



# **The property regimes of international couples (marriages and registered partnerships)**

**XXIII ELRA General Assembly  
Brussels, 1 December 2016**

**Maria Vilar Badia  
EUROPEAN COMMISSION  
DG Justice and Consumers**

# Background

- Citizens are increasingly mobile. Union law had already addressed divorce, parental responsibility, maintenance and successions
- One question outstanding: the property regime of international couples
- European Council called for solutions on this matter, as reflected in 2000 Council programme on measures implementing the principle of mutual recognition
- Today, matters on property regimes concern:
  - 16 million international couples in the Union
  - over 460 million EUR when these couples separate or one of the couple's members dies

# Adoption process

- 2011: initial COM proposals
- Family law measures require a special legislative procedure: Council acts by unanimity and EP is consulted
- December 2015: Council concluded that no EU-wide unanimity could be reached within a reasonable period of time
- Between December 2015 and March 2016, 18 MS requested enhanced cooperation: SE, BE, EL, HR, SI, ES, FR, PT, IT, MT, LU, DE, CZ, NL, AT, BG, FI, CY (9 MS is the minimum required by Treaties)
- March 2016: three COM proposals:
  - Council decision authorising enhanced cooperation
  - two Council regulations implementing enhanced cooperation: (i) marriages; (ii) registered partnerships

# Adoption process

- As requested by MS, proposed regulations based on compromise texts negotiated during 4 years and presented to Council in December 2015:
  - => scope of enhanced cooperation: 1 single area - the property regimes of international couples, covering both marriages and registered partnerships
  - => simultaneous adoption of, and joining to, the regulations
  - => safeguards introduced to respect legal traditions of MS:
    - possibility to decline jurisdiction
    - no obligation to recognise marriages and registered partnerships concluded in another MS
- 24 June 2016: adoption of Regulations by 18 MS
- Regulations applicable as from 29 January 2019

# Impact

- Regulations complete the area of Union family law requested by European Council
- Regulations enable the full operation of Regulations dealing with divorce and succession
- 18 MS in enhanced cooperation represent almost 70% of Union population: Regulations cover a majority of Union international couples
- Any MS can join enhanced cooperation (both Regulations) at any time

# Impact

- No negative impact for non-participating MS:
  - non-participating MS will continue to apply their national rules of private international law to the property regimes of marriages and registered partnerships
  - application of Regulations will not depend on nationality of citizens
  - agreements concluded (i) between MS and third countries and (ii) between participating and non-participating MS, not affected

# Scope

- All civil-law aspects (i.e. excluding public law) concerning the daily management and the sharing of the couple's property as a result of separation or death of one of the couple's members
- Covers property relationships (i) between the couple's members, and (ii) the couple's relations with third parties
- Certain civil-law aspects linked to a couple's property excluded, such as:
  - general capacity of spouses/partners
  - existence and recognition of a marriage/RP
  - maintenance and succession
  - pension rights
  - nature of rights *in rem* and recording in registers

# Jurisdiction

- Court: judicial authority and other legal professional acting as, or on behalf of, a court
- Notaries often deal with property regime matters. If acting as, or on behalf of, a court, subject to jurisdictional rules
- Concentration of jurisdiction in two cases - the court competent to deal with property regime matters is:
  - court dealing with succession
  - court dealing with divorce/dissolution of RP:
    - divorce: in certain cases only if spouses agree (depending on ground of jurisdiction)
    - dissolution of RP: if registered partners agree



# Jurisdiction

- In cases other than succession or divorce cases, competent court is, in hierarchical order, the court of MS of:
  - current habitual residence of both spouses/partners
  - last habitual residence of both spouses/partners
  - habitual residence of respondent
  - common nationality of spouses/partners
  - in case of RP, where the RP was created
- Choice of court: other than in succession or divorce cases, spouses/partners can agree (in writing) to choose:
  - court of MS whose law is applicable, or
  - court of MS where marriage was concluded or RP created

# Jurisdiction

- Alternative jurisdiction:
  - where a competent court does not recognise the marriage or RP, it can decline jurisdiction
  - in such case, alternative competent courts are:
    - court chosen by spouses/partners
    - any other court that could be competent under the Regulations
    - the court of the MS where marriage was concluded
- However, court cannot decline jurisdiction if divorce is entitled to recognition (in particular, under Union law)
- Courts that decline jurisdiction must apply the applicable law and recognise and enforce judgments from other MS
- Subsidiary jurisdiction: where no MS court is competent, a MS court is nevertheless competent in respect of assets located in its territory (to ensure access to justice in a MS)

# Jurisdiction

- Lis pendens:

Aims to avoid contradictory judgments by courts in different MS. How?

- If proceedings concerning the same dispute and between the same parties are brought before the courts of different MS, the **court first seised has priority**
- Once the court first seised has considered itself competent, the court second seised **must** decline jurisdiction

# Applicable law

- Substantive law governing the couple's property regime remains national
- Unity of applicable law: one single national law applies to all couple's assets regardless of their nature (moveable or immovable) and location (in a MS or third country)
- Universal applicable law: the applicable law can be the law of a MS or a third country
- Choice of law: spouses/partners can agree to choose (in writing) the law of:
  - country of residence of both or either spouse/partner, or
  - country of nationality of either spouse/partner, or
  - in case of RP, country where RP was created
- Choice can be made before, on conclusion/creation of, or during marriage/RP. Normally only with prospective effects

# Applicable law

- If no law is chosen, applicable law, in hierarchical order, of country of:
  - marriage: first common habitual residence, spouses' common nationality, closest connection
  - RP: where RP was created
- National applicable law will govern issues such as:
  - responsibility of one couple's member for debts of other member
  - rights and obligations of couple's members regarding property
  - distribution of property
  - property relationship between a couple's member and third parties
- MS authority handling property matters will not apply provisions of foreign law contrary to its MS public policy

# Recognition and enforcement

- Recognition and enforcement of court decision on property matters does not entail recognition of underlying marriage/RP
- Recognition of court decision is automatic
- Declaration of enforceability under simplified rules:
  - obtained on completion of formalities
  - can be appealed: grounds for non-recognition (e.g. public policy, judgement irreconcilable with earlier judgment), can only be invoked on appeal
- Notarial acts (authentic instruments):
  - if notaries act as a, or on behalf of, a court: acts recognised and enforced as court decisions
  - if notaries act as a legal professional: acts will have the same evidentiary effects as in MS of origin, unless contrary to public policy. Enforceability procedure as court decisions



**Thank you!**  
**Comments or questions?**

[maria.vilar-badia@ec.europa.eu](mailto:maria.vilar-badia@ec.europa.eu)