case²³, in which one of the criticisms that the CJEU received was precisely that it failed to take a stand on it because the issue in question was not an action for division

¹⁹ Order of 18 June 2021, ECLI:ES:APB:2021:5125A. See J. C. FERNÁNDEZ ROZAS, S. SÁNCHEZ LORENZO, *Derecho internacional privado*, 12 edition, Cizur Menor, Aranzadi, 2022, pp. 806-807.

²⁰ ECLI:NL:GHAMS:2023:1358.

²¹ Paragraph 4.8. As *Stichting IJI* noted: "As the Regulation is still quite young, it will be interesting to monitor rulings on similar subjects from the courts of the participating countries". <https://eapil.org/2024/01/16/amsterdam-court-of-appeal-on-the-scope-of-the-matrimonial-property-regimes-regulation/>

²² Paragraph 4.10. As Fontanellas Morell noted there are some interpretative suggestions. J. M. FONTANELLAS MORELL, «Rights *in rem* in Spanish Private International Law», in FONT I MAS, M., *Private International Law on Rights in rem in the European Union/Derecho internacional privado sobre derechos reales en la Unión Europea*, Madrid, Marcial Pons, 2024, pp. 141-178.

²³ Order of 14 June 2017, *Iliev*, C-67/17, ECLI: EU:C.2017:459. See D. LOOSCHELDERS, «Internationale Zuständigkeit für die Auseinandersetzung von Miteigentum bei ehgüterrechtlichem Bezug», *IPRax*, 38, no. 6, 2018, pp. 591-594.

of common property that affected rights *in rem* in immovable property (as was the case in *Virpi Komu*)²⁴, but in movable property.

In light of the above, the focus now will be on substantiating the course followed by the CJEU. This begins with the delimitation *within* the Brussels I *bis* and its predecessor instruments, and how the challenges involved will require a delimitation *among* instruments, from an interrelated argumentative and coherence-based approach²⁵ in order to lead to an analysis of the more specific aspects in the delimitation *within* and *among* instruments, which will be made in the following sections of this study.

III. DELIMITATION WITHIN AND AMONG INSTRUMENTS: AN ARGUMENTATIVE AND COHERENCE-BASED APPROACH

As stated the starting point for dealing with property disputes arising out of a matrimonial relationship or unmarried partnership is the delimitation *within* the Brussels I *bis*, in view of the situation of the CJEU's case law resulting from the exclusion of those disputes from its scope *ratione materiae* contained in Art. 1.2 a) Brussels I *bis*.

The scope of this exclusion in relation to “rights in property arising out of a matrimonial relationship” was promptly addressed in the Brussels Convention of 1968 in the *de Cavel I* case²⁶. This case law has been followed by the CJEU by using the building block methodology. In other words, up to now, the delimitation of this notion within the same instrument (and in its successive versions) has been developed by resorting to the repetition of building blocks, that is, arguments and phrases that have been used since the case considered to serve as precedent or *topoi* (*de Cavel I*)²⁷. This recurrent, formulaic use of lan-

²⁴ Judgment of 17 December 2015, *Virpi Komu* C-605/14, ECLI: EU: C: 2015:833. See J. M. FONTANELLAS MORELL, «La actio communi dividundo en el Reglamento “Bruselas I”»: STJUE de 17 de diciembre de 2015, Caso C-605/2014: *Virpi Komu*, Hanna Ruotsalainen y Ritva Komu c. Pekka Komu y Jelena Komu», *La Ley Unión Europea*, no. 37, 2016.

²⁵ Basedow remarked that: «*La coordinación de las normas relativas a la competencia y la ley aplicable es, sin embargo, esencial en los casos en los que las normas especiales sobre la competencia o la legislación aplicable se han puesto en marcha a causa de una especial preocupación sustantiva. Cuando, por ejemplo, se establece la competencia exclusiva en los litigios relativos a la protección de los derechos de propiedad intelectual o de los bienes inmuebles*». J. BASEDOW, *op. cit.*, note 13, p. 68.

²⁶ Judgment of 27 March 1979, *de Cavel I*, C-143/78, ECLI: EU: C: 1979:83.

²⁷ Defined as the early decision to be subsequently taken as a reference point, the precedent is an important tool used by the CJEU to argue and justify its decisions. R. CIPPITANI, «Argumentos interpretativos del Tribunal de Justicia y el derecho a la libre circulación de los familiares nacionales de países terceros», *Electronic Journal. Jean Monnet Chair*, no. 2, 2014, p. 33.

guage facilitates rulings that promote continuity²⁸ and, in turn, means that the Court need not assess or glimpse the effects they have on the questions that arise about a delimitation *among* instruments. And with regard to «relationships having comparable effects to marriage», the *Weil* case²⁹ posed a situation in which this specific exclusion was not yet contemplated in Art. 1.2 a) Brussels I, despite the fact that the request for a preliminary ruling was erroneously focused on the Brussels I *bis* (concerning the temporal scope of application). This was a missed opportunity to obtain a ruling from the CJEU that would provide major questions interaction towards a delimitation *among* instruments from the perspective of the material scope of application in the different EU Private International Law regulations that come into play, specifically between the Brussels I *bis* and Regulation (EU) 2016/1104.

Going further into the perspective of the principle of coherence, the exclusions from the material scope of application *within* the Brussels I *bis* need to be initially addressed by applying a specific level of coherence known as vertical coherence in the now-established terminology for this area³⁰. This corresponds to each of the succeeding regulations implemented over time on the same subject matter³¹, such as, in this case, the Brussels Convention of 1968, the Brussels I and the Brussels I *bis*. This is reflected in the second part of Recital 34 of the Brussels I *bis*, which states: «[...] The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the Brussels Convention of 1968 and of the Regulations replacing it»³².

Although this is the initial scenario, the adoption (in 2016) and full application (in 2019) of regulations covering Private International Law issues on matrimonial property regimes and property relationships of

²⁸ G. BECK, *The Legal Reasoning of the Court of Justice of the EU*, Portland, Hart Publishing, 2012, pp. 168-171.

²⁹ Judgment of 6 June 2019, *Weil*, C-361/18, ECLI:EU:C: 2019:473. See D. MARÍN CONSARNAU, «Ámbito de aplicación *ratione temporis* y *ratione materiae* del Reglamento (CE) 44/2001 vs. Reglamento (UE) 1215/2012: resolución judicial relativa a un crédito resultante de la disolución del régimen patrimonial derivado de una relación de pareja de hecho no registrada. Sentencia del Tribunal de Justicia de 6 de junio de 2019, C-361/18: *Weil*», *La Ley Unión Europea*, no. 77, 2020.

³⁰ Basedow noted that vertical coherence has a historical meaning in common law countries through precedent. J. BASEDOW, *op. cit.*, note 13, p. 55. This is also in line with the building block methodology.

³¹ S. SÁNCHEZ LORENZO, *op. cit.*, note 10, p. 21; A. BONOMI, *op. cit.*, note 15, p. 30 and J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, p. 124.

³² This was expressly stated by Crawford and Carruthers: «his encompasses two aspects of vertical continuity: first, the temporal scope of application of each succeeding instrument, including transitional provisions, and, secondly, judicial interpretation of the instrument where an identical or similar form of words is found in succeeding instruments. Vertical continuity in the second sense is readily seen in the evolution of jurisdictional provisions from the 1968 Brussels Convention through the Brussels I Regulation to Regulation 1215». E. CRAWFORD, J. CARRUTHERS, *op. cit.*, note 9, p. 3.

registered partnerships reveal that it is insufficient to approach delimitation *within* instruments strictly from a vertically coherent perspective.

This state of affairs compels us to look at other dimensions of coherence, which necessarily lead to the question of the delimitation *among* instruments and to horizontal coherence³³, concerning cases that fall under the different sectoral regulations by reason of subject matter, but are related to each other³⁴. This would be the case, for example, when faced with the need to discern whether a certain action falls under the regime of *mortis causa* succession or the matrimonial property regime, highlighted in the *Mahnkopf* case³⁵, which will be discussed further later on. In terms of horizontal coherence, in the context of the EU Private International Law instruments this would strain the material scope of application of Regulation (EU) 650/2012 and Regulation (EU) 2016/1103 or of the Brussels I *bis* and Regulation (EU) 2016/1103/Regulation (EU) no. 2016/1104 in circumstances such as those in the *Kubicka* case, where it needed to be clarified whether the relevant rules were those on rights *in rem* or those on the matrimonial property regime or a comparable regime, depending on the autonomous interpretation held by the CJEU in each instrument.

Moreover it is important not to disregard aspects related to another form of coherence, the so-called «transversal» coherence, a term coined by Sánchez Lorenzo which concerns regulatory texts with different origin that are considered interdependent³⁶. These include, for example, coherence between Regulation (EU) 2019/1111 (Brussels II *ter* Regulation)³⁷ and the Hague Convention of 1996.³⁸ A somewhat functional manifestation of transversal coherence can be seen in Recital 92 Brussels II *ter*. In fact, as Fontanellas Morell also noted, the CJEU had the opportunity to interpret the material scope of application *among* instruments from a perspective of horizontal coherence in the

³³ Basedow noted that the European Commission's efforts are mainly directed towards horizontal coherence. J. BASEDOW, *op. cit.*, note 13, p. 55. This makes sense in terms of the attention to be paid to the principle of coherence as a «*principio informador en el plano legislativo previo*» as remarked by S. SÁNCHEZ LORENZO, *op. cit.*, note 10, pp. 19-20.

³⁴ E. CRAWFORD, J. CARRUTHERS, *op. cit.*, note 9, p. 3; S. SÁNCHEZ LORENZO, *op. cit.*, note 10, p. 21 and J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, p. 124.

³⁵ Judgment of 1 March 2018, *Mahnkopf*, C-558/16, ECLI:EU:C: 2018:138. See J. M. FONTANELLAS MORELL, «Los derechos legales del cónyuge supérstite en los instrumentos europeos de Derecho internacional privado. Sentencia del Tribunal de Justicia, Sala Segunda, de 1 de marzo de 2018, C-558/16: Mahnkopf», *La Ley Unión Europea*, no. 61, 2018.

³⁶ S. SÁNCHEZ LORENZO, *op. cit.*, note 10, p. 22. Also, along these lines, J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, pp. 124-125.

³⁷ Council Regulation (EU) No. 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction. *OJ L 178/1* of 2 July 2019.

³⁸ Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996. *BOE* No 291 of 2 December 2010.

Brussels I *bis*, while at the same time addressing aspects of transversal coherence, as for example, in the *Matoušková* case, where reference was made to the explanatory report on the Hague Convention of 1996 to support its argument³⁹.

Furthermore, it could be added that there is another (more blurred) dimension of transversal coherence, which is not quite treated as a coordination issue⁴⁰. This can manifest itself even when the EU normative instrument is influenced by another rule that has never entered into force, or has not entered into force in the Member States across the board. That is, in the specific scope of this paper, the interdependence among Regulation (EU) 2016/1103/ Regulation (EU) 2016/1104 and the Hague Convention of 1978 regarding the law that is applicable to matrimonial property regimes would influence the development of the regulation of the applicable law. However, it would not have an influence on the definition of the concept of matrimonial property regime, since it is not contemplated in the Convention⁴¹. As advised by Fontanellas Morell (who introduced this interesting view), rather than speaking of transversal coherence, we should speak of transversal «influence» in these cases⁴².

Having identified the questions relating to argumentative technique and coherence that arise in the delimitation *within* and *among* instruments in relation to material scope, the next sections will focus on the course followed by the CJEU.

IV. «RIGHTS IN PROPERTY ARISING OUT OF A MATRIMONIAL RELATIONSHIP»: FROM THE BRUSSELS CONVENTION OF 1968 TO REGULATION (EU) 1215/2012

The CJEU's case law has confirmed that property issues arising out of a matrimonial relationship are excluded from the Brussels I *bis*, whereas those that are generally available independently of marriage fall within the scope of said Regulation.

³⁹ J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, p. 131. Note 36. Judgment of 6 October 2015, C-404/14, *Matoušková*, ECLI:EU:C:2015:653. See A. FONT I SEGURA, «Competencia para autorizar un acuerdo de partición de herencia celebrado por un tutor en representación e interés de unos herederos menores de edad», *La Ley Unión Europea*, no. 35, 2016.

⁴⁰ A. BONOMI, *op. cit.*, note 15, pp. 29-31, on the concern about differentiating coherence from coordination.

⁴¹ Convention on the law applicable to matrimonial property regimes. This Convention did enter into force for France, Luxembourg and the Netherlands, which are themselves Member States participating in the enhanced cooperation of Regulation (EU) 2016/1103.

⁴² J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, pp. 130-131.

As Rogerson and Mankowski argued, this exclusion cannot be easily addressed, since the concepts of property rights arising from a matrimonial relationship are unknown in some Member States and are interpreted differently in others⁴³. This difficulty was also raised by Advocate General Warner in his Opinion on the *de Cavel I* case⁴⁴. Nevertheless, the logic of the legal doctrine arising from *de Cavel I* allows the Luxembourg Court to circumvent this complexity when dealing with delimitation cases *within* the same instrument.

So much so that, years later, the CJEU seems to have found it «easy» to delimit the material scope of application in relation to rights in property arising out of a matrimonial relationship issues under the Brussels I and the Brussels I *bis*, without expressly adopting Advocate General Warner's proposal for a *iuris tantum* presumption. In order not to undermine the objective of the Brussels Convention of 1968, he concluded that one of the solutions he accepted was that a decision relating to a property dispute between spouses is presumed to fall outside its scope unless, in the light of that decision, the authority can establish that this is not the case. Although this is not the position explicitly taken up by the Luxembourg Court, the structure of the criteria used to outline the concept of «rights in property arising out of a matrimonial relationship» as an excluded matter shows that it would be difficult to have disputes between spouses concerning property where the matrimonial bond has no relevance that would lead to the assertion that the claim does fall within the material scope of application of the Brussels Convention of 1968.

This apparent simplicity can be seen in *Iliev* and in *Weil* cases. Both decisions dispensed with the written dialogue between the CJEU and the Advocate General. There was no opinion by the Advocate General; it was noted that this would not be required, as there was no novelty or lack of clarity. This was revealed in the Order in the *Iliev* case, which argued that, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing caselaw, the Court of Justice may at any time decide to rule by reasoned order, after a proposal from the Judge-Rapporteur and after hearing the Advocate General. And in the CJEU judgment in the *Weil* case, it was noted that the Court, after hearing the Advocate General, may decide that the case shall be determined without a submission from the Advocate General

⁴³ P. ROGERSON, P. MANKOWSKI, «Art. 1 Brussels I bis/ Scope of application», in MAGNUS, U., MANKOWSKI, P., *ECPIIL. European Commentaries on Private International Law. Commentary. Brussels I bis*, vol. I, 2nd ed., Köln Ottoschmidt, 2023, p. 66. See from a Notary's perspective Á. SERRANO DE NICOLÁS, «Derechos reales y aspectos de delimitación racione materiae desde la perspectiva notarial de los reglamentos de la UE de DIPr: cuestiones de derechos reales o personales», in FONT I MAS, M., SERRANO DE NICOLÁS, A., VÁZQUEZ MORAL, P., (dirs.), *op. cit.*

⁴⁴ Submitted on 22 February 1979, ECLI: EU: C: 1979:50.

when it considers that the case raises no new point of law, in accordance with Article 20 of the Statute governing the CJEU.

Let us now turn to the argumentative line of this legal doctrine. As is well known, the Luxembourg Court has stated on several occasions that the concept of civil and commercial matters must be regarded as autonomous⁴⁵ and must be broadly defined⁴⁶, while exclusions from the material scope are exceptions which must be interpreted strictly⁴⁷.

De Cavel I case gave the Luxembourg Court the opportunity to rule on an autonomous concept of «rights in property arising out of a matrimonial relationship» within the scope of the exclusion of the Brussels Convention of 1968. The judgment indicated that this concept covers not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any proprietary relationships resulting *directly*⁴⁸ from the matrimonial relationship or the dissolution thereof. It established in turn three categories of disputes concerning the assets of spouses in divorce proceedings, which may affect or be closely connected with: (1) questions relating to the status of persons; (2) proprietary legal relationships between spouses resulting *directly*⁴⁹ from the matrimonial relationship or the dissolution thereof; and (3) proprietary legal relations existing between them which have no connection with the marriage, the latter being the only ones that can be understood to fall within the material scope of application of the Brussels Convention of 1968⁵⁰ and the least likely to occur⁵¹. Consequently, the protective measures sought in *de Cavel I*, namely, the sealing of the furniture in a flat during the divorce proceedings, whether they were considered provisional or definitive, did not fall within scenario (3), and were therefore excluded from the scope of application of the Brussels Convention of 1968.

From this point onwards, the rulings in the cases decided by the CJEU confirmed the legal doctrine and greater caution was taken in arguing the interpretation made in its early days, through to the *Iliev* case.

⁴⁵ Judgment of 14 October 1976, *Eurocontrol*, C-29/76, ECLI:EU:C:1976:137, paragraph 3 *in fine*.

⁴⁶ Judgment of 10 September 2019, *German Graphics*, C-292/08, ECLI: EU: C: 2009:544, paragraph 23.

⁴⁷ Judgment of 23 October 2014, *flyLAL-Lithuanian Airlines*, C-302/13, EU: C: 2014:2319, paragraph 27.

⁴⁸ Emphasis added. This issue will be discussed again when introducing the *Iliev* case and the definition of matrimonial property regime in Regulation (EU) No. 2016/1103.

⁴⁹ Again, emphasis has been added to highlight the argument made in footnote 48.

⁵⁰ As the Advocate General warned, there will be few property disputes between spouses in which the marital relationship is irrelevant.

⁵¹ Paragraph 7.

In the *C.H.W.* case⁵², the Luxembourg Court was again asked about the exclusion of the «rights in property arising out of a matrimonial relationship» in the Brussels Convention of 1968, but this time with regard to the management of the spouses' property. This involved an application for a provisional measure for the delivery of a document marked «codicil», which was likely to be used as evidence in an action relating to a husband's management of his wife's separate property. Once again, the wording in *de Cavel I* was resorted to as a building block; the judgment noted that the application was closely linked to rights in property arising out of a matrimonial relationship and therefore outside the scope of application of the Brussels Convention of 1968⁵³, in accordance also with the Opinion delivered by Advocate General Simone Rozès⁵⁴.

The *Boogaard* case⁵⁵ also raised the question of exclusion from the material scope of the Brussels Convention of 1968. The court of the Member State addressed had doubts as to whether the judgment issued by the court of origin concerned matters relating to maintenance (and therefore fell within the material scope of the Brussels Convention of 1968 or matters relating to the matrimonial property regime (excluded from its material scope). The Luxembourg Court provided its interpretation of what is to be understood by maintenance and by matrimonial property regime in the light of the instrument. It stated that the decision will be concerned with rights in property arising out of a matrimonial relationship where the provision awarded is solely concerned with dividing property between the spouses⁵⁶. And it declared that, if a decision is rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse, it relates to maintenance obligations and therefore falls within the scope of the Brussels Convention of 1968, if its purpose is to ensure the former spouse's maintenance⁵⁷. While the question may have been a matter of vertical coherence at that time, from the adop-

⁵² Judgment of 31 March 1982, *C.H.W.*, C-25/81, ECLI:EU:C: 1982:116.

⁵³ Paragraphs 6 to 9.

⁵⁴ Submitted on 27 January 1982, ECLI:EU:C: 1982:19, paragraph 3 *in fine*.

⁵⁵ Judgment of 27 February 1997, *Boogaard*, C-220/95, ECLI:EU:C: 1997:91. See BORRÁS, A., "Sentencia de 27 de febrero de 1997, Asunto C-220/95, Antonius van den Boogaard c. Paula Laumen", *Revista Jurídica de Catalunya*, no. 4, 1997, pp. 1158-1162.

⁵⁶ Paragraph 22.

⁵⁷ Borrás noted that «la brevedad de la decisión y sus fundamentos queda compensada por las conclusiones del Abogado General». A. BORRÁS, *op.cit.*, note 55, p. 1160. The particular implication here is a generous interpretation of the matter of maintenance: «en detrimento de la materia de régimen económico matrimonial», as Forner Delaygua pointed out. J. J. FORNER DELAYGUA, «Reconocimiento y ejecución de sentencias extranjeras. - CB: arts. 1.º-2 y 42.- Ámbito material: Régimen económico matrimonial y alimentos. - Convenio de la Haya de 2 de octubre de 1973: art. 23», *REDI*, vol. L, no. 1, 1998, p. 299.

tion and application of Regulation (EC) 4/2009 onwards⁵⁸, it could be a matter of horizontal coherence among the Brussels I *bis*, Regulation (EC) 4/2009 and even Regulation (EC) 2016/1103, which would require recourse to case law from a vertical coherence perspective (that may be described as conceptual)⁵⁹. This shows that the advancements made in the regulation of EU Private International Law instruments have led to a complex logic of segments in relation to the levels of coherence, depending on how they have been categorised.

Thirty-eight years later, in the *Iliev* case, which discussed the international jurisdiction of courts in relation to an action on the division of movable property (a car acquired by one of the spouses when the couple regularly resided in a Member State other than the one in which the divorce was pronounced), the CJEU clearly and succinctly assigned it to the second category: proprietary legal relationships between spouses resulting directly from the dissolution of the matrimonial relationship, therefore falling outside the material scope of application of the Brussels I *bis*⁶⁰. As the CJEU envisaged that there would be some consequences with regard to the delimitation among instruments, it also indicated that the action was not included in the scope of application of Regulation (EC) 2201/2003 (Brussels II *bis*) either. As Regulation (EU) 2016/1103 had not yet been adopted at that time, we cannot fail to note that it would have been most interesting if a case such as *Iliev* had been brought up at a later date. This might have prompted a clarification such as the one provided in relation to the Brussels II *bis*, bearing in mind that the CJEU did refer to Regulation (EU) 2016/1103 to reinforce its argument in the *Mahnkopf* case⁶¹.

V. DISSOLUTION OF CO-OWNERSHIP AND LIQUIDATION OF PROPERTY ACQUIRED DURING THE MARRIAGE ;RIGHTS *IN REM* OR MATRIMONIAL REGIME?

This matter also revolves around vertical coherence in the delimitation *within* and horizontal coherence in the delimitation *among* instruments. In this regard, it is worth focusing on the *Virpi Komu, Iliev*

⁵⁸ Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. *OJ L* No 7 of 10 January 2009.

⁵⁹ Fontanellas Morell introduced conceptual vertical influence to this effect, by referring to interdependence with rules that have not entered into force. J. M. FONTANELLAS MORELL, «Coherence between...», *op. cit.*, note 16, p. 131, note 35. Within this conception, vertical coherence may also be deemed to encompass a form of coherence that affects the interdependence of concepts, which has particularly strong impact on the material scope of application of the rules. This interpretation would be part of a nuanced and evolving understanding of the levels of coherence.

⁶⁰ Paragraphs 28 to 29.

⁶¹ Paragraph 41.

and *Mahnkopf* cases. The necessary interaction of the different levels of coherence continues to be found in these cases, to which the CJEU needs to offer a response in terms of the essentially interpretative facet of the principle of coherence, which ultimately has an impact on the delimitation *within* and *among* instruments as a principle informing the legislative realm.

The connection between the *Virpi Komu* case and the *Iliev* case lies in the fact that they were concerned with actions where the application of the rules on right *in rem* may be questioned. However, this was not disputed in both cases. It only happened in the *Komu case*, in relation to proceedings between co-owners (domiciled in Finland) of immovable property located in Spain (Torrevieja, Alicante), in which the Luxembourg Court concluded that Spanish courts had exclusive jurisdiction, as they were the courts of the Member State in which the immovable property was located⁶². The CJEU's argumentation technique relied on the legal doctrine by using building blocks from previous case law in which it justified the purpose of *forum rei sitae* as a criterion of exclusive jurisdiction in matters of rights *in rem* in immovable property. The rationale was that the courts of the Member State in which the property was situated were best placed to ascertain the facts satisfactorily and to apply the rules and practices which are generally those of the State in which the property is situated, due to their proximity⁶³.

However, in the *Iliev case*, the question focused on whether, in the event of the liquidation of movable property after a divorce had taken place, the dispute came within the scope of application *ratione materiae* in relation to the exclusion of the «rights in property arising out of a matrimonial relationship» from the Brussels I *bis*. The provisions within it establish that the dispute corresponds to the «rights in property arising out of a matrimonial relationship» and those directly resulting from the dissolution of a matrimonial relationship, and it was therefore excluded from the scope of the Brussels I *bis*.

Nevertheless, what was succinctly expressed in the *Iliev* case, which appealed to vertical coherence among instruments by referring to Recital 34 the Brussels I *bis* (without addressing the question from the perspective of rights *in rem* in relation to the action for division of common property), should not leave us indifferent. If the action had affected immovable property, the controversy could have arisen from an approach similar to that of the *Virpi Komu* case, in which the CJEU would have had to consider whether or not the action was comprised within the concept of «rights *in rem* in immovable property». Nonetheless, it should be remembered that the action must fall within the scope

⁶² J. M. FONTANELLAS MORELL, «La actio communi dividundo ...», *op. cit.*, note 24.

⁶³ Paragraph 25, in conjunction with judgment of the CJEU, C438/12-, *Weber*, C438/12-, EU:C:2014:212.

of application of the regulatory instrument⁶⁴. While, from this point onwards, the question would again have centred on the discussion of the scope of application, the CJEU skirted around the lack of a specific rule in the Brussels I *bis* (or in its predecessor rules) on the criteria of jurisdiction for rights *in rem* in movable property, as it was not required to address it by the question referred for a preliminary ruling; nor was it obliged to deal with the issue regarding the relationship with Regulation (EU) 2016/1103 for temporal reason.

The latter issue was addressed in the *Mahnkopf* case precisely in order to strengthen its argument, as the CJEU had to rule on whether a matter was included within the scope of application of Regulation (EU) 650/2012, or whether it was a concern relating to the matrimonial property regime, and therefore excluded from the scope of application of Regulation (EU) 650/2012 (Art. 1. 2 d). Moreover, although Regulation (EU) 2016/1103 was not yet applicable, the CJEU referred to this instrument in an effort to justify its argument from the perspective of horizontal coherence among instruments, by clarifying that the scope of application of Regulation (EU) 2016/1103 did not contradict this interpretation, since it excluded the succession to the estate of a deceased spouse (Art. 1.2 d).

In the *Mahnkopf* case, the CJEU focused on determining that if in case on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate falls within the scope of Regulation (EU) 650/2012 or not. The Court held that this mainly concerned succession to the estate of the deceased spouse and not the matrimonial property regime; and that, consequently, it was within the scope of Regulation 650/2012. Nothing was mentioned with regard to its legal doctrine on the «rights in property arising out of a matrimonial relationship» under the Brussels I *bis*. If recourse had been had to the argumentative technique of sufficient dissimilarity⁶⁵ (whereby the CJEU differentiates one case from a preceding one, distinguishing the facts of the new case as opposed to the previous one), the Court would have shown continuity in the criteria used in its reasoning and would have reached the same outcome without needing to use such a strained qualification in its judgment⁶⁶.

In the *Iliev* case, the CJEU only dealt with delimitation *within* the same instrument, apparently maintaining vertical coherence in relation to the *de Cavel 1* doctrine. Together with the scenario of cases in which delimitation is *among* instruments within the level of horizontal coher-

⁶⁴ In criticism, D. LOOSCHELDERS, *op. cit.*, note 23.

⁶⁵ On this methodology, G. BECK, *op. cit.*, note 28, R. CIPPITANI, *op. cit.*, note 27, pp. 32-36, M. JACOB, *Precedents and Case-Based Reasoning in the European Court of Justice*, New York, Cambridge University Press, 2014, pp. 147-150.

⁶⁶ See J. M. FONTANELLAS MORELL, «Los derechos legales...», *op. cit.*, note 35.

ence (following the *Mahnkopf* case, which will play a leading role in future pronouncements)⁶⁷, this allows us to enter into the borderline areas arising from the *Iliev* case.

As seen above, in the *Iliev* case the CJEU concluded that the liquidation of assets was a question linked to the dissolution of the marriage, and was therefore excluded from the material scope of application of the Brussels I *bis*. However, the dire immediacy of the Court's conclusion led to the criticism that the CJEU did not go into whether it was a question related to the distribution of assets arising *directly*⁶⁸ from the divorce proceedings. In other words, the Court failed to address whether it was directly and immediately connected to the dissolution of the marriage (which would be excluded from the scope of application of the Brussels I *bis*), or whether it arose as an indirect consequence of the divorce (which would then fall within the material scope of application of the Brussels I *bis*)⁶⁹ placing it in the third category that emerged in the *de Cavel I*.

The question of the need for a direct link is certainly not trivial in terms of Regulation (EU) 2016/1103 (which is important from a perspective of conceptual vertical or horizontal coherence), whereby the definition of matrimonial property regime as «a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution» (Art. 3.1.a) derived from the case law in *de Cavel I*. As can be seen, no reference is made in this provision to the directness required with regard to the marriage bond or its dissolution, but this directness is mentioned in Recital 18 *in fine*. Two considerations should be made in this respect. Firstly, it may be questioned whether the terminology «as a result of» in the various versions languages available is equivalent to «directly resulting from»⁷⁰, taking as a reference a dimension of coherence halfway between the vertical and the horizontal level in relation to the case law in *de Cavel I*. Secondly, linked to the final idea raised in the first consideration, it can be noted that, while the principle of coherence has an impact on the delimitation *among* instruments, it does not overshadow the delimitation *within* the instrument itself (Regulation (EU) 2016/1103).

⁶⁷ In this sense, see A. BONOMI, *op. cit.*, note 15, p. 33.

⁶⁸ Emphasis added.

⁶⁹ D. LOOSCHELDERS, *op. cit.*, note 23.

⁷⁰ D. LOOSCHELDERS, *ibid.*

VI. «RIGHTS IN PROPERTY ARISING OUT OF A RELATIONSHIP DEEMED BY THE LAW APPLICABLE TO SUCH RELATIONSHIP TO HAVE COMPARABLE EFFECTS TO MARRIAGE»: TOWARDS ITS INTRODUCTION IN REGULATION (EU) 1215/2012

The *Weil* case, without specifying whether it concerns rules on rights *in rem* or on property regarding unmarried couples on this occasion, introduced a question which, having attempted a delimitation *within* the same instrument, may have an impact on the delimitation *among* instruments in the future, once again from a perspective in which vertical and horizontal coherence matters intersect.

In this case, the CJEU was asked whether the property regime arising from an unregistered partnership was a civil or commercial matter within the meaning of Article 1(1) Brussels I *bis*, or whether, on the contrary, it was a matter excluded from its scope of application according to Art. 1.2 a) Brussels I *bis* that expressly excludes «rights in property arising out of a relationship deemed by the law applicable to such relationship to be comparable to marriage». The referring court had noted that, under its national law, property relationships between the members of an unregistered partnership were part of obligations law. In short, the question involved discerning whether a repayment action between members of an unregistered non-marital *de facto* partnership fell within the scope of the rights in property arising out of a relationship deemed to have comparable (legal) effects to marriage. This was therefore a case of delimitation within one and the same instrument, in which the temporal scope of the rules was decisive, and in which some questions initially arose from the perspective of vertical coherence.

Focusing on the first point, although the question referred for a preliminary ruling concentrated on the Brussels I *bis*, the CJEU responded by taking into account the material scope of application of the Brussels I, since, as we have seen, the temporal scope of application means having to resort to the Brussels I and not to the Brussels I *bis*. Consequently, the CJEU reformulated the question referred: whether Article 1(1) and (2)(a) of Regulation 44/2001 must be interpreted to mean that an action concerning an application for dissolution of the property relationships arising out of a *de facto* unregistered partnership comes within the concept of “civil and commercial matters” or whether it is an excluded matter.

With regard to the second point, this reformulation had an impact, since the difference between the Brussels I and the Brussels I *bis* in the scope *ratione materiae* is that, while in the Brussels I only matrimonial

property regimes are excluded,⁷¹ in the Brussels I *bis* this exclusion is explicitly extended to property relationships that regulate relationships having comparable effects to marriage according to the applicable law. In this scenario, in our view, two options were possible in light of the silence of the European legislator in the Brussels I, which, at this stage, continued to maintain the delimitation *within* the same instrument from the standpoint of vertical coherence. Thus, in the choice between an *argumentum a simili* or a *contrario*⁷², the latter was the one the CJEU opted for, based on the restrictive interpretation to which the exclusions from the material scope of application are subject and resorting to the support provided by the explicit extension of the material exclusion in the Brussels I *bis*. Thus, through a systematic interpretation, the Court concluded that considering that the property relationships of a *de facto* (unregistered) partnership are within the scope of the Brussels I exclusion would render meaningless the extension of the scope of the exclusion beyond matrimonial property regimes expressly introduced by the Brussels I *bis*⁷³.

Finally, another aspect will be briefly discussed which has to do with the expression «relationships deemed [...] to have comparable effects to marriage» in Art. 1.2 a) in the Brussels I *bis* that is the relevance of placing (or not) the term ‘legal’ next to ‘effects’; some issues were introduced concerning a literal interpretation of the provision, which the CJEU did not address in this specific case. As the referring court pointed out, in the Hungarian version of Article 1(2)(a) Brussels I *bis*, in contrast to other language versions, the expression «relationships deemed [...] to have comparable effects to marriage» was translated as «relationships deemed [...] to have comparable legal effects to marriage», the question being whether more importance should be attached to the content of an unregistered partnership or to its legal effects⁷⁴. The Spanish language version does not include the equivalent term «*jurídicos*». Neither do the German, French, English and Italian versions. However, the CJEU did not take a stand on this, and therefore postponed the debate on an initial and appropriate literal interpretation that would allow the different language versions to be coordinated⁷⁵. Once again, it can be seen how the linguistic aspect provides additional nuances and enhancements by addressing the problem of delimitation

⁷¹ This exclusion is based on the Jenard Report, on the grounds of the disparity of legislative systems in this area. *OJ C* 189/122 of 28 July 1990. However, it is clear that focusing only on the exclusion of matrimonial property regimes may be too narrow.

⁷² Reached throughout my research, and now transferred to the object of this study. D. MARÍN CONSARNAU, «Ámbito de aplicación *ratione temporis*...», *op. cit.*, note 29.

⁷³ Paragraph 44.

⁷⁴ Paragraph 21.

⁷⁵ On questions of coherence in the language versions of regulations, M. FONT I MAS, «Multilingualism in EU Private International Law Regulations: the Chimera of Vertical and Horizontal Coherence?», in FORNER DELAYGUA, J.J., SANTOS, A., *op. cit.*, note 15, pp. 43-68.

within and *among* instruments and the impact on the maintenance of vertical coherence and the challenges that horizontal coherence may pose.

VII. FINAL CONSIDERATIONS

In the incomplete EU Private International Law system on rights *in rem*, the relevance of the vertical coherence that is predicated with respect to the Brussels I *bis* seems unquestionable in the delimitation *within* this instrument. Something that seemed simple for a long time, that is, the Court of Justice limiting itself to indicating what is included and what is not in a more or less «general» framework, and then applying it to the solution of each specific case through de minimis vertical coherence, has become increasingly complex.

This turning point was first found in the *Iliev* case, in which the question arose as to whether the *vis attractiva* towards property relations between spouses is so easily justifiable or not so easily justifiable, for two reasons. Firstly, because rights *in rem* in immovable property were not questioned; thus, without departing from the *Virpi Komu* ruling, a strain was placed on it. And secondly, because the direct connection with the dissolution of the marriage bond in this specific case was not assessed, but rather presumed.

Consequently, in terms of the delimitation *among* instruments, and regarding the object of the claim being asserted, the boundary to be used to delimit the material scope of application of any related instruments shows that horizontal coherence is certainly not an easy goal. Although this involves moving between autonomous concepts, it is a difficult task for legal operators to dissociate themselves from these concepts, as they start from deeply rooted categories of domestic law and need to understand them from the point of view of the autonomous concept as interpreted by the CJEU.

And secondly, the turning point was found in the *Mahnkopf* case, in which the *vis attractiva* towards property relationships was no longer so attractive. This will undoubtedly have consequences. The next stops could be: a delimitation *among* instruments in which one of the main regulations is Regulation (EU) 2016/1103/ Regulation (EU) 2016/1104 in relation to Regulation (EU) 650/2012, following the *Mahnkopf* case; Regulation (EU) 2016/1103 in relation to the Brussels I *bis*, following the *Iliev* case; and Regulation (EU) 2016/1104 in relation to the Brussels I *bis*, following the *Weil* case.