



# Training of lawyers on EU instruments on Family Law and Insolvency Law (CiviLAW)

Jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and on the property consequences of registered partnership – Anna Wysocka-Bar

Warsaw, 21 October 2022



The project is co-financed with the support of the European Union's Justice programme

# Treaty on the Functioning of the EU

TITLE IV FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

## **CHAPTER 3 JUDICIAL COOPERATION IN CIVIL MATTERS**

Article 81(1)

The Union shall develop **judicial cooperation in civil matters** having cross-border implications, based on the **principle of mutual recognition of judgments** and of decisions in extrajudicial cases.

# Treaty on the Functioning of the EU

## Article 81(2)

For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the **ordinary legislative procedure**, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

- (a) the mutual **recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases (...)**
- (c) **the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction (...)**

# Treaty on the Functioning of the EU

## Article 81(3) TFEU

Notwithstanding paragraph 2, measures concerning **family law with cross-border implications** shall be established by the Council, acting in accordance with a **special legislative procedure**.

The Council shall act **unanimously** after consulting the European Parliament.

# Treaty on the European Union

## Article 20 Treaty on European Union

1. Member States which wish to establish **enhanced cooperation** between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences (...)

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States (...)

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that **at least nine** Member States participate in it. (...)

4. Acts adopted in the framework of enhanced cooperation shall bind only **participating Member States**. (...)

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**

**AND**

COUNCIL REGULATION (EU) 2016/1104 of 24 June  
2016 implementing enhanced cooperation in the area  
of jurisdiction, applicable law and the recognition and  
enforcement of decisions in matters of the **property**  
**consequences of registered partnerships**

# Regulation on matrimonial property regimes

## Material scope

### *Article 1 Scope*

1. This Regulation shall apply to **matrimonial property regimes**.

### *Article 3 (1)(a) Definitions*

'**matrimonial property regime**' means a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution;

(18) The scope of this Regulation should include all civil-law aspects of matrimonial property regimes, both the **daily management of matrimonial property** and the **liquidation of the regime**, in particular as a result of the couple's separation or the death of one of the spouses. For the purposes of this Regulation, the term 'matrimonial property regime' should be **interpreted autonomously** and should encompass not only rules from which the spouses may not derogate but also any optional rules to which the spouses may agree in accordance with the applicable law, as well as any default rules of the applicable law.

# Regulation on matrimonial property regimes

(17) This Regulation does **not define 'marriage'**, which is defined by the national laws of the Member States.

(21) This Regulation should not apply to other preliminary questions such as the **existence, validity or recognition of a marriage**, which continue to be covered by the national law of the Member States, including their rules of private international law.

(38) The courts of a Member State may hold that, under their private international law, the **marriage in question cannot be recognised** for the purposes of matrimonial property regime proceedings. In such a case, it may exceptionally be necessary to decline jurisdiction under this Regulation.

# Regulation on registered partnerships

(17) The Regulation should cover matters arising from the property consequences of registered partnerships.

**'Registered partnership'** should be defined here solely for the purpose of this Regulation. The actual substance of the concept should remain defined in the national laws of the Member States. Nothing in this Regulation should oblige a Member State whose law does not have the institution of registered partnership to provide for it in its national law.

## *Article 3 (1)(a)* **Definitions**

**'registered partnership'** means the regime governing the shared life of two people which is provided for in law, **the registration of which is mandatory under that law** and which fulfils the **legal formalities required by that law** for its creation;

# Regulation on matrimonial property regimes

## Territorial scope

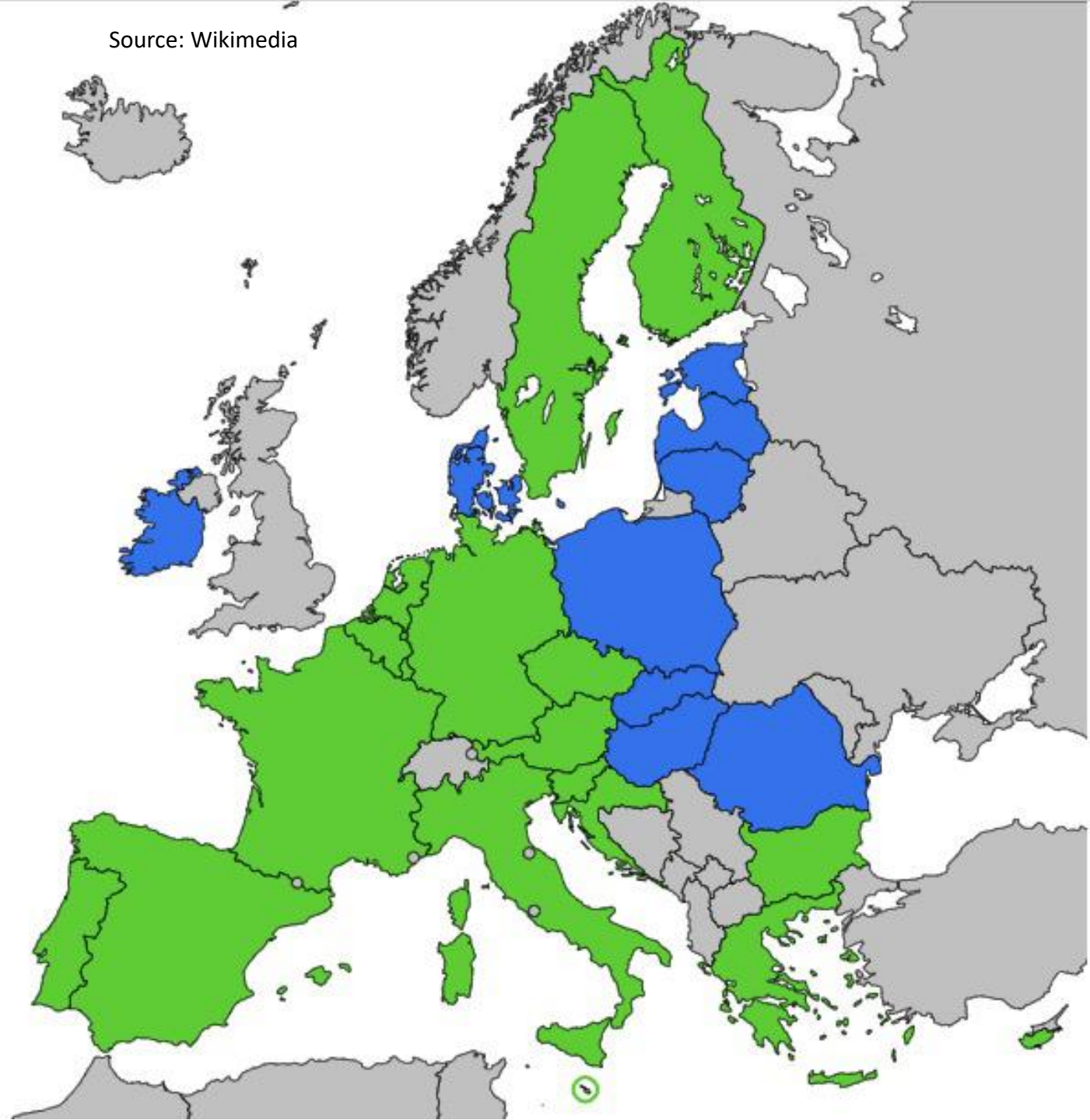
(10) At its meeting of 3 December 2015, the Council concluded that **no unanimity** could be reached for the adoption of the proposals ...

(11) (...) **Belgium, Bulgaria, the Czech Republic, Germany, Greece, Spain, France, Croatia Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden** (...) wished to establish **enhanced cooperation** between themselves in the area of the property regimes of international couples and (...) the property consequences of registered partnerships, and asking the Commission to submit a proposal to the Council to that effect. (...) **Cyprus** indicated its wish to participate (...)

(13) According to Article 328(1) TFEU, when enhanced cooperation is being established, it is to be open to all Member States

Source: Wikimedia

(12) On 9 June 2016, the Council adopted Decision (EU) 2016/954 authorising such **enhanced cooperation**.



# Regulation on matrimonial property regimes

## Temporal scope

### *Article 70* **Entry into force**

(...) It shall apply from **29 January 2019** (...)

### *Article 69* **Transitional provisions**

1. This Regulation shall apply only to legal proceedings instituted (...) **on or after 29 January 2019** (...)

2. If the proceedings in the Member State of origin were instituted **before 29 January 2019**, decisions given after that date shall be recognised and enforced in accordance with Chapter IV **as long as the rules of jurisdiction applied comply with those set out in Chapter II.**

3. Chapter III [on applicable law] shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after **29 January 2019**.

# Regulation on matrimonial property regimes

## *Personal scope*

Recital (40) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the matrimonial property regimes of spouses, this Regulation should set out in **an exhaustive way** the grounds on which such subsidiary jurisdiction may be exercised.

= **no residual jurisdiction under domestic law**

Recital (44) The law determined by this Regulation should apply even if it is not the law of a Member State.

= *erga omnes personal scope*

# Regulation on matrimonial property regimes

*Article 62(2)* Relations with existing international conventions

Notwithstanding paragraph 1, this Regulation shall, as between **Member States, take precedence over** conventions concluded between them in so far as such conventions concern matters governed by this Regulation.

= **conventions between participating MS**

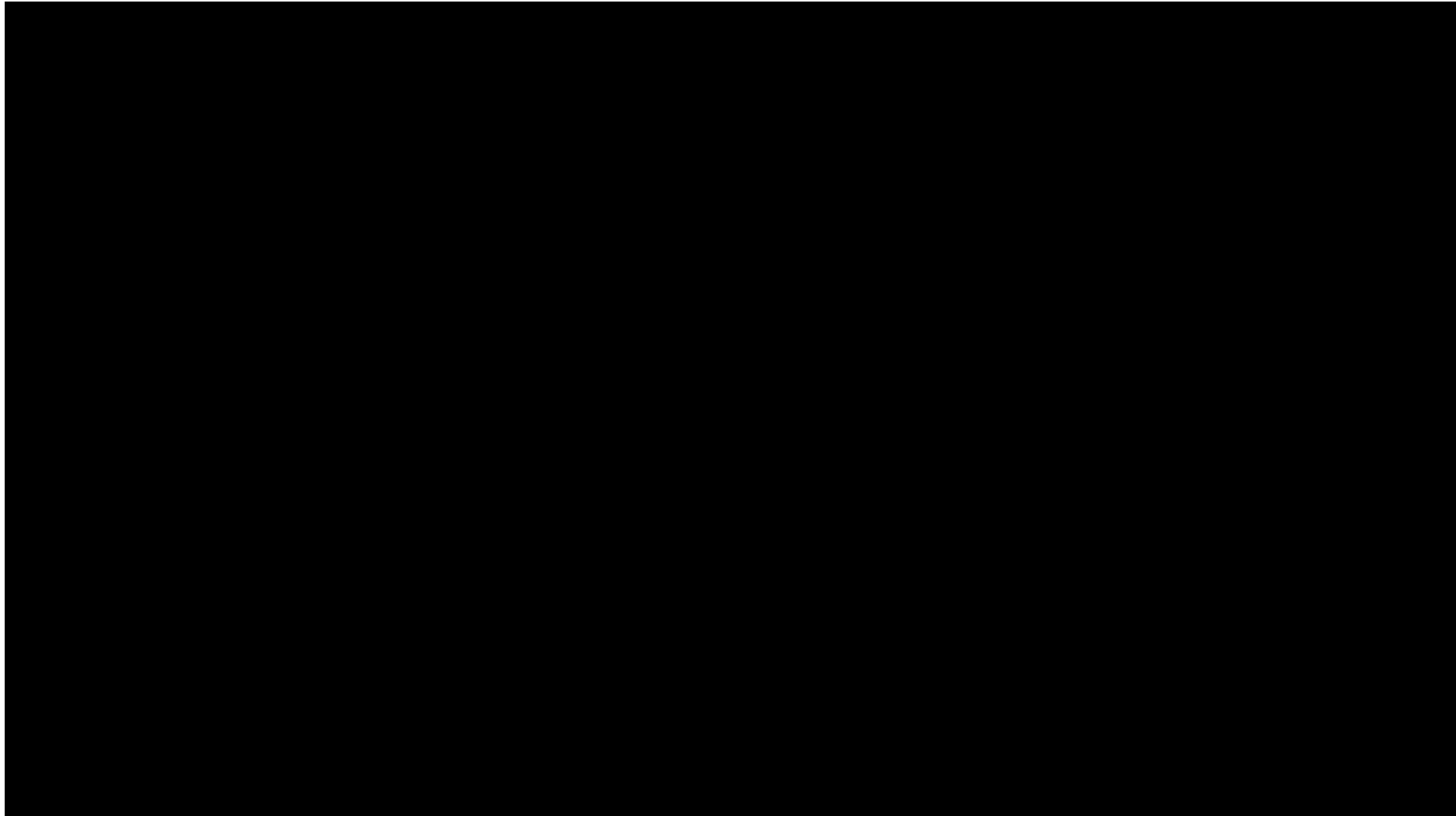
# Regulation on matrimonial property regimes

*Article 62(1)* Relations with existing international conventions

This Regulation shall **not affect** the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation (...)

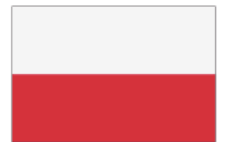
= **conventions with third states and non-participating MS**

Conversation recorded within the PSEFS project  
Neža Pogorelčnik Vogrinc and Anna Wysocka-Bar





# Jurisdiction



# Regulation on matrimonial property regimes

## *Article 4* **Jurisdiction in the event of the death of one of the spouses**

Where a court of a Member State **is seised** in matters of the succession of a spouse pursuant to Regulation (EU) No 650/2012 [**Succession Regulation**], the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that succession case.

# Regulation on matrimonial property regimes

## *Article 5(1)* **Jurisdiction in cases of divorce, legal separation or marriage annulment**

(...) where a court of a Member State **is seised** to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No 2201/2003 [**Brussels II bis, now Brussels II ter**], the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application.

+ in certain circumstances agreement of spouses is needed.

# Regulation on registered partnerships

## Article 5

### Jurisdiction in cases of dissolution or annulment

1. Where a **court of a Member State is seised to rule on the dissolution or annulment of a registered partnership**, the courts of that State shall have jurisdiction to rule on the property consequences of the registered partnership arising in connection with that case of dissolution or annulment, **where the partners so agree**.
2. If the agreement referred to in paragraph 1 of this Article is concluded before the court is seised to rule on matters of the property consequences of the registered partnership, the agreement shall comply with Article 7.

# Regulation on matrimonial property regimes

## *Article 6 Jurisdiction in other cases*

Where no court of a Member State has jurisdiction pursuant to Article 4 or 5 or in cases other than those provided for in those Articles, jurisdiction to rule on a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:

- (a) in whose territory the **spouses are habitually resident** at the time the court is seised; or failing that
- (b) in whose territory the **spouses were last habitually resident**, insofar as one of them still resides there at the time the court is seised; or failing that
- (c) in whose territory the **respondent is habitually resident** at the time the court is seised; or failing that
- (d) of the spouses' **common nationality** at the time the court is seised **or failing that,**
- (e) **under whose law the registered partnership was created.**

# Regulation on matrimonial property regimes

## *Article 7* **Choice of court**

1. In cases which are covered by Article 6, the parties may agree that the courts of the Member State whose law is applicable pursuant to Article 22, or point (a) or (b) of Article 26(1), or the courts of the Member State of the conclusion of the marriage shall have **exclusive jurisdiction** to rule on matters of their matrimonial property regime.
2. The agreement referred to in paragraph 1 shall be **expressed in writing and dated and signed** by the parties. Any communication by **electronic means** which provides a durable record of the agreement shall be deemed equivalent to writing.

# Regulation on matrimonial property regimes

## *Article 8* **Jurisdiction based on the appearance of the defendant**

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable pursuant to Article 22 or point (a) or (b) of Article 26(1), and before which a defendant enters an appearance, shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Article 4 or 5(1).
2. Before assuming jurisdiction pursuant to paragraph 1, the court shall ensure that the defendant is **informed** of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

# Regulation on matrimonial property regimes

## *Article 11* **Forum necessitatis**

Where no court of a Member State has jurisdiction (...) the courts of a Member State may, on **an exceptional basis**, rule on a matrimonial property regime case if proceedings cannot reasonably be brought or conducted or would be impossible in a third state with which the case is closely connected.

The case must have a **sufficient connection** with the Member State of the court seised.

# Code of Civil Procedure

## Matrimonial Property – contentious proceedings

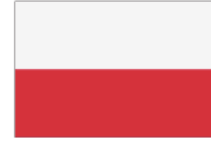


### **Article 1103.**

Cases adjudicated by trial fall under domestic jurisdiction if the defendant has his place of residence or usual stay, or a registered office in the Republic of Poland.

# Code of Civil Procedure

## Matrimonial Property – contentious proceedings



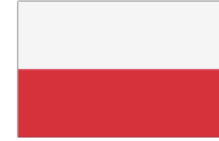
### Article 1103<sup>1</sup>.

§ 1. Matrimonial cases and cases involving property in marriage also fall under domestic jurisdiction if:

- 1) the last place of residence or usual stay of both spouses was in the Republic of Poland, or if one of the spouses still has his or her place of residence or usual stay in the Republic of Poland, or
- 2) the petitioning spouse had his or her place of residence or usual stay in the Republic of Poland for at least one year before the institution of proceedings, or
- 3) the petitioning spouse is a Polish citizen and had his or her place of residence or usual stay in the Republic of Poland for at least six months before the institution of proceedings, or
- 4) both spouses are Polish citizens.

# Code of Civil Procedure

## Matrimonial Property – contentious proceedings



### Article 1103<sup>1</sup>.

- § 2. Domestic jurisdiction is exclusive if both spouses are Polish citizens and have their place of residence or usual stay in the Republic of Poland.
- § 3. Domestic jurisdiction in matrimonial cases also includes ruling on parental authority over common minor children of the spouses.

# Code of Civil Procedure

## Matrimonial Property – non contentious proceedings

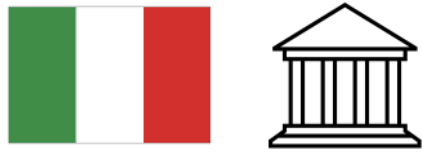


### **Article 1110<sup>2</sup>.**

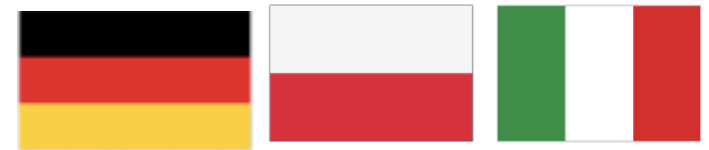
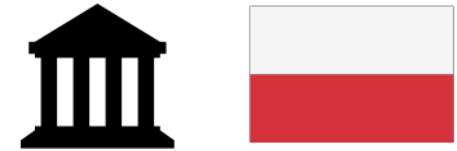
Domestic jurisdiction in cases adjudicated in non-contentious proceedings is exclusive insofar as adjudication concerns property rights in immovable property or possession of immovable property located in the Republic of Poland.

### **Article 1106<sup>2</sup>.**

- § 1. Matrimonial cases fall under domestic jurisdiction if one of the spouses or persons intending to enter into marriage is a Polish citizen or a foreign citizen who has his place of residence or usual stay in the Republic of Poland, or intends to enter into marriage in the Republic of Poland.
- § 2. Cases involving division of marital property after termination of community of property between spouses also fall under domestic jurisdiction if the marital property or its major part is located in the Republic of Poland.



Applicable law



# Regulation on matrimonial property regimes

## CHAPTER III APPLICABLE LAW

### *Article 2* **Universal application**

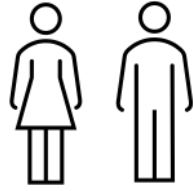
The law designated as applicable by this Regulation shall be applied whether or not it is the law of a Member State.

# Regulation on matrimonial property regimes

## *Article 21*

### **Unity of the applicable law**

The law applicable to a matrimonial property regime pursuant to Article 22 or 26 shall apply to all assets falling under that regime, regardless of where the assets are located.



1. Agreement on applicable law



2. Agreement on matrimonial property regime



# Regulation on matrimonial property regimes

## *Article 22* **Choice of the applicable law**

1. The spouses or future spouses may agree to designate, or to change, the law applicable to their matrimonial property regime, provided that that law is one of the following:
  - (a) the law of the State where the spouses or future spouses, or one of them, is **habitually resident** at the time the agreement is concluded; or
  - (b) the law of a State of **nationality** of either spouse or future spouse at the time the agreement is concluded.
2. Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall have prospective effect only.
3. Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law.

# Regulation on matrimonial property regimes

## *Article 24* **Consent and material validity**

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it pursuant to Article 22 if the agreement or term were valid.
2. Nevertheless, a spouse may, in order to establish that he did not consent, rely upon the law of the country in which he has his habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

# Regulation on matrimonial property regimes

## Formal validity of the agreement on a choice of applicable law

### Article 23(1)

1. The agreement referred to in Article 22 shall be expressed in **writing, dated and signed** by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

**BUT**

# Regulation on matrimonial property regimes

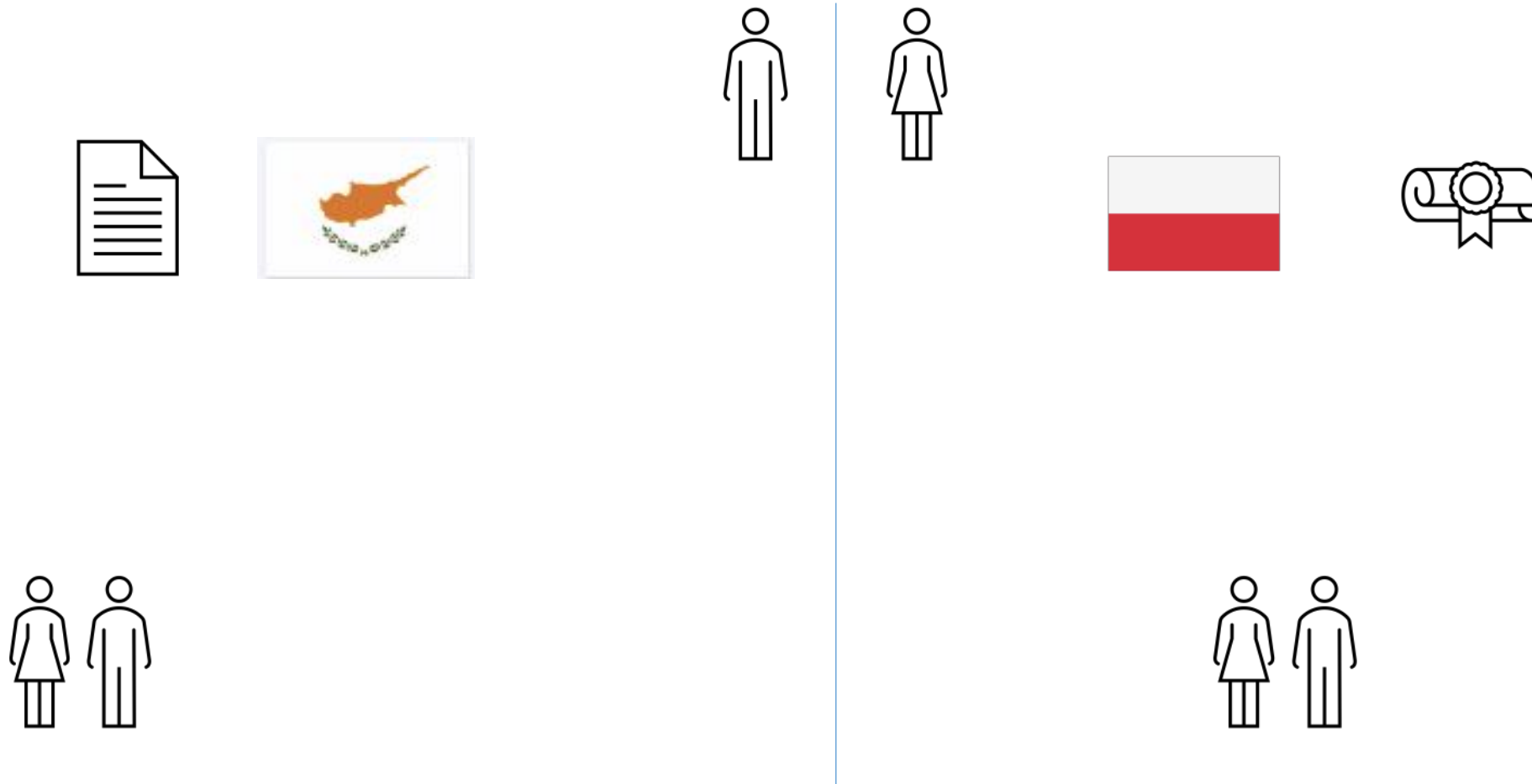
## Formal validity of the agreement on a choice of applicable law

### Article 23

2. If the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down **additional formal requirements** for matrimonial property agreements, those requirements shall apply.
3. If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.
4. If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

# Regulation on matrimonial property regimes

## Formal validity of the agreement on a choice of applicable law



# Regulation on matrimonial property regimes

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

### *Article 26*

1. In the absence of a choice-of-law agreement pursuant to Article 22, the law applicable to the matrimonial property regime shall be the law of the State:
  - (a) of the spouses' first common habitual residence after the conclusion of the marriage; or, failing that
  - (b) of the spouses' common nationality at the time of the conclusion of the marriage; or, failing that
  - (c) with which the spouses jointly have the closest connection at the time of the conclusion of the marriage, taking into account all the circumstances.
  
2. If the spouses have more than one common nationality at the time of the conclusion of the marriage, only points (a) and (c) of paragraph 1 shall apply.

# Regulation on registered partnerships

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

### *Article 26(1)*

In the absence of a choice-of-law agreement pursuant to Article 22, the law applicable to the property consequences of registered partnerships shall be the law of the State under whose law the **registered partnership was created**.

# Regulation on matrimonial property regimes

## *Article 27* **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**.

# Regulation on matrimonial property regimes

## **Formal validity of a matrimonial property agreement**

Article 25(1)

The matrimonial property agreement shall be **expressed in writing, dated and signed** by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

**BUT**

# Regulation on matrimonial property regimes

## *Article 25 Formal validity of a matrimonial property agreement*

2. If the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down **additional formal requirements** for matrimonial property agreements, those requirements shall apply.

If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

3. If the law applicable to the matrimonial property regime imposes additional formal requirements, those requirements shall apply.

# Regulation on matrimonial property regimes

## Overriding mandatory provisions

### Article 30(2)

Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime pursuant to this Regulation.

### Article 30(1)

Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the **forum**.

# Regulation on matrimonial property regimes

## Overriding mandatory provisions

### Article 30(2)

Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime pursuant to this Regulation.

### Article 30(1)

Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the **forum**.

# Regulation on matrimonial property regimes

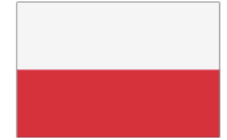
## Public policy (*ordre public*)

### Article 31

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

# 2011 Polish PIL Act

## Matrimonial Property Regime

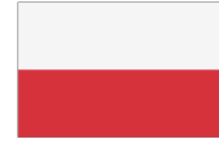


### *Article 52*

1. As the law applicable to their matrimonial property regime, the spouses are free to choose the law of nationality of one of the spouses, or the law where one of the spouses is domiciled or has habitual residence. The choice may also be made before the marriage is concluded.
2. The matrimonial property agreement is governed by the law chosen by the spouses in accordance with paragraph 1. In the absence of a choice of law, the matrimonial property agreement is governed by the law applicable to the spouses' personal relationships and the matrimonial property regime, as of the day when the agreement was concluded.
3. In making the choice of law for the matrimonial property regime or matrimonial property agreement, it suffices to comply with the formal requirements established for the matrimonial property agreements in the chosen law, or in the law of the state in which the choice was made.

# 2011 Polish PIL Act

## Matrimonial Property Regime

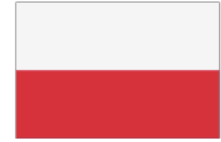


### *Article 51*

1. The personal relations between spouses and the matrimonial property regime are governed by the law of the state of which both spouses are currently nationals.
2. In the absence of the common law of nationality, the law of the state in which both spouses are domiciled applies, and if spouses are not domiciled in the same state – the law of the state, in which both spouses have their habitual residence. If the spouses do not have their habitual residence in the same state, the law of the state with which both spouses are otherwise most closely connected applies.

# 2011 Polish PIL Act

## Matrimonial Property Regime

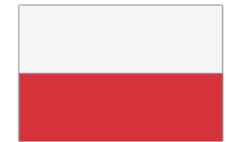


### *Article 53*

1. If, at the time when an obligation was created, the spouse and the third party creditor had their habitual residence in the same state, the law of that state determines the effectiveness of the matrimonial property regime against a third party, unless at the time when the obligation was created, the third party was aware of the character and content of the regime, or could have learnt of it, if he or she had exercised due care, or if requirements as to the publicity and registration under the law applicable to the matrimonial property regime, or – in the case of the property rights relating to immovable property – in the law of the state where the immovable property is located, were satisfied.
2. Paragraph 1 *mutatis mutandis* applies to the spouse's liability for the debts incurred by the other spouse in providing for ordinary family needs.



## Recognition and Enforcement



# Regulation on matrimonial property regimes

## Article 36(1) Recognition

A decision given in a Member State shall be recognised in the other Member States **without any special procedure being required.**

# Regulation on matrimonial property regimes

## Article 42 Enforceability

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been **declared enforceable** there in accordance with the procedure (...)

# Regulation on matrimonial property regimes

## Article 48

### Notice of the decision on the application for a declaration of enforceability

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

# Regulation on matrimonial property regimes

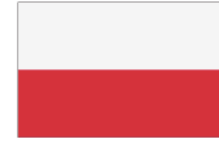
## Article 37 Grounds of non-recognition

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to **public policy (ordre public)** in the Member State in which recognition is sought;
- (b) where it was given in **default of appearance**, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence (...)
- (c) if it is **irreconcilable** with a decision given in proceedings between the same parties in the Member State in which recognition is sought;
- (d) if it is **irreconcilable** with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties (...)

# Code of Civil Procedure

## Recognition and Enforcement



### Article 1145

Rulings of foreign state courts issued in civil matters are **recognised** by virtue of law unless there exist obstacles as specified in Article 1146.

### Article 1150

Rulings of foreign state courts in civil matters which may be enforced by execution become enforceable titles when their **enforcement is confirmed** by a Polish court. Enforcement is confirmed, if a ruling is enforceable in the state of issue and is not blocked by the obstacles referred to in 1146 § 1 and 2.

# Code of Civil Procedure

## Recognition and Enforcement



### Article 1146 § 1

A ruling is not recognised if:

(...)

2) the ruling was issued in a case which falls under the **exclusive jurisdiction** of Polish courts;

(...)

Thank you!





# Training of lawyers on EU instruments on Family Law and Insolvency Law (CiviLAW)

Jurisdiction in matrimonial cases and in matters of  
parental responsibility – Theodora Fotiou

Warsaw, 21 October 2022



The project is co-financed with the support of the European Union's Justice programme

# INTRODUCTION - MAIN GOALS OF THE REGULATIONS

## MAIN GOALS of EU

- **mutual trust in one another's justice systems should be further enhanced.**
- creating, maintaining and developing an area **of freedom, security and justice**, in which the free movement of persons and access to justice are ensured.
- **smooth and correct functioning area of justice with respect** for the Member States **different legal system**
- **the rights of persons, in particular children, in legal procedures should be reinforced in order to facilitate the cooperation of judicial and administrative authorities** and the enforcement of decisions in family law matters with cross-border implications.

# JUDICIAL COOPERATION IN CIVIL MATTERS

So as to accomplish these goals mentioned above, The European Union adopts **measures in the field of judicial cooperation in civil matters** having cross-border implications, particularly when necessary for the proper functioning of the internal market.

The term '**civil matters**' should be interpreted autonomously, **in accordance with the established case-law of the Court of Justice of the European Union ('the Court of Justice')**. It should be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of this Regulation and, second, to the general principles which stem from the corpus of the national legal systems. The term 'civil matters' should therefore be interpreted as capable of extending also to measures which, from the point of view of the legal system of a Member State, might fall under public law.

It should cover, in particular, all applications, measures or decisions in matters of 'parental responsibility' within the meaning of this Regulation, in accordance with its objectives.

# FOUNDATIONS

- There were three **fundamental arguments** in favour of considering the advantages of drawing up this convention in a European context:
- (a) the desire to **introduce uniform standards for jurisdiction in matrimonial matters**;
- (b) the need to **introduce modern rules for the recognition and enforcement of judgments on annulment, divorce and separation among the Member States** of the European Union, establishing a uniform procedure;
- (c) **the avoidance of parallel procedures on matrimonial matters** in different Member States, establishing rules on lis pendens, an innovation that on its own would be justification for the Convention and would contribute to the prevention of contradictory rulings.

# SHORT HISTORY

1. Initially, **Brussels II** Council Regulation 1347/2000, entered into force on 1<sup>st</sup> of March 2001 **covered matters of jurisdiction, recognition and enforcement in matrimonial matters and matters of parental responsibility when connected to divorce proceedings**. Brussels II was the first attempt of regulating these matters through a solid instrument.

Later, Brussels II was repealed by Brussels II bis (IIa) Regulation (Article 46 of Brussels IIa).

2. The European Council Regulation 2201/2003 of 27 November 2003, widely known as 'The Brussels IIa Regulation' (Brussels bis Regulation) **was an innovative single legal instrument** aiming to help international couples resolve disputes, involving more than one country, over their divorce and over children custody, covering a broader spectre of parental responsibility matters.

- ❑ Brussels Ila Regulation 2201/2003 entered into force on 1<sup>st</sup> of August 2004 and has been applicable from 1<sup>st</sup> of March 2005 (Article 72). It covered matters of jurisdiction, recognition and enforcement in matrimonial matters and matters of parental responsibility. It has implied measures in the field of judicial cooperation in civil matters, being obligatory for all signatory state members. The scope of this Regulation covers civil matters, whatever the nature of the court or tribunal.
- ❑ **Brussels Iia Regulation had to be amended, and was repealed by the newest European Council Regulation 2019/1111**, that entered into force on 2<sup>nd</sup> of July, 2019 and has been applicable from August 1<sup>st</sup>, 2022. It came as the result of a **long term attempt to solve problems of Regulation 2201/2003 that had already been predestinated to be amended since 2014 by evaluating its effects.**

To be exact, on 15 April 2014, the Commission adopted a report on the application of Council Regulation (EC) 2201/2003 .

The report concluded that Regulation (EC) 2201/2003 is a well-functioning instrument that has brought important benefits to citizens, **but that the existing rules could be improved.**

A number of amendments were needed to be made to that Regulation, that led to legislation of currently in force, EC 2019/1111.

# How are EC Regulations No 2003/2201 and No 2019/1111 connected?

- The 25<sup>th</sup> of June, 2019 (EC) Regulation 2019/1111, applicable from the 1<sup>st</sup> of August 2022 regulates the same subjects, jurisdiction, recognition and enforcement in matrimonial matters and matters of parental responsibility
- This new Regulation **shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022.**

- **Regulation (EC) No 2201/2003 shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of that Regulation. (a. 100 (1), EC 1111/2019, Transitional Provisions)**

**Subject to Article 100(2) of Regulation (EC) No 2019/1111, Regulation (EC) No 2201/2003 is repealed from the 1<sup>st</sup> of August 2022.**

# **INNOVATIONS OF EC 2019/1111**

- uniform jurisdiction rules for divorce, legal separation and marriage annulment as well as for disputes about parental responsibility where more state – members are involved.
- It facilitates the circulation of decisions, as well as of authentic instruments and certain agreements
- clarifies the child's right to be provided with an opportunity to express his or her views in proceedings to which he or she is subject (right to be heard)
- contain provisions complementing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in relations between Member States.

# **INNOVATIONS OF EC 2019/1111**

**The major amendments brought on by the new regulation EC 1111/2019 are localized in 8 basic points:**

- (1) international jurisdiction,
- (2) international child abduction,
- (3) the child's right to express his or her view,
- (4) abolition of exequatur
- (5) enforcement,
- (6) authentic instruments and agreements,
- (7) placement of the child in another Member State and
- (8) reinforcement of the collaboration among Member States.

# REGULATORY POWER

Regulation EC 2019/1111 is a single, unifying legal instrument that sets out:

- rules determining **which court is responsible** for dealing with matrimonial matters and parental responsibility in disputes involving more than one country;
- rules **making it easier to enforce judgments** issued in one [European Union](#) (EU) [Member State](#) in another;
- a procedure to settle cases in which **a parent abducts a child from one Member State and takes them to another.**

It **does not** deal with **substantive family law matters**. These are the responsibility of individual Member States.

Central authorities should cooperate both in general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes, in matters of parental responsibility. To this end central authorities shall participate in the European Judicial Network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters.

<b>European instruments in matters of jurisdiction, recognition and enforcement of judgments in matrimonial matters</b>		
	<b>Temporal scope</b>	<b>Material scope</b>
<b>Convention of 28 May 1998</b>	Never entered into force	Jurisdiction, recognition and enforcement in matrimonial matters
<b>Regulation No 1347/2000 (Brussels II)</b>	<ul style="list-style-type: none"> <li>• Entered into force on 1 March 2001 (Article 46)</li> <li>• was repealed by Brussels II bis Regulation</li> </ul>	<ul style="list-style-type: none"> <li>• Jurisdiction, recognition and enforcement in matrimonial matters</li> <li>• Parental responsibility when connected to divorce proceedings</li> </ul>
<b>Regulation No 2201/2003 (Brussels II bis)</b>	<ul style="list-style-type: none"> <li>• Entered into force on 1 August 2004</li> <li>• is applicable from 1 March 2005 (Article 72)</li> </ul>	<ul style="list-style-type: none"> <li>• Jurisdiction, recognition and enforcement in matrimonial matters</li> <li>• Matters of parental responsibility</li> </ul>

# CHAPTER 1 OF THE REGULATION - ARTICLE 1

## “ THE SCOPE OF THE REGULATION ”

(a) divorce, legal separation or marriage annulment

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility

(c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child

(d) the placement of the child in a foster family or in institutional care;

(e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property

The matters referred to in point (b) of paragraph 1 may, in particular, include:

rights of custody and  
rights of access;

Guardianship,  
curatorship and similar  
institutions

The designation and  
functions of anyone or  
any body having in  
charge a property or a  
child / representing or  
assisting a child

# WHICH MATTERS OF PARENTAL RESPONSIBILITY DOES THIS REGULATION APPLY TO?

In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, including measures for the protection of the child, independent of any link with matrimonial proceedings or other proceedings.

# EXEMPTIONS (introductory par. 9 ,10 along with chapter 1, article 1)

The regulation **does not apply** to cases concerning:

- grounds for divorce or the law applicable in divorce cases
- property consequences of the marriage or any other ancillary measures.
- Measures relating to the child's property which do not concern the protection of the child (should continue to be governed by Council Regulation (EC) No 44/2001, signed on 22th December 2000, concerning matters of jurisdiction, recognition and enforcement of judgments in civil and commercial matters).

- matters relating to social security, public measures of a general nature in matters of education or health
- to decisions on the right of asylum and on immigration.
- establishing and challenging paternity, parent – child relationship
- decisions on adoption and the associated preparatory measures
- Measures preparatory to adoption, or the annulment or revocation of adoption;
- a child's first and last names
- Emancipation
- maintenance obligations;
- the independence of children from their parents or guardians
- Trusts and succession
- measures taken in response to criminal acts committed by children

# Thoughts on application of this Regulation

- This Regulation should, apply in cases where the object of the proceedings is the designation of a person or body administering the child's property. Measures relating to the child's property which do not concern the protection of the child should continue to be governed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council (4). **However, it should be possible for the provisions of this Regulation on jurisdiction over incidental questions to apply in such cases.**
- Any type of placement of a child in foster care, that is, according to national law and procedure, with one or more individuals, or institutional care, for example in an orphanage or a children's home, in another Member State should fall within the scope of this Regulation unless expressly excluded, which is for example the case for placement with a view to adoption, placement with a parent or, where applicable, with any other close relative as declared by the receiving Member State. As a result, also '**educational placements**' ordered by a court or arranged by a competent authority with the agreement of the parents or the child or upon their request following deviant behaviour of the child should be included. Only a placement – be it educational or punitive – ordered or **arranged following an act of the child which, if committed by an adult, could amount to a punishable act under national criminal law, regardless of whether in the particular case this could lead to a conviction, should be excluded.**

# Are maintenance obligations fully excluded from applying this Regulation? (th.13)

Those obligations are already covered by Council Regulation (EC) No 4/2009

In addition to the courts for the place where the defendant, or the creditor, is habitually resident, **the courts having jurisdiction under this Regulation in matrimonial matters should generally have jurisdiction to decide on ancillary spousal or post-marital maintenance obligations** by application of point (c) of Article 3 of that Regulation. The courts having jurisdiction under this Regulation **in matters of parental responsibility generally have jurisdiction to decide on ancillary child maintenance obligations by application** of point (d) of Article 3 of that Regulation

# TERMS – COURT

- **The term 'court'** in this regulation:
  - covers all authorities in the Member – States, having jurisdiction in matters falling within the scope of this Regulation.
  - This means that the Regulation respects the state members jurisdiction and its broad spectre of different types of authorities appointed by state regulations
  - According to the case-law of the Court of Justice, the term 'court' should be given a broad meaning so as to also cover administrative authorities, or other authorities, such as notaries, who or which exercise jurisdiction in certain matrimonial matters or matters of parental responsibility.

# TERMS MEMBER STATE OF ORIGIN AND ENFORCEMENT

- 'Member State of origin' means the Member State in which the decision has been given, the authentic instrument has been formally drawn up or registered, or the agreement has been registered;
- 'Member State of enforcement' means the Member State in which enforcement of the decision, authentic instrument or agreement is sought

# TERMS – AUTHENTIC INSTRUMENT

- 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in any Member State in the matters falling within the scope of this Regulation and the authenticity of which:
  - (a) relates to the signature and the content of the instrument; and
  - (b) has been established by a public authority or other authority empowered for that purpose. **Authentic instruments and agreements** between parties that are enforceable in one Member State **should be treated as equivalent to 'judgments'** for the purpose of the application of the rules on recognition and enforcement.

# TERMS – AGREEMENTS (th. 14)

An 'agreement' means,, a document **which is not an authentic instrument**, has been concluded by the parties in the matters falling within the scope of this Regulation and has been registered by a public authority as communicated to the Commission by a Member State in accordance with Article 103 for that purpose;

Such agreements which acquire binding legal effect in the Member State of origin following the formal intervention of a public authority or other authority as communicated to the Commission by a Member State for that purpose should be given effect in other Member States in accordance with the specific provisions on authentic instruments and agreements in this Regulation.

**This Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument, but have been registered by a public authority competent to do so, should circulate.** Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession.



# MATRIMONIAL MATTERS

By the term **Matrimonial matters**, the subjects covered by this Regulation are:

**divorce, legal separation and marriage annulment**, whether it is a court decision or a tribunal.

# GENERAL JURISDICTION (A. 3)

A. LIES WITH COURTS OF MEMBER STATE

**HABITUALLY RESIDENT SPOUSES**

B. LIES WITH THE COURT OF THE  
NATIONALITY OF BOTH SPOUSES

# GENERAL JURISDICTION OF THE MEMBER STATE: HABITUALLY RESIDENT SPOUSES (A. 3)

lies with the courts of the Member State in whose territory:

- the spouses are **habitually resident**, or
- the spouses were **last habitually resident**, insofar as one of them still resides there, or
- the respondent** is habitually resident, or
- in the event of a joint application, **either of the spouses is habitually resident**, or
- the applicant is habitually resident** if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident** if he or she **resided there for at least six months** immediately before the application was made and is **a national of the Member State** in question

- **“Counterclaim Jurisdiction” (A.4)**

The court in which proceedings are pending shall also have jurisdiction to examine a counterclaim, insofar as the latter comes within the scope of this Regulation.

**“Conversion of a separation into divorce Jurisdiction”(A.5)**

A court of a Member State that has given a judgement on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

# RESIDUAL JURISDICTION (A. 6)

**Where no court** of a Member State **has jurisdiction**, it shall be determined, in each **Member State, by the laws of that State.**

As against a respondent who is not habitually resident and is not either a national of a Member State, **any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.**

# WHEN DOES THE REGULATION APPLY?

According to the older jurisprudence of the Court of Luxembourg concerning the force of regulation 2201/2003, (which today, as we said, remains in force and under regulation 2019/1111): ECJ, 29.11.2007, Sundelind VS Lopez, C-68/07.

defendant having nationality of a third country, outside EU, who reside in a third country as well, European jurisdictional bases continue to apply over national rules that provide for excessive bases of international jurisdiction, **as long as the courts of a member state have jurisdiction by virtue of concurrent jurisdiction** of article 3 of the regulation. **European jurisdictional links prevail over the excessive jurisdictional bases of national laws.**

# CASE STUDY :

## ECJ, 29.11.2007, Sundelind VS Lopez, C-68/07

The case:

The plaintiff, is a Swedish national married to a Cuban citizen.

She filed for divorce before the First Instance Court of Stockholm based on a regulation of Swedish law, despite the fact that the couple resided in France and she was still a habitual residence of France. As the Court ruled, the French courts had jurisdiction to decide on the petition on the grounds of Article 3 of Regulation 2201/2003, the Swedish courts could not base their jurisdiction on their national law. **It still applies for the same reasons, to EC 2019/1111.**

## EXCLUSIVE NATURE OF JURISDICTION (A. 6, PAR. 2)

A spouse who:

- (a) is **habitually resident** in the territory of a Member State;
- or
- (b) is a **national** of a Member State, **may be sued in another Member State only in accordance with Articles 3, 4 and 5.**

# FINDING JURISDICTION IN MATRIMONIAL CASES – SUM UP

1. DO WE HAVE HABITUAL RESIDENCE OF SPOUSES, AS FOUND IN A, 3? -> COURTS OF HABITUAL RESIDENCE
2. DO WE HAVE SAME NATIONALITY OF BOTH SPOUSES? -> COURT OF NATIONALITY
3. HAS ANOTHER COURT BEING SEIZED / PENDING? -> THIS COURT HAS JURISDICTION
4. HAS THE COUPLE BEEN DECLARED AS SEPERATED BY DECISION -> THIS COURT HAS JURISDICTION
5. WE CAN'T FIND ANY COURT HAVING JURISDICTION? --> LAWS OF MEMBER STATE
6. IF ANY EUROPEAN LINK IS ACTIVATED, THEN THE REGULATION IS BEING APPLIED



# **PARENTAL RESPONSIBILITY**

**This is a single regulation for matters of dissolution of spouses relations and parental responsibility.**

In order to ensure **equality for all children**, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding. This Regulation recognizes the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union.

## TERMS AND DEFINITIONS (A.2)

'**Parental responsibility**' stands for all rights and duties relating to the person or the property of a child which are given to a natural or legal person:

- by **judgement**,
- by operation **of law** or
- by **an agreement** having legal effect.

Parental responsibility **also includes rights that have to do with custody and rights of access.**

The term '**rights of access**' stands for the right to take a child to a place other than his or her habitual residence for a limited period of time;

Custody **shall be considered to be exercised jointly** when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without **the consent of another** holder of parental responsibility.

A '**holder of parental responsibility**' represents any person, institution or body having parental responsibility over a child.

The '**rights of custody**' includes rights and duties relating to the care of the person of a child and in particular the right to determine the place of residence of a child;

A '**wrongful removal or retention**' is a child's removal or retention where specifically:

(a) it is in **breach of rights of custody** acquired by decision or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

(b) provided that, at the time of removal or retention, **the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.**

**Custody shall be considered to be exercised jointly** when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

**'Rights of access'** means rights of access to a child, including the right to take a child to a place other than his or her habitual residence for a limited period of time;

# JURISDICTION IN PARENTAL RESPONSIBILITY



# JURISTICTION BASIC PRINCIPLES

**Jurisdiction** in matters of parental responsibility established in the present are shaped **in the light of the best interests of the child**, in particular on **the criterion of proximity**.

**General jurisdiction** the courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is **habitually resident** in that Member State at the time the court is seised. (A.7)

# Exemptions from the rule of General Jurisdiction (A.8)

- When a child **moves lawfully** from one member State to another, jurisdiction is retained **for a 3 month period** by the country of **former habitual residence** of the child, only for modifying a judgment on access rights that happened to be issued in that Member State before the child moved, and the holder of access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence. This does not apply if the holder of access rights has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.
- **with the Member State of the child's current residence**, that has changed due to an agreement between the holders of parental responsibility. retain jurisdiction during a three-month period

By way of exception and under certain conditions, the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case, considering the child's interest. In this case, the second court should not be allowed to transfer the case to a third court. (par. 13)

# WRONGFUL REMOVAL/ RETENTION (A. 9)

Jurisdiction in cases of the wrongful removal or retention of a child, without prejudice to choosing a court jurisdiction (a.10), in the case of the wrongful removal or retention of a child, **the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:**

- a) **each person, institution or other body having rights of custody has acquiesced in the removal or retention**; or L 178/20 Official Journal of the European Union 2.7.2019 EN
- (b) **the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child** and the child is settled in his or her new environment and at least one of the following conditions is met:
  - (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no application for return has been lodged with the competent authorities of the Member State to which the child has been removed or where the child is being retained;
  - (ii) an application for return lodged by the holder of rights of custody has been withdrawn and no new application has been lodged within the time limit set in point (i);
  - (iii) an application for return lodged by the holder of rights of custody was refused by a court of a Member State on grounds other than point (b) of Article 13(1) or Article 13(2) of the 1980 Hague Convention and that decision is no longer subject to ordinary appeal; (not legally exercising the custody rights, or having accepted the removal, return does harm to a child)
  - (iv) no court was seised as referred to in Article 29(3) and (5) in the Member State where the child was habitually resident immediately before the wrongful removal or retention;
  - (v) a decision on rights of custody that does not entail the return of the child has been given by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

# “CHOICE OF COURT” – A. 10

The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met: (a) the child has **a substantial connection** with that Member State, in particular by virtue of the fact that: (i) at least one of the holders of parental responsibility **is habitually resident in that Member State**; (ii) that Member State is the **former habitual residence of the child**; or (iii) the **child is a national of that Member State**; (b) the parties, as well as any other holder of parental responsibility have: (i) **agreed freely upon the jurisdiction, at the latest at the time the court is seised**; or (ii) **expressly accepted the jurisdiction** in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; **and (c) the exercise of jurisdiction is in the best interests of the child.**

**WHEN AN APPLICATION FOR DIVORCE / LEGAL SEPERATION OR MARRIAGE ANNULMENT HAS BEEN APPLIED IN A STATE MEMBER** → According to article 10 of EC 1111/2019, the transferring jurisdiction clause due to the existence of a pending matrimonial dispute of former article 12 par. 1 is abandoned, and somehow is included in article 10 of the new regulation, **since the close relationship of the child with the state adjudicating the parental custody dispute is important.**

- A choice of court agreement has to be in writing, dated and signed by the parties concerned or included in the court record in accordance with national law and procedure. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
- Persons who become parties to the proceedings after the court was seised may express their agreement after the court was seised. In the absence of their opposition, their agreement shall be regarded as implicit.

Unless otherwise agreed by the parties, the jurisdiction that is chosen by the parties, shall cease as soon as: **final decision**

- (a) the decision given in those proceedings is no longer subject to ordinary appeal; or
- (b) the proceedings have come to an end for another reason.

The jurisdiction by acceptance of the other party shall be exclusive. (a.10, par.4)

# JURISDICTION UNDER THE PRESENCE OF THE CHILD (A. 11)

Where the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of Article 10, the courts of the Member State where the child is present shall have jurisdiction.

This jurisdiction also apply to refugee children or children internationally displaced because of disturbances occurring in their Member State of habitual residence.

# TRASFERRING JURISDICTION – CHILD'S INTEREST (A. 12)

In exceptional circumstances, a court of a Member State having jurisdiction as to the substance of the matter may, upon application from a party or of its own motion,

- if it considers that a court of another Member State **with which the child has a particular connection would be better placed to assess the best interests of the child** in the particular case,

**stay the proceedings or a specific part thereof and either:**

- (a) **set a time limit** for one or more of the parties **to inform the court of that other Member State of the pending proceedings** and the possibility to transfer jurisdiction and to introduce an application before that court; or (b) **request (DIRECTLY) a court of another Member State to assume jurisdiction** in accordance with paragraph 2.

# ACCEPTANCE OF JURISDICTION TRANSFER IN (A. 12)

The court of the other Member State may, where due to the specific circumstances of the case this is in the best interests of the child,

**accept jurisdiction within six weeks after:**

- (a) its seizure (after the stay of first court, the time limit and information for transfer)
- (b) or receive the request from the first with point.

# AFTERMATH OF TRANSFERRING JURISDICTION IN (A. 12)

The court second seised or requested to accept jurisdiction shall inform the court first seised without delay. **If it accepts, the court first seised shall decline jurisdiction.**

The **court first seised shall continue to exercise its jurisdiction if it has not received the acceptance of jurisdiction by the court of the other Member State within seven weeks after:** (a) **the time limit** set for the parties to introduce an application before a court of another Member State in accordance with point (a) of paragraph 1 has expired; or (b) that court has received the request to assume jurisdiction, in accordance with point (b) of paragraph 1.

# “PARTICULAR CONNECTION” OF A CHILD – CHILD’S INTEREST –A. 12, PAR.

## 4

- The child shall be considered to have a particular connection with a Member State if that Member State: **(a) has become the habitual residence** of the child after the court referred to in paragraph 1 was seised; **(b) is the former habitual residence** of the child; **(c) is the State of the nationality** of the child; L 178/22 Official Journal of the European Union 2.7.2019 EN **(d) is the habitual residence of a holder of parental responsibility**; or **(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of that property.**

# WHEN JURISDICTION IS TRANSFERRED BY A STATE MEMBER NOT HAVING ANY(A. 13)

In exceptional circumstances and without prejudice to jurisdiction in cases of wrongful removal:

if a court of a Member State does not have jurisdiction under this Regulation,

but the child has a particular connection with that state, in accordance with Article 12(4), considers that it is better placed to assess the best interests of the child in the particular case, **it may request a transfer of jurisdiction from the court of the Member State of the habitual residence of the child.**

# AFTERMATH OF TRANSFERRING JURISDICTION IN (A. 13)

Within six weeks after the receipt of the request for transferring jurisdiction,

the requested court may accept to transfer its jurisdiction, if it considers that due to the specific circumstances of the case such a transfer is in the best interests of the child.

Where the requested court accepts to transfer jurisdiction, it shall inform the requesting court without delay.

**In the absence of such acceptance within the timeframe, the requesting court shall not have jurisdiction**

European Regulation EC 2019/1111 applies on EU state members

Therefore it does not apply in UK anymore, in which the 1980 Hague Convention applies, but without the EC 2019/1111 override mechanism that stands in favor of the courts of the state of the child's habitual residence before the illegal removal. This override mechanism has to do with the public documents which are drawn up or registered officially or agreements registered on or after the 1<sup>st</sup> of August 2022.

# RESIDUAL JURISDICTION (A. 14)

Where no court of a Member State has jurisdiction, **jurisdiction shall be determined, in each Member State, by the laws of that State.**

# PROVISIONAL AND INCLUSIVE MEASURES (A. 15)

In urgent cases, even if the court of another Member State has jurisdiction as to the substance of the matter, the courts of a Member State shall have jurisdiction to take provisional, including protective, measures which may be available under the law of that

Member State in respect of:

- (a) a child who is present in that Member State;
- or (b) property belonging to a child which is located in that Member State.

# PROVISIONAL AND INCLUSIVE MEASURES (A. 15)

- In so far as the protection of the best interests of the child so requires, the court having taken the measures shall, without delay, inform the court or competent authority of the Member State having jurisdiction or, any court of a Member State exercising jurisdiction under this Regulation.
- The measures taken pursuant to paragraph 1 shall cease to apply as soon as the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate. Where appropriate, that court may inform the court having taken provisional, including protective, measures, either directly in accordance with Article 86 or through the Central Authorities designated pursuant to Article 76, of its decision.

# INCIDENTAL QUESTIONS (A.16)

If the outcome of proceedings in a matter not falling within the scope of this Regulation before a court of a Member State depends on the determination of an incidental question relating to parental responsibility, **a court in that Member State may determine that question for the purposes of those proceedings even if that Member State does not have jurisdiction under this Regulation.**

The determination of an incidental question shall produce **effects only in the proceedings** for which that determination was made.

If the validity of a legal act undertaken or to be undertaken on behalf **of a child in succession** proceedings before a court of a Member State **requires permission or approval by a court, a court in that Member State may decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation.**

# FINDING JURISDICTION IN PARENTAL RESPONSIBILITY CASES – SUM UP

- **Does the court seised have jurisdiction under the general rule in Art. 8? (Child's habitual residence) --> International jurisdiction of member state of child's habitual residence**
- **Do the courts of another MS have prevailing jurisdiction under Art. 9, 10 or 12?**
- **Does another court have jurisdiction, but it has been seized? --> It must t declare of its own motion that it does not have jurisdiction (A. 18)**
- **When we can't find any jurisdiction --> A. 14 , residual jurisdiction --> national laws of member state**



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and families**

# SEISING OF A COURT WHEN HAS A COURT TAKEN OVER A CASE? – A. 17

- (a) at the time when the document **instituting the proceedings** or an equivalent **document is lodged with the court**, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; or
- (b) **if the document has to be served before being lodged with the court**, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

# SEIZING A COURT – A. 17

- c) if the proceedings **are instituted of the court's own motion**, at the time when the decision to institute the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

# EXAMINATION OF JURISDICTION

## -A. 18

Where a court of a Member State is seised of a case over which **it has no jurisdiction** under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall **declare of its own motion that it has no jurisdiction.**

**That does not produce precedent that the case has been examined, only precedent that with the provided information, the state member's court has no jurisdiction.**

# HAS THE RESPONDENT RECEIVED THE PETITION? - EXAMINATION OF ADMISSIBILITY – A. 19

- **A- respondent habitually resident in a State other than the Member State**

the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent **has been able to receive the document** instituting the proceedings or an equivalent document in sufficient time to enable him to **arrange for his defence**, or that all necessary steps have been taken to this end.

- **B - Respondent that is found to be habitually resident in another State:**

if the document instituting the proceedings had to be transmitted from one Member State to another, Article 19 of Regulation (EC) No 1393/2007 shall apply instead.

Where the provisions of Regulation (EC) 1393/2007 is not applicable, then --→ Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters

# AVOIDING CONTRADICTION IN JUDGEMENT – LIS PENDENS –A. 20

- Where proceedings relating to divorce, legal separation or marriage annulment between the same parties **are brought before courts of different Member States**, the court **second seised** shall of its own **motion stay its proceedings until such time as the jurisdiction of the court first seised is established**.
- If **proceedings relating to parental responsibility relating to the same child** and involving **the same cause of action** are brought before courts of different Member States, **the court second seised shall of its own motion stay** its proceedings until such time as the jurisdiction of the court first seised is established.

# LIS PENDENS

- Where the jurisdiction of the court first seised is established.
- **The court second seised shall decline jurisdiction in favour of that court.** In that case, the party who brought the relevant action before the court second seised **may bring that action before the court first seised.** In that case, the party who instituted proceedings before the court second seised may **bring those proceedings before the court first seised.**
- If a court of a Member State on which an acceptance of jurisdiction as referred to in Article 10 (choice of court) confers exclusive jurisdiction is seised, **any court of another Member State shall stay** the proceedings until such time as the court seised, on the basis of the agreement or acceptance declares that it has no jurisdiction under the agreement or acceptance. Where and to the extent that the court has established exclusive jurisdiction in accordance with an acceptance of jurisdiction as referred to in Article 10, any court of another Member State shall decline jurisdiction in favour of that court. **EXCEPTION TO THAT ARE PROVISIONAL MEASURES OF ART. 15**

# EXPRESSING CHILD'S VIEW RIGHT- A.21

The exercising jurisdiction court has to provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views, either directly, or through a representative or an appropriate body, giving due weight to the views of the child in accordance with his or her age and maturity.

# RELATION TO OTHER INSTRUMENTS

This Regulation shall, for the Member States, **supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.**

Finland and Sweden were provided with the option of declaring in accordance with Article 59(2) of Regulation (EC) No 2201/2003 and subject to the conditions set out in points (b) and (c) of that provision that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, **will apply, in whole or in part, in their mutual relations**, in place of the rules of that Regulation. Their respective declarations have been published in the Official Journal of the European Union as an annex to Regulation (EC) No 2201/2003. They may be withdrawn, in whole or in part, at any moment by the said Member States.

Decisions handed down in any of the Nordic States which have made the declaration provided for in paragraph 2 under a forum of jurisdiction corresponding to one of those laid down in Chapter II, shall be recognised and enforced in the other Member States under the rules laid down in Section 1 of Chapter IV.

# RELATIONS TO MULTILATERAL CONVENTIONS – A. 60

- This Regulation **precedes over:**
- (a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;
- (b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;
- (c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations; L 338/16 EN Official Journal of the European Union 23.12.2003
- (d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

**The agreements and conventions above shall continue to have effect in relation to matters not governed by this Regulation.**

# CONNECTION TO 1980 HAGUE CONVENTION (A. 96)

Where a child has been wrongfully removed to, or is being wrongfully retained in, a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, the provisions of the 1980 Hague Convention shall continue to apply as complemented by the provisions of Chapters III and VI of this Regulation.

Where a decision ordering the return of the child pursuant to the 1980 Hague Convention which was given in a Member State has to be recognised and enforced in another Member State following a further wrongful removal or retention of the child, Chapter IV shall apply.

# Relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children -A. 97

This Regulation applies:

- (a) **where the child concerned has his or her habitual residence on the territory of a**

**Member State;**

- (b) as concerns the recognition and enforcement of a decision given by a court of a Member State in the territory of another Member State, even if the child concerned has his or her habitual residence in the territory of a State which is a contracting Party to the said Convention and in which this Regulation does not apply.

# EXCEPTIONS

- (a) where the parties have agreed upon the jurisdiction of a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply, Article 10 of that Convention shall apply;
- (b) with respect to the transfer of jurisdiction between a court of a Member State and a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply, Articles 8 and 9 of that Convention shall apply;
- (c) where proceedings relating to parental responsibility are pending before a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply at the time when a court of a Member State is seised of proceedings relating to the same child and involving the same cause of action, Article 13 of that Convention shall apply.

# TREATIES WITH THE HOLY SEA

The Regulation also applies in mentioned in Article 99 Treaties with the Holy Sea.

# THANK YOU

That concludes presentation over jurisdiction in matrimonial matters and matters of parental responsibility, as being analyzed in EC No 1111/2019.