

What would a cross-border divorce require to be registered in your land register?

Francisco J. Gimeno

Secretary General ELRA



Co-funded by
the European Union



European Land Registry Association

Trento, June 11th 2025

WHICH COURT HAS JURISDICTION ON A DIVORCE?

- Which Court has jurisdiction on divorce, legal separation or marriage annulment applications? Regulation (EU) 2019/1111.
- And on matters of matrimonial property regimes?
- 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.

WHICH LAW APPLIES TO MATRIMONIAL PROPERTY REGIME?

- **Unity of the applicable law.**
- **Choice of the applicable law.**
- **Formal validity of a matrimonial property agreement.**
- **Applicable law in the absence of choice by the parties.**

SCOPE OF THE APPLICABLE LAW

The law applicable to the matrimonial property regime pursuant to this Regulation shall govern, inter alia:

- (a) the classification of property of either or both spouses into different categories during and after marriage;
- (b) the transfer of property from one category to the other one;
- (c) the responsibility of one spouse for liabilities and debts of the other spouse;
- (d) the powers, rights and obligations of either or both spouses with regard to property;
- (e) the dissolution of the matrimonial property regime and the partition, distribution or liquidation of the property;
- (f) the effects of the matrimonial property regime on a legal relationship between a spouse and third parties; and
- (g) the material validity of a matrimonial property agreement.

OUT OF THE SCOPE OF THE REGULATION

RECITALS (26) AND (27)

ART. 1.2. The following shall be excluded from the scope of this Regulation: (...)

- (g)** the nature of rights in rem relating to a property;
- (h)** and (h) any recording in a register of rights in immovable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

GENERAL FEATURES REGARDING THE RESOLUTION OR DEED AND ITS REGISTRATION

- **Identification of the parties.**
- **Controversial/agreed procedure. Intervention of the parties.**
- **Identification of the plot.**
- **Other requirements to be assessed by the registrar?**

OTHER REQUIREMENTS TO BE ASSESSED

- **Adaptation principle.**
- **Acceptance of authentic instruments.**
- **Enforceability of authentic instruments and court settlements.**
- **Legalisation and other similar formalities.**
- **Relations with existing international conventions.**

QUESTIONS FOR THE ROUND TABLE

1. 1.a. What **kind of document** would you require to register an immovable property transaction as an effect of a divorce? A judicial resolution? A private document? A notarial deed?
- 1.b. Would you admit a **foreign document** for registration regarding this matter? If you admitted it, translation or any other further requirements would be needed?

QUESTIONS FOR THE ROUND TABLE

2. Is it the **same document** as the one that declares the divorce of the spouses? In case it was different, would you require for the registration **in the LR both**, that is, the document (e.g. the judicial resolution) that declares the divorce and the document concerning the effects on immovable property (e.g. dissolution of shared-property or dissolution of matrimonial community).
3. Do you **record the divorce of the spouses in a Register** (such as natural persons registry or civil status registry)? If it were the case, would you require the **previous record** on that Register to enter the registration of the immovable property effects of divorce in the LR?

QUESTIONS FOR THE ROUND TABLE

4. As a result of the divorce, different economical relations between the spouses must be dealt with. Some of them concern the family dwelling and the liquidation of the matrimonial property regime. Some others not, such as purchases made by the spouses before the marriage of immovables that are not the family dwelling. In the document where spouses rule or agree about the economic effects of the divorce, can they make agreements about both kinds of properties (**matrimonial property and non-matrimonial one**, to name it somehow)? If they can agree on both them on the same document, would it be **a vehicle to register** transactions on immovable property in the LR? Or only for the so called matrimonial property?

QUESTIONS FOR THE ROUND TABLE

5. Do you apply the same provisions to **partnerships**? If not, please state the main differences.

THANK YOU



Francisco J. Gimeno
Secretary General ELRA
secretary.general@elra.eu