

# **Practical exercises in implementing the judicial cooperation instruments in civil matters**

**Council Regulation (EU) No 1259/2010  
of 20 December 2010**

**implementing enhanced cooperation in the  
area of the law applicable to divorce and legal  
separation**

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# Rome III Regulation

- The essential goal: to unify choice of law rules.
- Unanimity could not be reached, so Rome III was adopted under enhanced cooperation. This means that the Regulation is only binding and applicable in those Member States that have voluntarily decided to participate.
- The other Member States continue to apply their national choice of law provisions.

# **Special legislative procedure**

- **Article 81 (3) of the Treaty on the Functioning of the European Union**
- **The Council Decision 2010/405/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation**

# Enhanced cooperation?

- Enhanced cooperation is a mechanism open to Member States outside the areas of the Union's exclusive competences.
- It allows participating Member States to further the objectives of the Union by adopting acts which are only binding to those participating.
- Enhanced cooperation permits to unlock situations in which acts cannot be adopted following the ordinary legislative procedure.

# **Rome III Regulation - objectives**

**See Recital (9) of the Preamble**

- create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States.**
- provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility.**
- prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.**

# **application**

- **elements in connection to the EU which determine a conflict of laws in divorce and legal separation matters: the habitual residence of the spouses, the last habitual residence, the nationality of the spouses.**

# **The Regulation shall not apply**

- **See article 1 - scope, paragraph 2**
- **See the EU law and the international private law of the Member State**

# Steps

- **1 - the jurisdiction, under R 2201/2003**
- **2 - the applicable law, under R 1259/2010**



# **Time application**

- **Article 18 - transitional provisions - 21 June 2012**
- **Agreement concluded before 21 June 2012, provided that it complies with Articles 6 and 7 (material and formal validity)**
- **See also art. 18 paragraph 2**

# Territorial application

- **„participating Member State” means a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union;**
- **From 22 May 2014 Lithuania - Decision 714/2012**

# **No definition for „divorce” and „legal separation”**

- **See article 13 - differences in national law**

**„Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation”.**

**See also recital no. 26**

# **Universal application**

- **Important - see article 4**
  - **See also recital no. 12**

# **Relationship with existing international conventions**

- **See article 19**

**„the court”**

**See the case of Romania  
the administrative/notary procedure**

# Choice of applicable law by the parties

- See article 5 - the parties' autonomy.
- Exhaustive, but alternative criteria, without an hierarchy.
- See distinction between a), b), c) - the time the agreement is concluded and d) - the time the court is seized.

# The agreement

- **See article 6 - consent and material validity**
- **See article 7 - formal validity**



# **Applicable law in the absence of a choice by the parties**

- **See article 8 - interpretation based on recital no. 21 : „a scale of successive connecting factors - the existence of a close connection between the spouses and the law concerned”.**

# Other provisions

- **Application of the law of the forum - see article 10**
- **Exclusion of renvoi - see article 11**

# Public policy

- **See article 12 - „an application manifestly incompatible with the public policy of the forum”.**

Thank you  
for your attention !

