

Matrimonial Property Regimes EU 2016/ 1103

Article 28

Amendment to the 11th fact sheet

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Article 28 Effects in respect of third parties

- 1. Notwithstanding point (f) of Article 27, the law applicable to the **matrimonial property regime** between the spouses **may not be invoked** by a spouse against a **third party** in a dispute between the third party and either or both of the spouses **unless the third party knew or, in the exercise of due diligence, should have known of that law.**
- 2. The **third party** is deemed to possess the knowledge of the **law applicable** to the matrimonial property regime, if:
 - (a) that law is the law of:
 - (i) the State whose law is applicable to the **transaction** between a spouse and the third party;
 - (ii) the State where the contracting spouse and the third party have their **habitual residence**; or,

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- (iii) in cases involving **immovable property**, the State in which the **property is situated**; or
- (b) either spouse had complied with the applicable **requirements for disclosure or registration of the matrimonial property regime specified by the law of:**
 - (i) the State whose law is applicable to the transaction between a spouse and the third party;
 - (ii) the State where the contracting spouse and the third party have their habitual residence; or
 - (iii) in cases involving **immovable property**, **the State in which the property is situated**.

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- 3. Where the law applicable to the matrimonial property regime between the spouses **cannot be invoked by a spouse against a third party by virtue of paragraph 1, the effects of the matrimonial property regime in respect of the third party shall be governed:**
 - (a) by the law of the State whose law is applicable to the transaction between a spouse and the third party; or
 - (b) in cases involving **immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.**

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1.1 Can a foreign default REM be registered or disclosed in your country?

1.1

No

Sweden, Northern Ireland, Malta, Lithuania, Estonia, Portugal, Scotland
Belgium*, Finland, Ireland, Cyprus

1.1

Yes

Spain, Luxembourg, Austria, Slovak republic, Poland, Italy Libro Fondiario,
Romania, Croatia

1.2 Can a choice-of-law agreement regarding foreign REM be registered or disclosed in your country?

1.2

No

Malta, Lithuania, Austria, Slovak republic, Scotland*, Belgium*, Ireland, Cyprus, Croatia*

1.2

Yes

Sweden, Spain, Luxembourg, Estonia, Portugal, Poland, Finland, Italy
Libro Fondiario, Romania

1.2

If yes, where and by whom?

Land registry

Spain, Luxembourg, Austria, Slovak republic, Poland, Italy Libro Fondiario, Romania, Croatia*

Other authority

Sweden, Spain, Estonia, Portugal, Poland, Finland

Notary

Romania

2.1 If the information under 1.1 and 1.2 is available to the land registry, will it be controlled?

2.2 If the information is controlled will it also affect the decisions made by the land registry?

2.1-2.2

No or non applicable

Sweden, Malta, Luxembourg, Lithuania, Slovak republic, Scotland,
Belgium, Finland, Ireland, Cyprus, Croatia

2.1-2.2

Yes

Spain, Estonia, Austria, Portugal, Poland, Italy Libro Fondiario, Romania

Problems!

- We can see a great diversity whether information about default REM is checked, registered or disclosed by the land registry, notary or any other public organ
- If the applicable law can be invoked against a third party or not is often determined by the domestic legislation about registration or requirements for registration
- There is also a great variation regarding the possibility to register choice-of-law agreements



Solutions?