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# *Lex Patriae versus Lex Domicilii:* What Law Governs the Personal Status of Beneficiaries of Subsidiary Protection?

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2024 ELI Young Lawyers Award Winning Paper Summary





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*Lex Patriae versus Lex Domicilii:*  
What Law Governs the Personal Status of  
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By Aron Johanson

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# Summary

The European Union (EU) can generally grant two different protection statuses: refugee status and subsidiary protection status. In both cases, the question arises as to which law applies to the personal status of those enjoying these protection statuses; ie, which law determines their legal capacity, the validity of their marriage, their name, their gender, etc? While there is a specific conflict-of-laws rule for refugee status (Article 12 of the Geneva Convention Relating to the Status of Refugees), there is no harmonised rule for subsidiary protection status. This results in a patchwork of legal provisions within the EU, as Member States follow completely different regulatory approaches to address this issue, which causes 'limping' situations, jeopardises the uniform application of EU law, hampers the integration of protection seekers, and contradicts the principle of equal treatment of refugees and beneficiaries of subsidiary protection (BOSP). A harmonised European conflict-of-laws provision should thus be developed for BOSP's personal status matters, which could be implemented in another recast of the EU-Qualification Directive 2011/95/EU.

The centrepiece of the proposed provision is its conflict-of-laws rule, which would replace the connecting factor of 'nationality' with 'habitual

residence' in existing (national, European, and – potentially – international) conflict-of-laws provisions regarding personal status matters. This is not only in line with the current trend in European private international law, but can also be justified by the specific situation of BOSP, which is similar to that of refugees, since BOSP also often remain permanently in the host State and have only weak connections with the law of the country of their nationality if that country has been fragmented or annexed as a result of the civil war from which they fled.

Moreover, the proposed conflict-of-laws provision should consider other issues such as the protection of rights previously acquired, the exclusion of renvoi, public policy, and the relations with other existing international conventions. Finally, it is worth considering the option of allowing BOSP to choose the law of the state of their nationality, otherwise the proposed conflict-of-laws provision may be too paternalistic. However, before drafting such a choice-of-law clause, several other aspects should be taken into account, including formal requirements, the protection of third parties, notification of public authorities, reversibility, and uniformity of the choice of law.



## The Author

Aron Johanson is a PhD student and research fellow at the chair of Professor Anatol Dutta at the Ludwig Maximilian University of Munich (Germany). He studied law in Passau (Germany) and Dundee (Scotland). His main research focuses on international, European and national family law, and its related interface with migration law. He is the author of numerous publications in these areas and a visiting lecturer at the University of Passau (Germany).

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