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REPORT ON NATIONAL IMPLEMENTATION LAWS

EUFAMS II CONSORTIUM

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ABBREVIATIONS

1956 New York Recovery Convention *Convention on the Recovery Abroad of Maintenance, concluded at New York on 20 June 1956*

1961 Hague Apostille Convention *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, drafted by the Hague Conference on Private International Law and concluded at The Hague on 5 October 1961*

1973 Hague Maintenance Convention *Convention on the Law Applicable to Maintenance Obligations, drafted by the Hague Conference on Private International Law and concluded at The Hague on 2 October 1973*

1980 Hague Child Abduction Convention *Convention on the Civil Aspects of International Child Abduction, drafted by the Hague Conference on Private International Law and concluded at The Hague on 25 October 1980*

1996 Hague Child Protection Convention *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, drafted by the Hague Conference on Private International Law and concluded at The Hague on 19 October 1996*

2007 Hague Maintenance Convention *Convention on the international recovery of child support and other forms of family maintenance, drafted by the Hague Conference on Private International Law and concluded at The Hague on 23*

2007 Hague Maintenance Protocol *11 Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, drafted by the*

Brussels II bis Regulation *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*

CCP *Code of Civil Procedure*

CJEU *Court of Justice of the European Union*

ECS *European Certificate of Succession*

EU *European Union*

Maintenance Regulation *Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations*

Matrimonial Property Regimes Regulation *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*

PIL *Private International Law*, *Private International Law*

Public Documents Regulations *Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012*

Regulation on Property Consequences of Registered Partnerships *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*

Rome III Regulation *Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation*

Succession Regulation *Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession*

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A. INTRODUCTION

I. IMPORTANCE OF IMPLEMENTATION LAWS

Over the course of the EUFams II predecessor project, it was observed that the effectiveness and functioning of the European framework of private international law in family and succession matters is closely connected to the existence of national legislation implementing the relevant EU regulation in this field. On the one hand, national legislation governing the interplay between the national legal system and the European framework as well as international conventions may significantly contribute to an effective application in practice. Simultaneously, the lack of legislation assimilating European instruments into national procedures may hinder the *effet utile* of European law in general and the regulations on European family and succession law in particular.

Consequently, the EUFams II project endeavored to shed light on national implementation laws. National implementation laws have been dealt with over the course of the EUFams II project on multiple occasions, particularly within the framework of the Case Law Database[1] as well as in the Comparative Report on National Case Law[2]. However, in view of their great practical importance, the EUFams II Consortium deemed it appropriate to dedicate a separate report to national implementation laws.

II. METHODOLOGY

1. Objectives

The research consortium aimed at gaining insight into and assessing the measures taken by Member States in order to ensure the implementation of European family and succession law in the national legal order.

2. The notion of implementation laws

For the purposes of this report, the notion of implementation laws is to be understood in a broad sense. An implementation law is essentially any instrument provided by the national legal order dealing with the practical application of European family and succession law by courts or other entities. Therefore, the notion of implementation laws in the first place entails implementing legislation such as acts of parliament, governmental decrees, ministerial orders or circulars. Moreover, soft instruments such as guidelines, non-binding circulars, mere informative documents or informal means of coordination are accordingly covered. Finally, the notion encompasses methodological means recognized in national law which result in the application of pre-existing provisions or rules to European instruments, e.g. application by analogy.

Additionally, in view of the fragmentary character of European family and succession law, national law with a gap-filling function was accordingly included, even though it

[1] http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=entscheidungsdatenbank.

[2] Forthcoming, to be published on the project website: http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=projektberichte.

does not constitute implementation law pursuant to the aforementioned definition. Such gaps can particularly arise when a regulation covers an area of law in principle but excludes certain specific topics from its scope. For instance, the Rome III Regulation governs the law applicable to divorce but pursuant to the CJEU's *Sahyouni*-decision it does not apply to certain forms of private divorces. Hence, the ensuing gap will have to be filled out by domestic private international law.

3. Substantive scope

This report focusses on implementation laws in relation to the following European and international instruments of private international law in family and succession matters:

- Brussels II bis Regulation
- Rome III Regulation
- Maintenance Regulation
- Matrimonial Property Regimes Regulation
- Regulation on Property Consequences of Registered Partnerships
- Succession Regulation
- Public Documents Regulations
- 1980 Hague Child Abduction Convention
- 1996 Hague Child Protection Convention
- 2007 Hague Maintenance Convention
- 2007 Hague Maintenance Protocol

4. General concept

In line with the objectives and envisaged scope as laid out above, a template was drafted which was formulated in an open manner and therefore enabled the national reporters to present national particularities in any manner they deemed fit. Reporters were invited to describe pertinent issues and subsequently engage in an assessment. Furthermore, relevant provisions of national implementation laws were translated in order to ensure easy accessibility.

III. STRUCTURE OF THIS REPORT

This report consists of country reports from Croatia (B.), France (C.), Germany (D.), Greece (E.), Italy (F.), Luxembourg (G.), Spain (H.) and Sweden (I.). It concludes with a comparative perspective on implementation laws (J.). Translated provisions of national law are annexed to this report.

B. CROATIA

I. RELEVANT IMPLEMENTATION LAWS IN CROATIA

The relevant European and international instruments in the field of private international law in family and succession matters are in direct or indirect coordination with national legislation relating either to cross-border legal settlement or to national rules applicable to specific subject matters. Primarily relevant are the following sources:

- Act on Private International Law[3] (Zakon o međunarodnom privatnom pravu), Official Gazette No 101/17, applies as of 29 January 2019.
- Family Law Act (Obiteljski zakon) Official Gazette No. 103/15, 98/19, applies as of 1 January 2020.
- Civil Procedure Act (Zakon o parničnom postupku), Official Gazette No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, applies as of 1 September 2019.
- Enforcement Act (Ovršni zakon) Official Gazette No 112/12, 25/13, 93/14, 55/16, 73/17, applies as of 3 August 2017.
- Inheritance Act (Zakon o nasljeđivanju) Official Gazette No 48/03, 163/03, 35/05, 127/13, 33/15, 14/19, applies as of 15 February 2019.

Relevant private international law implementing legislation in Croatia includes the following:

- The Law on Adoption of the Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility[4] (Official Gazette, No 127/13).
- The Law on Adoption of Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations[5] (Official Gazette, No 127/13).
- Act on the Application of Council Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession[6] (Official Gazette, No 152/14).

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[3] Zakon o međunarodnom privatnom pravu NN 101/17.

[4] Zakon o provedbi Uredbe Vijeća (EZ) br. 2201/2003 o području nadležnosti, priznanja i izvršenja sudskih odluka u bračnim sporovima i u stvarima povezanim s roditeljskom skrbi, Narodne novine 127/13.

[5] Zakon o provedbi Uredbe Vijeća (EZ) br. 4/2009 o području nadležnosti, mjerodavnog prava, priznanja i izvršenja odluka te suradnji u stvarima koje se odnose na obveze uzdržavanja narodne novine 127/13.

[6] Zakon o provedbi Uredbe (EU) br. 650/2012 Europskog Parlamenta i Vijeća od 4. srpnja 2012. o nadležnosti, mjerodavnom pravu, priznavanju i izvršavanju odluka i prihvaćanju i izvršavanju javnih isprava u nasljednim stvarima i o uspostavi europske potvrde o nasljeđivanju NN 152/14.

– Act on Implementation of the 1980 Hague Child Abduction Convention[7] Official Gazette, No. 99/2018. (Became applicable in January 2019).

II. GENERAL ASSESSMENT

Research conducted within the framework of the EUFams I project indicated that misapplication of EU legislation in family and succession matters in Croatia is a result of confusion in relation to the relevant legal sources. More precisely, the Croatian legislator never set aside the application of the national PIL Act of 1982[8] in matters regulated by EU legislation, although the moment of full accession to the EU (1 July 2013) actually effectively set aside those provisions.

The direct effect and supremacy of regulations is indisputable in the EU legal order. Since EU PIL largely consists of regulations, implementing legislation was not necessary. However, ever since Croatia acceded to the EU, the Croatian legislator found it appropriate to introduce implementing legislation in relation to regulations as well. The legislator sought to facilitate the adoption of novelties in the field of family and succession matters introduced by the regulations with implementing legislation. Still, as will be shown, the implementing legislation has produced very limited effects.

The reform of the national PIL regime has been discussed in Croatia for a decade, as the PIL Act of 1982 never went through any formal amendment. Despite the lack of formal change of the PIL Act of 1982, its provisions were actually set aside by international conventions to which Croatia has acceded, as well as with accession to the EU. The recently adopted Croatian PIL Act of 2017 incorporated relevant international conventions and EU legislation. The PIL Act of 2017 aims at the application of relevant regulations and conventions for any respective matter.[9] This approach would certainly solve the ambiguity relating to the legal sources.

It is notable that the unsystematic policy approach hinders the smooth application of the mosaic of private international law rules in Croatia. Although the PIL Act of 2017 was created as an act that would enumerate all of the relevant legal sources, it failed to mention several important conventions and regulations.[10] Furthermore, the attitude of Croatian policy towards the enhanced cooperation is twofold. More precisely, the Rome III Regulation does not apply formally, although the provisions of Croatian PIL Act are a verbatim copy. On the contrary, the Property Regime Regulations have full effects in Croatia as a participating Members States in the enhanced cooperation. The inconsistent policy is reflected in the implementing legislation as well: most of the regulations on family law have been proceeded by implementing legislation, but not all

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[7] Zakon o provedbi Konvencije o građanskopravnim vidovima međunarodne otmice djece NN 99/18 Official Gazette, No. 99/2018.

[8] The Law on Resolution of Conflict of Laws with Regulations of Other Countries (Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima), Official Gazette of SFRJ, No 43 of 23 July 1982 with corrigenda in No 72/82, adopted in Croatian Official Gazette, No 51/91. – not in force.

[9] Although not all of the conventions and regulations having effect in Croatia are enumerated by the PIL Act. M Župan 'Novelties of the Croatian 2017 Private International Law Act' 4 Hrvatska pravna revija 1.

[10] Hague Adoption Convention of 1993, Regulation No 606/2013 of mutual recognition of protective measures.

of them.[11] There is no clear-cut policy about organization of the courts in respect of issuing the certificates annexed to the regulations. In some courts, it is the judge, in others it is the court advisor previously not involved in a case that issues the certificate.

III. ASSESSMENT OF GOOD AND BAD PRACTICES

When it comes to the content of implementing legislation, it is disturbing that most of them are merely a copy of provisions regarding the Central Authority and an enumeration of the declarations Croatia has submitted to the Commission. Regrettably, the most problematic area, particularly the institutes unknown in Croatian national law, are not sufficiently dealt with. The most prominent example relates to the rules on transfer of jurisdiction of Art. 15 Brussels II bis Regulation. Open questions relate to the communication of the courts of different members states, which rules of Croatian civil procedure law should apply to decline jurisdiction in favour of the court of another member states and whether it is only the first or the second instance decisions that may be transferred. The last issue has reached the Supreme Court, though it failed to refer to it as an issue of European law but treated it as a matter of national law.[12]

Another disparity in relation to the Act on Civil Procedure relates to the fact that the basic rule of local jurisdiction relies on domicile, unlike the family and succession regulations relying on the notion of habitual residence. One problem appears as the Act on Civil Procedure does not require that the habitual residence of the parties is established at the beginning of the proceedings (merely domicile and nationality are established by the court *ex officio)*. Hence, international jurisdiction is initially not based on the proper grounds. This is sometimes established only at a later stage of the proceedings when the *perpetuatio fori* principle prevents the court to decline its jurisdiction. The disparity of the bases of jurisdiction is relevant also in relation to the application of the Maintenance Regulation, which actually sets international and local jurisdiction.[13]

Unlike regulations implementing legislation, the Act on Implementation of the 1980 Hague Child Abduction Convention substantially modifies the regime of both EU and third county abductions.[14] Art. 14 Implementation Act introduced the concentration of jurisdiction, hence any international child abduction case would be dealt with by the Municipal Civil Court of Zagreb, while any appeal in this matter would be dealt with by the County Court of Zagreb. The Implementation Act has introduced procedural tools with the aim of speeding up the return procedure. More stringent and specialized rules of procedure are applied in international child abductions in comparison to regular procedural rules.[15] To ensure that the first instance procedure lasts no longer

[11] No implementation law to Regulation 2016/1103, 2016/2204.

[12] Supreme Court of Republic of Croatia, 10.07.2017, Gr1 629/16-2, cf. HRF20180125.

[13] Općinski građanski sud u Zagrebu, 06.04.2017, P OB 153/2017, HRF20170406.

[14] This Implementing Act was drafted in the period of 2015-2017, and became applicable in January 2019. The provisions of the implementing Act were affected by the results of the EUFams I project and national project "Cross-border Removal and Retention of a Child – Croatian Practice and European Expectation" (IZIP).

[15] Art. 16-19.

than six weeks, courts are empowered with additional tools to depart from ordinary family law procedures. Some of them are: parties may be summoned by phone call, telefax or email, the court does not have to hold an oral hearing, and the court has to render its decision within eight days of the date of the conclusion of the hearing. The Implementation Act furthermore encourages judicial cooperation, with the aim of speeding up the collection of evidence from abroad. The Act also introduced a provision on issuing of a second instance decision within 30 days (Art. 16 (4)). No extraordinary appeal is permitted.

Although this implementation act influences the progressive development of adjudication in child abduction matters, it has some shortcomings as well. It has omitted to prescribe specialization of judges within the specialized court, the number of appeals is not limited.[16] A lacuna is left in relation to the relevant authority to issue a provisional measure in relation to a child that has been abducted. The question is whether the specialized court in Zagreb or the court of the temporary residence of the child has jurisdiction to issue a provisional measure. Currently, the court having jurisdiction under the Family Law Act decides on the proposed interim measure. There is however no obligation of that court to inform the specialized court on the measure adopted. There were examples that such procedures were extended to requests belonging to parental responsibility under the Family Law Act, such as enrolling the abducted child to school.[17]

IV. CONCLUSION

The international family and succession regime is still in its infancy in Croatian practice. The case law collected for the EUFams II Database revealed the benefits and shortcomings of its early application. Both serve as useful lessons for the future proper application of the regime. The shortcomings detected here may usefully guide the Ministry of Justice and judicial training facilities with topics deserving more attention. The EUFams II research and Database is thus a valuable point of departure for improved implementation and uniform interpretation of the EU acquis in Croatia.

[16] This is a regrettable, all the more because the EU legislator left this matter to national law. (The Commission's Proposal for the Brussels II bis Recast contained a rule that there can be only one appeal, but this provision was not taken up in the final Regulation.) Commission's Proposal of Brussels II bis Recast, Art. 25 (4).

[17] Dubrovnik Municipal Court, R1 at 105 / 2018-19, 14.12.2018, HRF20181214.

C. FRANCE

I. IMPLEMENTATION OF THE EU REGULATIONS INTO NATIONAL PROCEDURAL LAW

1. Description

The French legislator has opted for the incorporation of jurisdictional implementation rules for the cross-border recognition and enforcement of decisions, settlements, and authentic instruments under all EU Regulations in civil and commercial matters. Therefore, these implementation rules do not only apply to the EU Regulations in family and succession matters but also refer to the Brussels I bis Regulation, for instance. The main implementation rules are Art. 509-1, 509-2, and 509-3 Civil Procedure Code. These provisions are primarily special subject-matter jurisdiction rules and functional jurisdiction rules. In addition, further procedural rules have been enacted for specific subject-matters or stages of proceedings to supplement the relevant EU and international instruments.

2. Succession Regulation

Within three months of the applicability of the Succession Regulation (17 August 2015), the French legislator enacted a decree[18] (*décret*) that introduced several provisions in the Civil Procedure Code explicitly implementing into national law the Succession Regulation concerning the procedure for the declaration of enforceability of decisions, court settlements and authentic instruments (Art. 45-58, 60-61 Succession Regulation).

These provisions define the functional jurisdiction for issuing the attestation for *French decisions and court settlements* in succession matters as provided for by the Implementation Regulation 1329/2014. Specifically, the registrar of the court rendering the decision or approving the settlement is defined as the competent authority (Art. 509-1 (1) Civil Procedure Code). Applications for the declaration of enforceability of *foreign executory titles* to be enforced in France under the Succession Regulation have to be lodged before the registrar of the respective territorially competent ordinary court (*Tribunal Judiciaire*; Art. 509-2 (1) Civil Procedure Code).

In addition, special jurisdiction rules were implemented in Art. 509-3 Civil Procedure Code for the enforceability of *authentic instruments* under Chapter V of the Succession Regulation (Art. 59 et seq.). For the execution of *foreign* authentic instruments in France under Art. 60 Succession Regulation, applications shall be lodged before the president of the Chamber of Notaries. For authentic instruments issued by French notaries, the notary who registered the authentic instrument may issue the attestation as provided for by the Implementation Regulation 1329/2014.

The implementation decree also amended Art. 509-6 (4) and Art. 509-9 Civil Procedure Code. These provisions identify the registry of the court issuing the decision

[18] Décret n° 2015-1395 du 2 novembre 2015 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière de successions transfrontalières, available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031417982.

on the application for a declaration of enforceability as the authority in charge of serving the decision to the defendant (Art. 49 Succession Regulation). Appeals against this decision (Art. 50 Succession Regulation) shall be lodged before the president of the territorially competent ordinary court (*Tribunal Judiciaire*).

Furthermore, the implementation decree inserted a new section in the Civil Procedure Code that is entirely dedicated to the European Succession Certificate (Art. 1381-1 et seq. Civil Procedure Code). Among others, these provisions regulate the following procedural aspects: the persons eligible for requesting a certificate (heirs, legatees, executors or administrators of the estate); the notary as the competent issuing authority; the serving of the certificate to the applicant and any legitimately interested party; and the appeal proceedings lodged by an eligible person before the ordinary court in whose judicial district the issuing notary is located.

3. Brussels II bis Regulation

The above-mentioned Art. 509-1 Civil Procedure Code also defines the competent authority for issuing the attestation under Art. 39 Brussels II bis Regulation, namely, the registrar of the French court that rendered the decision in question. However, attestations for *'privileged decisions'* (decisions on rights of access and 'trumping orders') are issued by the judge who rendered the decision.

Applications for issuing the declaration of enforceability of *foreign executory titles* to be enforced in France under the Brussels II bis Regulation are subject to the same rules as mentioned earlier concerning the Succession Regulation, i.e., applications have to be lodged before the registrar of the respective territorially competent ordinary court (Art. 509-2 Civil Procedure Code).

Agreements on divorce or separation by mutual consent under French law are subject to special rules (Art. 509-3 Civil Procedure Code). Applications for issuing an attestation under Art. 39 Brussels II bis Regulation must be lodged before the notary who registered the divorce or separation agreement. This special jurisdiction rule comes as a response to the introduction of purely *'private'*, i.e., out-of-court divorces in France in 2016. However, it is questionable whether the Brussels II bis Regulation applies at all to such divorce agreements, as the Brussels II bis Recast[19] explicitly introduces recognition rules for out-of-court divorce agreements.

Concerning cross-border child abduction cases, the French legislator already introduced a special section dedicated to return proceedings into the Civil Procedure Code in 2004 (Art. 1210-4 et seq.). The respective provisions entered into force simultaneously with the applicability of the Brussels II bis Regulation on 1 March 2005. This subsection complements the rudimentary Art. 11 Brussels II bis Regulation with more specific procedural rules for the processing of cross-border child abduction cases in France. Among others, these special rules define the subject-matter jurisdiction and local jurisdiction for the processing of return orders from abroad and the competences of the French authorities involved.

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[19] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, OJ L 178, 02.07.2019, p. 1–115. The Regulation will apply from 01.08.2022.

The Rome III Regulation has not explicitly been the object of an implementation law. However, in the context of the introduction of out-of-court divorces in 2016, the Ministry of Justice issued a circular (*circulaire*) that refers to and further explains the possibilities to conclude choice-of-law agreements under the Rome III Regulation.[20]

4. Maintenance Regulation

The national rules implementing the recognition and enforcement mechanism of the Maintenance Regulation are similar to the implementation provisions described above concerning the Succession Regulation and the Brussels II bis Regulation. However, they reflect the crucial distinction drawn by the Maintenance Regulation between decisions given in a Member State *bound by the 2007 Hague Maintenance Protocol* and decisions given in a Member State *not bound by said Protocol* (Art. 509-1 (1), (2) Civil Procedure Code). For decisions falling under the first category, applications for issuing a copy of a French decision for its enforceability abroad (Art. 20 (1) Maintenance Regulation) have to be filed before the *judge* who rendered the decision. For decisions falling under the second category (Art. 28 (1) Maintenance Regulation), the respective applications have to be lodged before the *registry* of the court (*greffe*) that rendered the decision.

5. Property Regimes Regulations

The latest amendments to Art. 509-1 et seq. Civil Procedure Code were introduced with the entry into force of the Property Regimes Regulations. First of all, these implementation provisions determine the local and functional jurisdiction (registry of the court or president of the court) for applications for a declaration of enforceability of a *court decision or court settlement* under Art. 44 et seq. and Art. 60 Property Regimes Regulations. Special rules designating the president of the chamber of notaries as competent authority were introduced with respect to the declaration of enforceability of *foreign notarial deeds* under Art. 59 Property Regimes Regulations.

6. Assessment

The enactment of detailed rules regulating the functional and subject-matter jurisdiction is certainly to be welcomed as a good practice to supplement the procedural framework of the EU Regulations in family and succession matters. This approach creates legal certainty and facilitates the application of the Regulations in practice. Notably, the French legislator took into consideration the specificities of each subject-matter covered by the single Regulations.

The introduction of subject-matter and functional jurisdiction rules is especially crucial in succession matters, as the procedural framework of the Succession Regulation is more complex than the EU Regulations in family matters. Against this background, the French implementation decree strikes a balance by complementing the jurisdictional system of the Succession Regulation while preserving the characteristics of the French legal system, where notaries play an essential role in the issuing of authentic instruments.

[20] The circular is available at: http://circulaires.legifrance.gouv.fr/pdf/2017/06/cir_42386.pdf.

Also, the speedy reaction of the French legislator to enact implementation rules should be mentioned as a positive approach: the decree implementing the Succession Regulation was published on 2 November 2015, i.e., less than three months after the Regulation started to be applicable. The procedural implementation rules concerning cross-border divorce and parental responsibility proceedings were coordinated with the date of application of the Brussels II bis Regulation, so that both sets of rules started to be applicable as of 1 March 2005.

II. INFORMATION AND TRAINING SERVICES FOR JUDGES AND PRACTITIONERS

1. Description

The French Ministry of Justice has published thoroughly drafted circulars (*circulaires*) on the EU Regulations in family and succession matters aimed at informing judges and practitioners on these new instruments for cross-border cases. Such initiatives may also be considered as a mechanism to implement the EU provisions into the domestic legal order.

2. Succession Regulation

On 29 February 2016, the French Ministry of Justice published a circular[21] on the Succession Regulation and its Implementation Regulation. The information therein provided gives a comprehensive overview of the cornerstones of the Succession Regulation and also refers to the national implementation provisions mentioned above, i.e., the implementation decree and the amended Articles of the Civil Procedure Code. On 18 pages, the circular explains the Regulation's scope of application, the jurisdiction rules, the applicable law rules, the provisions on recognition and enforcement of decisions and authentic instruments as well as the provisions establishing the European Succession Certificate.

Notably, the circular highlights the changes brought to French Private International Law rules and substantive succession law, such as the principle of unity of the succession (Art. 4 and Art. 21 Succession Regulation) as opposed to the division of moveable and immovable assets under French law (*régime scissionniste*). Particular regard is given to the public policy exception under Art. 35 Succession Regulation. The circular recalls that, while some Member States have argued that mandatory shares may be invoked via the public policy exception, the French Court of Cassation[22] (*Cour de Cassation*) has, so far, denied such an approach.

[21] Circulaire du 25 janvier 2016 de présentation des dispositions du règlement (UE) n° 650/2012 du Parlement européen et du Conseil du 4 juillet 2012 relatif à la compétence, la loi applicable, la reconnaissance et l'exécution des décisions, et l'acceptation et l'exécution des actes authentiques en matière de successions et à la création d'un certificat successoral européen (BOMJ n°2016-02 du 29 février 2016 – JUSC1601018), available at: http://www.textes.justice.gouv.fr/art_pix/JUSC1601018C.pdf.

[22] For recent case-law, see Cour de cassation, 27.09.2017, 16-17198, FRT20170927; Cour de cassation, 27.09.2017, 16-13151, FRT20170927a.

3. Brussels II bis Regulation

Similar to the circular on the Succession Regulation, the circular on the Brussels II bis Regulation, published on 28 October 2005[23], thoroughly informs judges and practitioners on this European instrument and the respective national implementation provisions. Within its 27 pages, the circular gives particular regard to the provisions regulating the cooperation between the national authorities in cross-border child abduction cases.

4. Property Regimes Regulations

On 24 April 2019, the Ministry of Justice published a circular informing on the two Property Regimes Regulations, which comprises four detailed 'fact sheets' on the cornerstones of the Regulations (scope of application, applicable law rules, jurisdiction rules, rules on recognition and enforcement).[24] Furthermore, the circular refers to the possibility to complement the information provided therein with the consultation of an e-learning platform developed by the National School of Magistrates. Via this platform, training sessions on the Succession Regulation are also offered.[25]

5. Assessment

Initiatives such as the circular issued by the French Ministry of Justice are to be welcomed as a good practice. The survey conducted within the EUFams II Project[26] , as well as several Exchange Seminars hosted by the Project Partners[27], revealed that the overall familiarity with the EU instruments on cross-border family and succession matters is relatively poor among practitioners. Thus, education and training are of paramount importance to secure a better application and functioning of the EU instruments.

Notably, the circulars of the French Ministry of Justice are not a generic summary of the Regulations, but a tailor-fit information tool for practitioners working in France or dealing with French law. It is noteworthy that the circulars are usually distributed via different channels: They are first circulated among the presidents of the highest levels of the judiciary and the directors of the national schools for magistrates and registrars, and subsequently published in the official bulletin of the Ministry of Justice (*bulletin officiel du ministère de la justice*).

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[23] Circulaire relative à l'entrée en vigueur du Règlement (CE) n° 2201/2003 du Conseil du 27 novembre 2003 relatif à la compétence, la reconnaissance et l'exécution des décisions en matière matrimoniale et de responsabilité parentale dit «Bruxelles 2 bis», available at: http://circulaires.legifrance.gouv.fr/pdf/2009/04/cir_2657.pdf.

[24] Circulaire du 24 avril 2019 de présentation des dispositions des règlements (UE) n° 2016/1103 et n°2016/1104 du Conseil du 24 juin 2016 mettant en œuvre une coopération renforcée dans le domaine de la compétence, de la loi applicable, la reconnaissance et l'exécution des décisions, en matière de régimes matrimoniaux et d'effets patrimoniaux des partenariats enregistrés, available at: http://circulaires.legifrance.gouv.fr/pdf/2019/06/cir_44741.pdf.

[25] The training platform is available at: https://formation.enm.justice.fr/Pages/Accueil.aspx.

[26] Lobach/Rapp, An Empirical Study on European Family and Succession Law (2019), available at: http://www2.ipr.uni-heidelberg.de/eufams/index-Dateien/microsites/download.php?art=projektbericht&id=2.

[27] The respective summaries and reports are available at: http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=projektberichte&lang=en.

Also, it should be mentioned that the circulars are usually distributed within only a few months after the respective Regulations started to be applicable. This timing allows practitioners to inform themselves about the new legislation at an early stage.

D. GERMANY

I. SCOPE OF THIS REPORT

In Germany, the implementation of the instruments of European PIL in family and succession matters was conducted in two complementary ways: On the one hand, new laws were created, specifically designed to deal with the procedural aspects not yet covered by the respective instrument. On the other hand, several provisions of the already existing national law were changed, amended or abolished in order to prevent confusion arising from conflicting provisions. This report will, for the most part, focus on the former and will address the latter only insofar as they are of particular interest.

II. OVERVIEW OF THE MOST IMPORTANT IMPLEMENTATION LAWS

1. General remarks on the structure of German implementation laws

Generally, the German implementation laws are structured alike: First, they define the scope of the respective act by referring to the respective instruments they are intended to implement. Then, they cover, if of relevance, general aspects concerning Central Authorities and their proceedings. This is followed by special provisions on local jurisdiction designed to supplement specific international jurisdiction rules listed therein. Further chapters cover the proceedings for the recognition and enforcement of decisions and authentic instruments in chronological order beginning from the initial application and ending with the respective decision and the corresponding remedies. For certain types of proceedings and decisions (e.g. child return proceedings) there are special chapters. At the end of most implementation laws there are transitional provisions referring to the provisions that are to be applied in cases for which the respective instruments they implement are not yet applicable.

The following overview is structured in a similar manner.

2. The most important implementation laws

a) International Family Law Procedure Act (IntFamRVG)

aa) Scope and date of adoption

The International Family Law Procedure Act[28] was adopted on 26.01.2005, which is after the entry into force of Brussels II bis Regulation on 01.08.2004 but before the beginning of its general applicability on 01.03.2005. According to its § 1, it executes the Brussels II bis Regulation and implements *inter alia* the 1996 Hague Child Protection Convention and the 1980 Hague Child Abduction Convention.

bb) Central Authorities

§§ 3-9 IntFamRVG cover the proceedings before the Central Authority and its functions. The Central Authority for Germany is, according to § 3 (1) IntFamRVG, the German Federal Office of Justice (*Bundesamt für Justiz*). Its actions as well as its inaction during these proceedings are subject to judicial review either according to § 8

[28] Gesetz zur Aus- und Durchführung bestimmter Rechtsinstrumente auf dem Gebiet des internationalen Familienrechts (Internationales Familienrechtsverfahrensgesetz – IntFamRVG).

IntFamRVG or according to § 23 German Introductory Act to the Judicature Act[29]. In both cases the Higher Regional Court has to decide on the respective remedy.

cc) Local jurisdiction

The local jurisdiction rules in §§ 10-13a IntFamRVG correspond to specific international jurisdiction rules and to specific instruments. § 10 IntFamRVG provides exclusive local jurisdiction *inter alia* for recognition and enforcement proceedings under the Brussels II bis Regulation or the 1996 Hague Child Protection Convention. § 11 IntFamRVG governs local jurisdiction for proceedings pursuant to the 1980 Hague Child Abduction Convention. § 13 IntFamRVG determines under which conditions the same courts designated in §§ 10-12 IntFamRVG have jurisdiction for other proceedings concerning children. Local jurisdiction for other matters is provided by the general local jurisdiction rules in the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction[30]. Most noteworthy are the following provisions: § 122 FamFG for matrimonial matters; § 152 FamFG for matters concerning children.

dd) Recognition and enforcement

§§ 16-23 IntFamRVG govern the proceedings in which a declaration of enforceability is sought, while §§ 24-27 and §§ 28-31 IntFamRVG govern the respective remedies. Insofar as the decision or authentic instrument that is to be enforced is set aside or modified in the State it originated from, § 34 IntFamRVG provides a special remedy. Other remedies against the enforcement are provided by general procedural law.

ee) Chapters concerning special proceedings

§§ 37-49 IntFamRVG contain provisions for certain special proceedings: §§ 37-43 IntFamRVG apply to proceedings pursuant to the 1980 Hague Child Abduction Convention. § 44 IntFamRVG provides special jurisdiction for the imposition of coercive fines and coercive detention, where an enforceable decision on the return of children or on access rights has been infringed by the liable party. §§ 45-47 IntFamRVG govern proceedings concerning the placement of children. §§ 48-49 IntFamRVG govern the proceedings for the issue of the certificates pursuant to Art. 39 and pursuant to Art. 41 and Art. 42 Brussels II bis Regulation.

b) Foreign Maintenance Act (AUG)

aa) Scope and date of adoption

The Foreign Maintenance Act[31] was adopted on 23.05.2011, which is after the entry into force of the Maintenance Regulation but before the beginning of its general applicability on 18.06.2011. According to its § 1, it implements *inter alia* the Maintenance Regulation, the 2007 Hague Maintenance Convention, the 1973 Hague Maintenance Convention and the 1956 New York Recovery Convention. Also, it

[29] Einführungsgesetz zum Gerichtsverfassungsgesetz (GVGEG).

[30] Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG).

[31] Gesetz zur Geltendmachung von Unterhaltsansprüchen im Verkehr mit ausländischen Staaten (Auslandsunterhaltsgesetz – AUG).

applies, according to § 1 (3) AUG, to the recovery of statutory maintenance claims, where one of the parties has his or her habitual residence within the scope of application of this Act and the other party has his or her habitual residence in another State with which reciprocity is guaranteed. Therefore, it is not limited to the implementation of international instruments but also establishes provisions that are to be applied where no such instrument exists.

bb) Central Authorities

§§ 4-6 AUG determine the functions of the Central Authority in maintenance matters. As in § 3 (1) IntFamRVG, the Federal Office of Justice is designated as Central Authority in § 4 (1) AUG. However, § 4 (3) AUG allows the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) to transfer these functions in maintenance matters to another public body or to bestow them on a corporate body governed by private law. Despite this provision, no such transfer has taken place to this day.

§§ 7-12 AUG govern the proceedings for assistance in maintenance matters in which maintenance is to be enforced in another State by the German Central Authority. In opposition to the proceedings under the IntFamRVG, such applications in maintenance matters are, according to §§ 7-9 AUG, subject to prior examination by the Local Court with jurisdiction over the seat of the Higher Regional Court in whose district the applicant is habitually resident. This prior examination shall determine, if the application is manifestly unfounded or made in bad faith. In proceedings based on formal reciprocity according to § 1 (3) AUG the court also determines whether the intended legal pursuit would offer sufficient prospect of success. The Central Authority then determines according to § 11 (1) AUG whether the application complies with the formal requirements of the proceedings that are to be instituted abroad and forwards the application to the competent foreign authority. Remedy for decisions during these proceedings is in both stages the request for judicial review according to § 23 GVGEG in combination with § 9 (2) AUG or § 11 (3) AUG.

§§ 13-15 AUG govern applications originating from other States. §§ 16-19 AUG determine the Central Authority´s means for procuring information.

cc) Special provisions for legal aid proceedings

§§ 20-24 AUG contain special provisions that *inter alia* modify the legal aid proceedings of German procedural law in accordance with Art. 46 Maintenance Regulation and Art. 14 and Art. 17 of the 2007 Hague Maintenance Convention.

dd) Additional international jurisdiction rules pursuant to Art. 3 (c) Maintenance Regulation; corresponding local jurisdiction

§ 25 AUG provides, pursuant to Art. 3 (c) Maintenance Regulation, additional international jurisdiction for maintenance matters that are ancillary to pending divorce proceedings or pending proceedings for the determination of paternity before German courts exercising jurisdiction under specific provisions listed therein. Correspondingly, § 26 AUG provides the courts before which these matters are pending with local jurisdiction for the ancillary maintenance matters.

ee) Local jurisdiction

§ 28 AUG governs local jurisdiction in maintenance matters for which German courts have jurisdiction according to Art. 3 (a) or (b) Maintenance Regulation in cases in which one of the parties is not habitually resident in Germany. § 27 AUG provides local jurisdiction in maintenance matters for cases in which German courts are competent according to Art. 6 or Art. 7 Maintenance Regulation.

ff) Recognition and enforcement

§§ 30-34 AUG govern the enforcement of decisions and authentic instruments for which exequatur proceedings are not required. Otherwise, §§ 35-56 AUG govern the recognition and enforcement proceedings. §§ 57-64 AUG modify these provisions for proceedings under certain international instruments. §§ 65-69 AUG contain remedies against the enforcement. §§ 70-75 AUG contain provisions for German titles that are intended to be enforced in another State.

c) International Succession Law Procedure Act (IntErbRVG)

aa) Scope and date of adoption

The International Succession Law Procedure Act[32] was adopted on 29.06.2015, which is after the entry into force of the Succession Regulation but prior to the beginning of its general applicability on 17.08.2015. It implements, according to its § 1, only the Succession Regulation.

bb) Local jurisdiction

§ 2 (1)-(3) IntErbRVG provide several local jurisdiction rules that correspond with certain international jurisdiction rules of the Succession Regulation.

§ 2 (4) IntErbRVG provides non-exclusive jurisdiction for all other cases in which German courts have international jurisdiction according to Chapter II of the Succession Regulation. This provision refers to the place where the deceased was habitually resident at the time of death. If he or she was at that time not habitually resident in Germany, the last habitual residence in Germany shall prevail according to § 2 (4) IntErbRVG. If no such habitual residence in Germany has existed, the Local Court Schöneberg in Berlin has local jurisdiction according to § 2 (4) IntErbRVG. The general local jurisdiction rules in §§ 12-40 German CCP[33] (apart from § 27 and § 28 ZPO) may be applied as well, according to § 2 (5) IntErbRVG.

cc) Recognition and enforcement

§§ 3-9 IntErbRVG govern the proceedings for obtaining the declaration of enforceability, while §§ 10-14 IntErbRVG govern the respective remedies. §§ 15-20 and §§ 23-26 IntErbRVG govern remedies against the enforcement. §§ 27-30 IntErbRVG contain provisions for German titles that are to be enforced in another State.

[32] Internationales Erbrechtsverfahrensgesetz (IntErbRVG).

[33] Zivilprozessordnung (ZPO).

dd) Jurisdiction for specific purposes

For the purpose of receiving the declarations listed in Art. 13 Succession Regulation, § 31 IntErbRVG provides the court in whose district the declaring person is habitually resident with local jurisdiction. According to § 31 IntErbRVG, the court has to confirm the declaration in a publicly certified document in which location and date of the declaration are indicated. The declaring person then has to receive the original version of this document. There are, however, no provisions that would indicate any further steps the court would need to undertake. The German legislator, therefore, seems to be of the opinion that the delivery of the respective declaration to the court conducting the succession proceedings needed to be performed by the declaring party.

§ 32 IntErbRVG provides the court at the habitual residence of the deceased with local jurisdiction to receive declarations of the respective public body for the purpose of acquiring the estate, if no other successors could be identified.

ee) European Certificate of Succession

§§ 33-44 IntErbRVG govern the proceedings concerning the European Certificate of Succession. According to §§ 33 IntErbRVG, they apply to the issue, the rectification, the modification and the withdrawal of the Certificate as well as to the suspension of its effects, the issue of certified copies and the extension of their period of validity. § 34 (1)-(3) IntErbRVG provide local jurisdiction for these proceedings. § 34 (4) IntErbRVG determines the jurisdiction *ratione materiae*, but allows the federal states to transfer it to other agencies, making use of the option provided by Art. 64 (b) Succession Regulation. § 37 IntErbRVG determines who may participate in the proceedings. §§ 43-44 IntErbRVG govern the respective remedies.

ff) Authenticity of public documents

§§ 45-46 IntErbRVG contain special provisions governing the proceedings in case of challenges relating to the authenticity of an authentic instrument according to Art. 59 (2) Succession Regulation.

gg) Default jurisdiction

§ 47 IntErbRVG provides local jurisdiction for matters in which German courts have international jurisdiction under the Succession Regulation, if no other local jurisdiction rule applies. § 47 (2) IntErbRVG refers to the local jurisdiction rules of the German FamFG insofar as international jurisdiction was not provided by the provisions of the Succession Regulation listed in § 2 (1)-(3) IntErbRVG.

d) International Property Law Procedure Act

aa) Scope and date of adoption

The International Property Law Procedure Act[34] was adopted on 17.12.2018, which is after the entry into force of the Matrimonial Property Regulation and the Partnership Property Regulation but before the beginning of their general applicability on 29.01.2019. It implements, according to its § 1, both Regulations.

[34] Internationales Güterrechtsverfahrensgesetz (IntGüRVG).

bb) Local jurisdiction

§ 3 (1) no. 1-3 IntGüRVG contain several local jurisdiction rules which apply, if the international jurisdiction is based on provisions of the Matrimonial Property Regimes Regulation or the Regulation of Property Consequences of Registered Partnerships that rely on the connection to other pending proceedings (e.g. divorce or succession). § 3 (1) no. 1-3 IntGüRVG insofar refer to the national jurisdiction rules that govern the local jurisdiction for international succession matters (§ 2 IntErbRVG) and for matters relating to marriage (§ 122 FamFG) or registered partnerships (§ 270 FamFG).

§ 3 (1) no. 6 IntGüRVG provides exclusive jurisdiction in case of choice of court agreements. § 3 (1) no. 7 IntGüRVG corresponds with Art. 9 of the Regulations, § 3 (1) no. 8 IntGüRVG with their Art. 10 and § 3 (1) no. 9 with their Art. 11.

If the international jurisdiction is based on other provisions, § 3 (1) no. 4 IntGüRVG provides a sequence of criteria the local jurisdiction may be based on in accordance with the criteria listed in Art. 6 of both Regulations. If none of them applies, the Local Court Schöneberg in Berlin has jurisdiction according to § 3 (1) no. 4 (b) IntGüRVG. This is supplemented by § 3 (1) no. 5 IntGüRVG that corresponds with Art. 6 (e) Regulation of Property Consequences of Registered Partnerships for which there is no equivalent in the Matrimonial Property Regulation.

According to § 3 (2) certain jurisdictions listed therein may be transferred by the federal states to other courts.

cc) Recognition and enforcement

§§ 4-10 IntGüRVG govern the proceedings concerning the declaration of enforceability. §§ 11-14 IntGüRVG govern the respective remedies. §§ 15-20 and §§ 23-26 IntGüRVG govern remedies concerning the enforcement as well as corresponding compensation claims. §§ 27-30 IntGüRVG contain provisions for German titles that are to be enforced in another State.

dd) Authenticity of public documents

§§ 31-32 IntGüRVG contain special provisions governing the proceedings in case of challenges relating to the authenticity of an authentic instrument according to Art. 58 (2) Matrimonial Property Regimes Regulation or Regulation of Property Consequences of Registered Partnerships.

III. SELECTED PROVISIONS OF PARTICULAR INTEREST FOR THE IMPLEMENTATION OF EUROPEAN PIL IN FAMILY AND SUCCESSION MATTERS

Of the great number of other provisions that also serve implementation purposes, the following are of particular interest:

1. Art. 3 EGBGB

Art. 3 German Introductory Act to the Civil Code[35] contains a non-exhaustive declaratory list of the European PIL instruments that have priority over the provisions of national PIL. This is intended to remind the legal practitioner to always consider whether any of the mentioned instruments may be applicable, before applying

[35] Einführungsgesetz zum Bürgerlichen Gesetzbuche (EGBGB).

national PIL. This provision only covers instruments that are of relevance for the determination of the applicable law. There is no similar provision in regard to questions of international procedural law.

2. Art. 17 EGBGB

The current Art. 17 EGBGB was created in the aftermath of the *Sahyouni*-decision (C-372/16) in order to fill the void resulting from the non-applicability of the Rome III Regulation to private divorces. According to Art. 17 (1) EGBGB, the proprietary consequences of divorces that do not fall in the scope of the Matrimonial Property Regimes Regulation or the Maintenance Regulation are governed by the law that would be applied to the divorce according to the provisions of the Rome III Regulation. For divorces that do not fall into the scope of the Rome III Regulation, Art. 17 (2) EGBGB declares the provisions of its Chapter II nonetheless applicable with certain modifications.

3. Art. 17b (4) EGBGB

Art. 17b (4) EGBGB contains special provisions for same-sex marriages. It provides that the law applicable to divorce and legal separation is determined according to the provisions of the Rome III Regulation and that the law applicable to the property consequences is determined according to the Matrimonial Property Regulation, even if those Regulations would otherwise not be applicable to same-sex marriages. Registered partnerships that have not converted to same-sex marriages are covered by Art. 17b (1) EGBGB which refers to the law of the State in which the partnership was registered, provided that the Regulation of Property Consequences of Registered Partnerships does not provide otherwise.

4. Art. 25 EGBGB

Art. 25 EGBGB declares Chapter III of the Succession Regulation applicable to the succession, even if the succession would otherwise not fall in the scope of that Regulation.

IV. ASSESSMENT AND CONCLUSIONS

After having compared the implementation laws, their respective content and structure, the following conclusions can be made in regard to the current state of implementation:

1. The implementation laws are usually adopted few months prior to the beginning of the general applicability of the instrument they implement.
2. Nearly all procedural aspects not explicitly determined in the Regulations are covered. Often default rules (e.g. § 47 IntErbRVG) are provided. It is to be expected that future implementing legislation will contain more provisions of this kind, since the German legislator had to learn in the recent years that the scope of European instruments may sometimes differ from what was initially expected. Especially the problems in the aftermath of the *Sahyouni*-case have led to more default rules in German PIL (e.g. Art. 17 (2) EGBGB, Art. 17b (4) EGBGB and Art. 25 EGBGB).
3. The implementation laws mostly contain special provisions for the implementation of the respective instrument. Therefore, they often refer to general provisions of German procedural law (ZPO, FamFG). Sometimes the

scope of these references is not clear. Especially if such references are made implicitly or in general provisions as in § 14 IntFamRVG, § 2 IntGüRVG or § 2 AUG, uncertainties may arise as to which extent special chapters of the respective law allow for such recourse to general provisions. Also, this technique of special implementation laws increases the complexity of the legal framework and makes it more likely that practitioners might instead apply the general provisions they are used to, because of lacking awareness of the implementation laws and their relation to the general provisions. To avoid this, one would either need to incorporate the implementation laws into the FamFG or to provide clear references for each chapter. Declaratory provisions indicating the hierarchy of these provisions in a similar manner as in Art. 3 EGBGB might also help.

4. Most provisions of the implementation laws cannot be understood without simultaneously reading the corresponding provisions of the instruments they implement, since they often contain complex references to specific combinations of these provisions (e.g. § 2 IntErbRVG, § 3 IntGüRVG).
5. The local jurisdiction rules mostly refer to the criteria used in the respective instrument for the determination of international jurisdiction. Therefore, German courts need to apply the concepts developed for the interpretation of the respective instrument, even if they do not apply it directly. There are risks of diverging interpretations, where the local jurisdiction rules contain additional criteria (e.g. § 2 (4) IntErbRVG which refers to the deceased´s habitual residence at the time of death as well as to his or her last habitual residence in Germany). The different functions of international jurisdiction rules and local jurisdiction rules may also lead to further distinctions[36] (for example: if a person was habitually resident in Germany, but not in a certain identifiable judicial district, courts would need to treat him, for the purpose of determining the local jurisdiction, as if he had no habitual residence in Germany[37]).
6. The local jurisdiction rules and the provisions determining the jurisdiction *ratione materiae* often allow the federal states to transfer these competences to other courts. Since the implementation laws do not contain any indication as to which state has made use of these options in which manner, there may arise uncertainties when dealing with such cases for the first time.

[36] This was already pointed out by the court in: OLG Düsseldorf, 18.11.2016, I-3 Sa 2/16, DES20161118.

[37] This solution was applied in: KG Berlin, 26.04.2016, 1 AR 8/16, DES20160426.

E. GREECE

I. FAMILY/SUCCESSION LAW REGULATIONS AND DOMESTIC LAW

1. Description

The Greek legislator traditionally does not adopt special/implementing acts when European Regulations are issued. Laws are passed when necessary to ratify an international Agreement or Convention (e.g. ratification of the 1980 Hague Child Abduction Convention or the 1996 Hague Child Protection Convention, see Annex).[38] EU Regulations are applied directly by the courts along with existing national law, the latter being interpreted in the light of the applicable Regulation. Domestic rules on competence apply insofar its determination is left to domestic law. An example of that is the designation of the single-member court of first instance as competent *ratione materiae* to declare the enforceability of a foreign judgment pursuant to Art. 905 (1) CCP (see Annex). Another example is the determination of the competent court *ratione loci* and *materiae* for the ECS, where the relevant provisions of the CCP on the domestic certificate (Art. 810 and 819 CCP) are applied.[39] Thus, the notifications delivered to the European Commission with regard to the competence of courts and authorities do not usually rely on special legislative provisions adopted for this reason but on the general provisions of domestic law. National provisions do exist on an exceptional basis covering special issues (see Annex). While the laws ratifying international conventions contain provisions on the designation of a Central Authority, that designation for EU regulations follows usually on the basis of the information provided by Greece to the Commission and possibly an internal circular or other document.

With regard to the child return procedure (Art. 11 Brussels II bis Regulation), the applicable procedure is that of provisional and protective measures of the CCP. However, courts have differentiated in their case law from ordinary protective measures: in child abduction cases full proof is needed and, while decisions on provisional measures are normally not subject to appeals, appeals are allowed, including an appeal in cassation.[40]

2. Assessment

The collected case law does not seem to indicate that the general lack of implementation provisions leads to inapplicability of the European instruments, which are applied directly by the courts.

Practical issues arise when a general, non-EU law specific provision of domestic law changes without a corresponding change to the information provided to the

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[38] General information on international cooperation in civil matters is available (in English) at the Ministry's website https://www.ministryofjustice.gr/English/?page_id=594.

[39] Chania Justice of the Peace, 15.03.2019, no. 170/2019, ELF20190315. Art. 810 and 819 do not mention the ECS.

[40] See for example Areios Pagos, 14.04.2016, no. 317/2016, ELT20160412; D Kranis in: P Arvanitakis/ E Vasilakakis (eds), Commentary of Regulation (EC) 2201/2003, 2016, Art. 11 no. 8.

Commission and published in the European Judicial Atlas. One such case concerns the change in structure and/or competence of the courts of appeal, which now include both single and three-member courts of appeal. In this context it has been pointed out in the literature that it is unclear where the appeal of Art. 33 Brussels II bis Regulation against the decision on the declaration of enforceability is to be lodged, since domestic law seems to indicate the single-member court of appeal while the (unchanged) notice to the Commission still refers to the old court of appeal without any distinction.[41]

II. DISSEMINATION OF INFORMATION FOR PRACTITIONERS

1. Description

The professional unions of the various legal practitioners (lawyers, notaries, bailiffs) may inform their members on the adoption/entry into force of a European instrument. This was the case with notaries, where circulars were issued with regard to the Succession Regulation and Matrimonial Property Regime Regulation by the notaries' associations. These circulars indicated to the notaries the existence of the two Regulations and their scope. The circulars also distributed practical manuals and informed their members on seminars for these two Regulations.

2. Assessment

The initiatives of the professional unions to inform their members are definitely helpful to spread knowledge of the instruments.

III. JUDICIAL TRAINING

1. Description

With regard to judicial training, the national school of judges has included courses on private international law and European civil procedure in its curriculum. It is also noticeable that case law explicitly mentions training events, such as the training conference for young Justices of the Peace on European procedures, organized by the Union of Judges and Prosecutors.[42]

2. Assessment

As with legal professionals, such initiatives are to be welcomed.

[41] P Giannopoulos in: Arvanitakis/Vasilakakis (eds), Commentary of Regulation (EC) 2201/2003, 2016, Art. 33 no. 2. The same notice is given with regard to the Maintenance Regulation, Matrimonial Property Regimes Regulation and the Registered Partnerships Regulation. However, the notice with regard to the Succession Regulation does distinguish (designating the single-member court of appeal).

[42] Chania Justice of the Peace, 15.03.2019, no. 170/2019, ELF20190315.

Maria Caterina Baruffi/Diletta Danieli/Caterina Fratea/Cinzia Peraro/Ilaria Viarengo/Francesca Villata/Lenka Válková/Dr. Nicolò Nisi

F. ITALY

I. PRELIMINARY REMARK

As a preliminary remark, it is worth underlining that in the Italian legal order no implementing legislation as such was passed with a view to regulating the interplay between national law and the EU regulations in family and succession matters.

Judicial and non-judicial proceedings for either cross-border or purely internal situations are generally governed by the same procedural legislation.

II. MATRIMONIAL MATTERS

1. Description

a) Procedural aspects

Separation proceedings brought before a court can be either by mutual consent (*separazione consensuale*, Art. 711 Italian Civil Procedural Code) or judicial (*separazione giudiziale*, Art. 706-710 Italian Civil Procedural Code). Proceedings consist of two stages: the first one taking place before the President of the court, the second one being handled by an investigating judge and concluded with a final decision taken by the court, which is provisionally enforceable and may be subject to subsequent modifications. After a fixed period of legal separation (12 months from the couple's appearance before the President of the court in case of judicial proceedings, or 6 months in case of separation by mutual consent), it is possible to file for divorce before the competent court of first instance, and proceedings are governed by the law on divorce (Law No. 898 of 1 December 1970). Also divorce proceedings can be either by mutual consent (*procedimento su domanda congiunta*) or judicial (*procedimento contenzioso*). In the latter case, the same procedural regime of separation proceedings applies.

Regarding non-judicial proceedings, separation/divorce can be obtained by means of an out-of-court settlement reached through the counselling of one or more lawyers (*accordo di negoziazione assistita da almeno un avvocato per parte*), or registered before the mayor in his capacity as civil status registrar (*accordo concluso avanti l'ufficiale di stato civile*) – in this latter case, only insofar as there are no minors or dependent children involved. The relevant provisions are found in the Decree Law No. 132 of 12 September 2014, converted into law and amended by Law No. 162 of 10 November 2014. Both legal institutions are deemed to fall within the scope of application of Brussels II bis/Rome III Regulations considering that they meet the requirement of the supervision from a public authority established by the CJEU in *Sahyouni* (C-376/16). In relation to the authority who is allowed to issue the certificate referred to in Art. 39 Brussels II bis Regulation, the following clarifications were provided. In the "administrative" proceedings before the civil status registrar, it is issued by the registrar himself (as per Circular No. 13 of 20 July 2018 of the Ministry of Home Affairs), while in the case of the agreement concluded through lawyers' counselling, the certificate is issued by the public prosecutor who has to approve the agreement (as per Circular No. 19 of 22 May 2018 of the Ministry of Justice).

b) Update of the civil status records (Art. 21 Brussels II bis Regulation)

For the purposes of updating the Italian civil status records on the basis of a judgment rendered in another Member State, Circular No. 24 of 23 June 2006 issued by the Ministry of Home Affairs established that only the certificate referred to in Art. 39 of the Regulation is required, without the need for a copy of the decision. This further document (and any other deemed relevant) may be requested by civil status registrars only if the certificate contains data pointing to the existence of possible grounds of non-recognition pursuant to Art. 22 of the Regulation.

c) Residual jurisdiction (Art. 7 Brussels II bis Regulation)

The reference to domestic laws made in Art. 7 of the Regulation shall be intended, in the absence of bilateral or multilateral conventions applicable in the given case, to Art. 32 of the Italian PIL Act (Law No. 218 of 31 May 1995). The text of the provision can be found in the Annex.

d) Same-sex marriages celebrated abroad

Brussels II bis Regulation cannot be referred to in relation to the dissolution of a marriage celebrated abroad between an Italian national and a same-sex spouse because of the so-called "downgraded recognition" provided under Art. 32 *bis* of the Italian PIL Act. According to this provision, in the Italian legal order such a marriage produces the effects of a registered partnership governed by Italian law. As it is not assimilated to a marriage, the Italian PIL Act (Art. 32 *quater*), and not the Regulation, shall apply to its dissolution.

In the literature, however, it has been argued that Brussels II bis Regulation should apply to the dissolution of non-traditional partnerships by means of an autonomous and EU-oriented interpretation of the notion of marriage. It seems still difficult, on a practical level, to infer such an autonomous concept.

e) Dissolution of same-sex registered partnerships

Art. 32 *quater* of the Italian PIL Act regulates jurisdiction and applicable law in relation to the dissolution of a same-sex registered partnership. By virtue of para. 2 thereof, the scope of application of Rome III Regulation is extended to this situation for the purposes of determining the applicable law. The text of the provision can be found in the Annex.

Notwithstanding the jurisdictional regime laid down in Art. 32 *quater*, an Italian court of first instance applied the *lis pendens* rule provided in Art. 19 of Brussels II bis Regulation in the context of a dissolution of a same-sex registered partnership concluded in Malta and entered into the Italian civil status records[43].

2. Assessment

Critical aspects related to the application of the ministerial Circulars concerning the certificate under Art. 39 of Brussels II bis Regulation and the update of Italian civil status records were already discussed in the *Report on the Italian Exchange Seminar*[44].

[43] Trib Bologna (sezione speciale civile), order, 18.10.2018.

[44] Baruffi/Danieli/Fratea/Peraro, Report on the Italian Exchange Seminar, p. 2-3.

The so-called "downgraded recognition" and the PIL regime established in relation to same-sex registered partnerships was subject to much debate in the Italian legal literature and still poses practical difficulties.

III. PARENTAL RESPONSIBILITY MATTERS AND CHILD ABDUCTION

1. Description

a) Procedural aspects

Specialized courts for civil, administrative, and criminal matters concerning minors have a number of competences that include orders modifying or limiting parental responsibility rights pursuant to the relevant rules of the Italian Civil Code. Civil proceedings before the juvenile courts are regulated according to the provisions on non-contentious jurisdiction (*giurisdizione volontaria*) set forth in the Italian Civil Procedural Code (Art. 737-742 thereof). Apart from these specific cases, competence to rule on parental responsibility issues shall lie with courts of first instance, which are further entitled to take measures modifying or limiting parental responsibility rights whenever they are concurrently seized with judicial separation/divorce proceedings (see Art. 38 of the implementing provisions of the Italian Civil Code). In these instances, the procedural rules illustrated above also apply.

Child abduction proceedings fall within the competence of juvenile courts and qualify as a form of non-contentious jurisdiction to be held in chambers (*camera di consiglio*). The relevant legislation is found in Art. 7 of the Law no. 64 of 15 January 1994 (ratification in Italy of the 1980 Hague Child Abduction Convention), the text of which is provided in the Annex.

The appeal against a decision on the declaration for enforceability under Art. 33 Brussels II bis Regulation, which only refers to "rules governing procedure in contradictory matters", is regulated by Art. 30 Legislative Decree No. 150 of 1 September 2011. This provision, which actually concerns disputes on the enforcement of judgments and decisions in matters of non-contentious jurisdiction provided under Art. 67 of the Italian PIL Act, refers to the form of expedited proceedings (*rito sommario di cognizione*) governed by Art. 702 *bis*-702 *quater* Italian Civil Procedural Code. The text of Art. 30 can be found in the Annex.

b) Residual jurisdiction (Art. 14 Brussels II bis Regulation)

The reference to domestic laws made in Art. 14 of the Regulation shall be intended, in the absence of bilateral or multilateral conventions applicable in the given case, to Art. 42 of the Italian PIL Act, which refers "in any case" to the 1961 Hague Apostille Convention for the purposes of the determination of jurisdiction and applicable law. The text of the provision can be found in the Annex.

However, following the entry into force in Italy of the 1996 Hague Child Protection Convention (from 1 January 2016), in a case involving a Contracting State of the Convention this legal instrument shall be referred to in order to determine whether the Italian court may have residual jurisdiction whenever no court of a Member State has jurisdiction pursuant to Brussels II bis Regulation.

2. Assessment

The practical difficulties stemming from the limited jurisdiction of juvenile courts and the separation of competences between juvenile court and civil courts of first instance affects also the resolution of cross-border parental responsibility cases, in the absence of proper implementing legislation as mentioned above.

The reference in Art. 42 of the Italian PIL Act to the 1961 Hague Apostille Convention, which is superseded at the international level by the 1996 Hague Child Protection Convention, has been subject to different interpretations in the legal literature. Some commentators argue that the reference should be intended to the 1996 Hague Child Protection Convention, while others maintain that the reference is still made to the 1961 Convention in the absence of any legislative amendment even after the entry into force of the 1996 Hague Child Protection Convention. In the case law, a "dynamic" interpretation of the reference is also proposed, whereby the 1996 Hague Child Protection Convention is recalled in order to define the scope of application of the previous instrument[45].

IV. SUCCESSION REGULATION

1. Description

a) European Certificate of Succession in the Italian system

Under Art. 69 Succession Regulation, the ECS shall constitute a valid document for the recording of succession property in the relevant register of a Member State. This solution represents quite a novelty for the Italian system, where the recording of mortis causa transfers are usually obtained – under Art. 2648 and 2660 Italian Civil Code – by way of submission of the acceptance of inheritance (*accettazione dell'eredità*) in the form of a declaration contained in a public deed or a notarized private agreement or a judicial decision, together with the death certificate or a notarized extract of the will. Such documents may be replaced by the ECS, which does not require to be legalized – as in contrast provided domestically by Art. 2657 (2) Italian Civil Code – and it is not subject to deposit under Art. 106 no. 4 of Law 16 February 1913 no. 89.

Interestingly, the ECS has a direct effect on the functioning of different provisions of the Italian Civil Code. Two examples are worth to be mentioned. First, with regard to purchases made by the apparent heir or legatee, under Art. 534 and 2652 no. 7 Italian Civil Code, it is not necessary for the third party purchaser to prove good faith if the indication of the apparent heir or legatee results from the ECS. Second, the application for ECS (on the ground that the applicant is heir of the deceased) substantiates per se an act of acceptance of the inheritance estate under Art. 475 Italian Civil Code. It follows that the heir who wants to accept the inheritance with benefit of inventory (*beneficio di inventario*), i.e. to avoid confusion of the heir's estate with the deceased's one, has the burden to make the relevant acceptance before the application for ECS.

[45] E.g. Tribunale di Roma, 28.09. 2016, No. 17955, ITF20160928; Tribunale di Roma, 14.10.2016, ITF20161014b.

b) Implementation of the Succession Regulation in Italy and lack of coordination with the notarial law

The Italian legislator implemented Art. 78 Succession Regulation and communicated the relevant information regarding the authorities competent to issue the ECS and the redress procedures referred to in Art. 72. Art. 32 of Law 20 October 2014 No 161, in particular, has provided notaries with the power to issue ECS under Art. 62 et seq. Succession Regulation, while any redress procedure against the issuance of the ECS must be decided by the ordinary court (*tribunale*) of the place of residence of the notary, sitting with a three-judge bench (*in composizione collegiale*), upon a complaint (*reclamo*) under Art. 739 Italian Civil Procedural Code.

In contrast, the Italian legislator has decided not to provide for rules of coordination between the Succession Regulation and the domestic notarial legislation. It follows that the gaps in the Regulation may be filled only to a limited extend by way of reference thereto (e.g. the registration of ECS in the notary's repertoire of *inter vivos* deeds and its preservation under Art. 61 and 62 of Law 16 February 1913 No. 89).

c) Coordination with the national certificate of inheritance

It is also worth mentioning that the Italian legislator has provided some coordination with the rules governing the certificate of inheritance, which is still provided for the region Trentino-Alto Adige according to the provisions of Royal Decree 28 March 1929 No. 499, where the land register system (*sistema tavolare*) is in force. The latter provisions continue to apply in those territories, where the institution of the certificate of inheritance ensures that the acquisition in favour of the heir takes place by virtue of a judicial title or to give certainty to the status of heir about his status as heir.

In this regard, in a case related to the ECS issued by an Italian notary regarding the succession of an Italian national with immovable property in Italy and Slovenia, the Tribunal of Trieste held that, under Art. 62 and 69 Succession Regulation, the ECS could well justify the registration in Italy of the transfer of inheritance rights in the land register and the possibility of claiming inheritance rights, thus providing the ECS with the same legal effect of national certificate granted by a national authority under Royal Decree of 28 March 1929 No. 499[46].

2. Assessment

The choice to grant to the notaries the authority to issue ECS is consistent with the legislator's favour for an ever-increasing resort to out-of-court procedures and with the role already played by notaries in other fields of non-contentious jurisdiction (*volontaria giurisdizione*). This solution deserves approval in the light of the functions already performed by notaries in matters of succession and their high degree of preparation and specialisation in this matter. However, the implementation legislation could have been more detailed and a proper coordination with the notarial law was actually necessary (for instance, concerning investigation powers of the notaries).

[46] Tribunale di Trieste, 08.05.2019, ITF20190508.

V. PROPERTY REGIMES REGULATIONS

1. Description

a) Scope: coordination with Italian PIL Act

As is known, Regulations no. 1103/2016 and no. 1104/2016 apply as from 29 January 2019. As for legal proceedings instituted before, after the recent legislative implemented by Law 20 May 2016 no. 76 which introduced registered partnership for same-sex couples, the Italian PIL Act provides a three-pronged approach: (i) Art. 29 and 30 regulates matrimonial property regimes; (ii) Art. 32-*ter* (4) and 32-*quinquies* regulates property regimes for registered partnerships; (iii) Art. 30-*bis* regulates the law applicable to cohabitation agreements. Under the first two items, in particular, the property regime is subject to: (i) the spouses' common national law; (ii) the law of the State before whose authorities the civil union was formed; or (iii) the law of the state in which matrimonial/partnership life is prevailingly located. The couple may also choose that their property regime should be governed by the law of a state of which at least one of them is a citizen or by the law of a state in which at least one of them resides.

The Italian PIL Act will continue to apply in any case, also after 29 January 2019, to (i) cohabitation agreements; (ii) *lis pendens* rules with third States (Art. 7); and (iii) recognition and enforcement of decisions delivered by courts of third States (Art. 64 et seq.), where this includes also Member States which did not participate to the enhanced cooperation.

b) Scope: the impact of domestic legislation on the applicability of the Property Regimes Regulations

The Matrimonial Property Regimes Regulation has expressly renounced to provide for any definition of marriage and does not apply to the preliminary questions such as the existence, validity or recognition of a marriage (Recitals 17 and 21). Both issues continue to be covered by the national law of the Member States. This choice has an impact on the functioning of jurisdictional rules, from one side, (e.g. Art. 9 (1)), and the rules on recognition and enforcement of decisions, from the other side (e.g. Recital 64). A similar problem also concerns Partnership Property Regimes Regulation, which provides for a definition of registered partnership, but does not regulate the preliminary question of the validity and recognition of the partnership. Both Regulations are therefore in principal neutral to the choices made by national legislators as to the introduction of same-sex marriages and registered partnership, with no obligation to provide any such institutions. However, such framework may have a significant impact in the Italian legal order, which only allows same-sex couples to enter into a registered partnership. From the foregoing, it follows that Italian courts will most likely apply the Partnership Regulation to those same-sex marriages celebrated abroad which are recognized in Italy as registered partnerships under Art. 32-*bis* of the Italian PIL Act.

c) Procedural aspects of Italian system

The statutory property regime for married couples and registered partners is the community of property (Art. 159 Italian Civil Code and Art. 13 of Law 20 May 2016 no. 76), while it is always possible to opt for the separation of property regime. In cases of dissolution of the (statutory) community of property regime, the assets and liabilities will be divided equally, after having completed any outstanding

reimbursements or repayments (Art. 191 et seq. Italian Civil Code). In the case of legal separation, the communion between the spouses shall be dissolved when the President of the Court authorises the spouses to live separately. In such case, pursuant to Decree of the President of the Republic no. 396/2000, judgments pronouncing the personal separation of the spouses or the approval of the consensual separation must be recorded in the marriage certificate.

If the spouses cannot find an agreement on the division of the community property, it will be determined by the judge following the procedure set forth in Art. 784 et seq. Italian Civil Procedural Code, which provides also for the possibility that division is executed by a notary public (Art. 790 and 791). In case of division due to succession, reference shall also be made to Art. 713 et seq. Italian Civil Code. Division of the community is one of the matters where court litigation must be necessarily preceded by out-of-court mediation under Legislative Decree 4 March 2010 no. 28 as a requirement of admissibility. For the purposes of the division, the assets are first estimated and then the estate portions are formed: each spouse or partner has the right to his or her share in kind of the movable and immovable property. If there are assets which cannot be divided either because they are indivisible in nature or because the division is not appropriate, they are sold and the proceeds are divided between the spouses.

More doubtful is whether also division proceedings started by creditors in the context of an enforcement procedure against an immovable within the community regime (*giudizio di divisione endoesecutiva*) under Art. 600 Italian Civil Procedural Code fall under the scope of Regulations no. 1103 and 1104 or whether, in contrast, they fall under the national law applicable as *lex loci executionis*.

2. Assessment

The legislative reform which introduced registered partnerships for same-sex couples and the consequent amendments to the Italian PIL Act, with different (recognition) rules for marriage (between persons of different sexes; between persons of the same sex where at least one is an Italian citizen; and between persons of the same sex where the spouses are both foreign citizens) and same-sex non-marital unions (between Italian citizens habitually resident in Italy; between an Italian citizen and a foreign citizen or between foreign citizens) may play an important role for the characterization under the *lex fori* of the relevant relationship.

VI. ENFORCEMENT OF JUDGEMENTS

1. Description

a) <u>General remarks on the enforcement of foreign judgments in Italy</u>

Enforcement of foreign decisions generally consists of the enforcement of an obligation to pay a sum of money. This is the case for maintenance obligations, but it can also occur for the dissolution of property regimes in case of possible outstanding repayments or reimbursement to be made. In the latter case, it is also possible that the division of the assets of the former spouses or partners may result in the enforcement of decisions where the applicant request to deliver an immovable property or to record the entitlement in the register of rights in immoveable or moveable property.

The regime for the circulation of foreign decisions is specific to each Regulation, with the different degrees of openness. Under the Property Regimes Regulations, for instance, enforcement may be started only after the obtainment of a declaration of enforceability in the addressed State (*exequatur*), which in Italy must be requested before the Court of Appeal of the place in which the judgment must be enforced. The first phase follows the same rules applicable for order of payments (*fase monitoria*), while the subsequent opposition proceeding – pursuant to Art. 30 of Legislative Decree 1 September 201 no. 150 – shall follow the rite for summary proceedings (*procedimento sommario di cognizione*) provided by Art. 702-*bis* et seq. Italian Civil Procedural Code.

b) Procedural aspects of Italian enforcement system

The Italian Civil Procedural Code deals with the enforcement proceedings in its third book (Art. 434–632) and provides for three types of enforcement proceedings: (i) enforcement of an obligation to pay a sum of money; (ii) enforcement of an obligation to deliver a movable or immovable property; and (iii) enforcement of an obligation to perform (or not to perform) a specific act. Any enforcement must be necessarily preceded by an injunction (*precetto*) on the debtor to comply within a deadline of at least 10 days and a warning that failure to do so will result in forced execution in accordance with Art. 480 Italian Civil Procedural Code.

The most relevant of the three ordinary types of enforcement is surely the enforcement of an obligation to pay a sum of money, which is carried out through the distraint and forced liquidation of assets belonging to the debtor, with the following distribution of the proceeds to the creditors (Art. 491-512 Italian Civil Procedural Code). The proceeding for delivery of property (Art. 605–611) is mainly conducted by the bailiff, who can proceed with the enforcement without judicial intervention, while the judge is called upon only to decide any difficulties that may arise.

The debtor is always entitled to raise objections against the creditor's right to enforcement (*opposizione all'esecuzione*) under Art. 615-616 Italian Civil Procedural Code or against particular acts of enforcement (*opposizione agli atti esecutivi*) under Art. 617–618 thereof. Both kinds of objections constitute independent proceedings, which must be brought before the same court in which the enforcement proceeding is pending.

2. Assessment

The Italian regime for enforcement does not raise complexities due to the cross-border nature of the underlying enforceable obligation. In some cases, the internal procedure to challenge the enforcement might be used by the debtor to slow down the enforcement process also in those cases where exequatur is not required, and foreign decisions are in principle directly enforceable in Italy.

G. LUXEMBOURG

I. IMPLEMENTATION LAWS ADOPTED FOR THE EU REGULATIONS IN FAMILY AND SUCCESSION MATTERS

1. Description

The Luxembourgish legislator has enacted implementation laws for all EU regulations in family and succession matters. The implementation rules primarily concern the cross-border recognition and enforcement of decisions, settlements, and authentic instruments under these EU regulations. Additional provisions have been introduced to implement the specificities of certain regulations, such as the nomination of the Central Authority or the involvement of notaries with regard to questions on immovable property.

2. Brussels II bis Regulation and Rome III Regulation

A particular subsection in the Luxembourgish Civil Procedure Code (*Nouveau Code de Procédure Civile*) was first introduced in the 1990s to complement the legal framework for cross-border child abduction proceedings set up by the 1980 Hague Child Abduction Convention and, further on, of the Brussels II bis Regulation. This section (Art. 1108-1116 Civil Procedure Code) deals with the judicial cooperation in the field of parental responsibility and mainly sets up additional procedural rules for petitions and actions lodged under the 1980 Hague Child Abduction Convention and the Brussels II bis Regulation. Notably, it defines the local jurisdiction for return orders and their enforcement, as well as the Office of the Prosecutor General as the competent Central Authority.[47]

The Rome III Regulation has not explicitly been the object of an implementation law. However, the Civil Procedure Code refers to the provisions on choice of law-agreements under the Rome III Regulation in the context of mutual consent divorces. According to Art. 1007-13 (3) no. 5 Civil Procedure Code, the spouses have to include the choice-of-law agreement in their petition for divorce or otherwise include the choice-of-law clause in the divorce agreement. It should be noted that the Luxembourgish legislator has not taken the opportunity to introduce stricter formal requirements for choice-of-law agreements under Art. 7 (2) Rome III Regulation.

3. Succession Regulation

Already before the official applicability of the Succession Regulation (17 August 2015), the Luxembourgish legislator enacted an implementation law[48] introducing a

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[47] This information is also available via the European e-Justice Portal: https://e-justice.europa.eu/content_matrimonial_matters_and_matters_of_parental_responsibility-377-lu-fr.do?member=1.

[48] Loi du 14 juin 2015 relative à la mise en application du règlement (UE) n° 650/2012 du Parlement européen et du Conseil du 4 juillet 2012 relatif à la compétence, la loi applicable, la reconnaissance et l'exécution des décisions, et l'acceptation et l'exécution des actes authentiques en matière de successions et à la création d'un certificat successoral européen et modifiant a) la loi modifiée du 25 septembre 1905 sur la transcription des droits réels immobiliers et b) le Nouveau Code de procédure civile, available at: http://legilux.public.lu/eli/etat/leg/loi/2015/06/14/n2/jo.

few specific changes to the domestic legal framework for succession matters. First, the legislator considered it necessary to complement the private international law rule on the adaptation of *foreign rights in rem* (Art. 31 Succession Regulation) with regard to immovable assets. For this purpose, the implementation law stipulates that the notaries are competent to carry out such adaptations. This attribution of competence appears to be coherent with the pre-existing framework, which attributes succession matters concerning immovable properties to the notaries.

Furthermore, the implementation law followed a coherent approach to complete the provisions in the Civil Procedure Code that regulate the recognition and enforcement of foreign titles under the EU instruments. This subsection of the Civil Procedure Code was supplemented with a new provision (Art. 685-2*bis*) stipulating that foreign decisions on succession matters shall be declared enforceable in Luxembourg according to the modalities laid down in the Succession Regulation.

4. Property Regimes Regulations

Half a year before the applicability of the Matrimonial Property Regimes Regulation and the Regulation on Property Consequences of Registered Partnerships (29 January 2019), the Luxembourgish legislator enacted an implementation law introducing minor changes to the domestic legal framework for property regimes.[49]

Concerning the procedural framework, the above-mentioned subsection in the Civil Procedure Code on the recognition and enforcement of foreign titles was supplemented with a new provision (Art. 685-2*ter*) stipulating that foreign decisions on property regimes shall be declared enforceable in Luxembourg according to the modalities laid down in the respective Regulation.

Furthermore, in accordance with the implementation of the Succession Regulation, the implementation law for the Matrimonial Property Regimes Regulation and the Regulation on Property Consequences of Registered Partnerships addressed the adaption of *foreign rights in rem* under Art. 29 of these Regulations and attributed the functional competence for such adaptations to the notaries.

5. Maintenance Regulation

The implementation law concerning the Maintenance Regulation was enacted in early August 2011, i.e., less than two months after the Regulation started to be applicable.[50] First of all, this law introduced new provisions in the Civil Procedure Code (Art. 685-2 and 685-3) on the cross-border recognition and enforcement of maintenance

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[49] Loi du 1er août 2018 relative à la mise en application du règlement (UE) 2016/1103 du Conseil du 24 juin 2016 mettant en œuvre une coopération renforcée dans le domaine de la compétence, de la loi applicable, de la reconnaissance et de l'exécution des décisions en matière de régimes matrimoniaux et du règlement (UE) 2016/1104 du Conseil du 24 juin 2016 mettant en œuvre une coopération renforcée dans le domaine de la compétence, de la loi applicable, de la reconnaissance et de l'exécution des décisions en matière d'effets patrimoniaux des partenariats enregistrés; et modifiant le Nouveau Code de procédure civile en y ajoutant un article 685-2ter, available at: http://legilux.public.lu/eli/etat/leg/loi/2018/08/01/a788/jo.

[50] *Loi du 3 août 2011 portant mise en application du règlement (CE) n° 4/2009 du 18 décembre 2008 relatif à la compétence, la loi applicable, la reconnaissance et l'exécution des décisions et la coopération en matière d'obligations alimentaires, modifiant le Nouveau Code de procédure civile*, available at: http://legilux.public.lu/eli/etat/leg/loi/2011/08/03/n5/jo.

decisions under the Regulation. These provisions take over the distinction drawn by the Regulation between decisions given in a Member State bound by the 2007 Hague Maintenance Protocol and decisions given in a Member State not bound by said Protocol. For decisions falling under the first category, the implementation rule mainly reproduces the principle of 'automatic recognition' and the content of Art. 19 Maintenance Regulation on the right to apply for a review. It only clarifies the coordination between the proceedings in the state of enforcement and the review proceedings in the state of origin. According to Art. 685-3 (2) Civil Procedure Code, the Luxembourgish court of enforcement shall stay its enforcement proceedings if the debtor applied for review in the state of origin and if he/she proves that he/she actually filed the application. This provision also stipulates that the debtor is obliged to inform the court of enforcement about the review's state of progress.

For decisions given in a Member State *not* bound by the 2007 Hague Maintenance Protocol, Art. 685-2 Civil Procedure Code only refers to the modalities laid down in the Maintenance Regulation for the declaration of enforceability.

In addition to these procedural aspects, the implementation law nominates the Office of the Prosecutor General (*Procureur général d'Etat*) as the Central Authority for the purposes of Art. 49 et seq. Maintenance Regulation. Also, in accordance with Art. 61 Maintenance Regulation, the implementation law contains detailed provisions on access to information and treatment of personal data for the purposes of the tasks carried out by the Central Authority under the Regulation.

6. Assessment

First of all, the speedy reaction of the Luxembourgish legislator to enact implementation rules should be mentioned as a positive approach. Notably, this timing allows a smooth transition to the new legislation and permits practitioners to inform themselves about the legislative changes at an early stage.

With respect to the recognition and enforcement of foreign titles under the EU regulations in family and succession matters, the implementation laws adopted by the Luxembourgish legislator follow a consistent approach by incorporating explicit references to these Regulations in a specific section of the Civil Procedure Code. However, albeit following a coherent form, these provisions mainly do not go beyond their referential function. Therefore, it could be argued that these rules do not have any added value for the application of the Regulations, as they do not complement the recognition and enforcement framework of these EU instruments in its substance. For instance, these implementation provisions do not systemically specify the functional or subject-matter jurisdiction, which is left to domestic law within the EU regulations. However, the Luxembourgish legislator has adopted the approach mentioned above for all EU regulations concerning the judicial cooperation in civil matters, which guarantees the coherence and readability of the respective section of the Civil Procedure Code.

II. INFORMATION SERVICES FOR THE PUBLIC AND PRACTITIONERS

1. Description

In addition to the above-mentioned implementation laws which introduce explicit references to the applicable EU instruments in the Civil Procedure Code, practitioners

and parties involved in cross-border family and succession cases are informed about the relevant EU Regulations via an additional channel. The Luxembourgish Ministry of Justice provides on its website several links to and compendia on domestic laws and EU law (*recueils de lois*).[51] One specific compendium compiles all EU instruments enacted within the EU Judicial Cooperation in Civil and Commercial Matters. This compilation contains several pertinent materials: First, it refers to useful links, such as the e-Justice Portal, the European Judicial Atlas and the case-law database of the European Court of Justice. Second, it provides an overview of all EU regulations hitherto enacted as well as direct hyperlinks to the full text of the EU regulations, of interconnected international instruments, and to the respective standard forms provided for in the regulations. The compendium is publicly available and it is updated continuously when new EU instruments are being published.[52]

2. Assessment

Unlike France, where the Ministry of Justice published thoroughly drafted circulars on the EU regulations in family and succession matters aimed at informing judges and practitioners, the Luxembourgish Ministry of Justice only published the above-mentioned compendium, which does not entail detailed information on the content of the EU regulations. However, it provides for a good overview of these instruments as well as useful links and practical information tools. Therefore, it may also be considered as a mechanism to foster familiarity with these EU instruments and to support their correct application in practice.

[51] Cf. 'Codes et recueils de lois', available at: https://justice.public.lu/fr/legislation/codes.html#.

[52] Cf. 'Coopération judiciaire en matière civile et commerciale au sein de l'Union européenne', available at: http://data.legilux.public.lu/file/eli-etat-leg-code-cooperation_judiciaire-20170901-fr-pdf.pdf.

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H. SPAIN

It is worth underlining that the Spanish legislator has chosen to implement some of the EU regulations regarding family law and successions – through the so-called Final Dispositions –, but also it has adopted mere references to the prevalence of the European instruments international conventions over the national law, without any implementation. In particular, this report refers to the EU regulations as displayed in the Introduction (A.II.3.).

The Spanish PIL system is defined in any case by taking as a standpoint the prevalence of the legal sources as laid down after the Amsterdam Treaty: European regulations, international conventions and national laws. In this regard, Art. 21 of the Law 6/1985 on the Judiciary (*Ley orgánica del poder judicial*) as reformed by the Law 7/2015 of 21 July[53] states the basis of international jurisdiction in Spain in the sense that the Spanish civil courts will hear all the claims that arise within Spanish territory in accordance with the international conventions and treaties to which Spain is a party, the regulations of the EU and Spanish laws.

In the same sense, several conflict of law rules of the Spanish Civil Code have introduced a specific reference to the abovementioned prevalence of sources in matters as divorce, separation and marriage annulment, children protection and parental responsibility, maintenance obligations and successions. Many of them will have a very residual role in practice in international cases, but they can assume some function in the framework of internal conflict rules taking into account the interregional character of Spain. In this regard, there are several positions defended in Spain, as this report states later.

Other relevant modifications occurred in the summer of 2015 that can be mentioned in this field as the Law 29/2015, 30 July, on International Legal Cooperation (*Ley de cooperación jurídica internacional*)[54], as well as the Law 42/2015, 5 October, that reforms the Law 1/2000, 7 January, of civil procedure[55].

I. MATRIMONIAL MATTERS

1. International jurisdiction

On one hand, the determination of the jurisdiction of the Spanish courts in matrimonial matters will be done by taking into account the mentioned prevalence of sources.

In particular, as it has been pointed out before, Spanish civil courts will hear the claims raised in Spanish territory as established by the treaties and international conventions in which Spain is part, in the laws of the EU and in the Spanish laws. In

[53] BOE no. 175, 23.07.2015.

[54] BOE no. 182 of 31.07.2015.

[55] BOE no. 7, of 8.01.2000.

practice, the Brussels II bis Regulation and the Brussels II ter Regulation, after its entry in force, will have a prevalent role to determine the jurisdiction of the Spanish court in matrimonial cases.

Regarding its scope, it has to be said that the Brussels II bis Regulation does not deal with issues such as the grounds for divorce, the property consequences of the marriage or any other ancillary measures (cf. Recital 8 Brussels II bis Regulation). This is not coherent with legal systems such as the Spanish, where a sole judge is competent not only to dissolve the marriage, but also to rule on the liquidation of the matrimonial property regime as well as on the adjustment of the parent-child relationship to the new framework (Art. 90 and others of the Civil code).

Regarding some matters such as private divorces it is not possible in Spain to get access to the Civil Register without first having obtained a judicial resolution or a notarial deed. Although divorce is a private matter, according to Spanish law it is only possible to get a divorce if a public authority, either judicial or non-judicial (notary), is involved. Therefore, divorce in Spain cannot be labelled as private in view of the involved competent authorities.

In relation to the residual jurisdiction, the reference to domestic laws made in Art. 7 of the Regulation shall be intended, in the absence of bilateral or multilateral conventions applicable in the given case, to Art. 22 quáter (par. c) of the Law on Judiciary. The text of the provision can be found in the Annex.

2. Applicable law

The determination of the applicable law to the separation and divorce will be determined in Spain by the Rome III Regulation or international conventions in which Spain is member State as it is stated by Art. 107 of the Civil code which refers to the "rules of the European Union or Spanish Private International Law".

In any case, the marriage annulment will go on being regulated under the Art. 107 due to the exclusion of this matter from the scope of Rome III Regulation.

II. PARENTAL RESPONSIBILITY MATTERS

1. International jurisdiction

The summer of 2015 was particularly fruitful in relation to the PIL system in Spain. In this regard, many modifications took place in the field of children protection in general, and international child abduction, in particular. These modifications were made taking as reference the system of the Brussels II bis Regulation and the international conventions as the 1980 Hague Child Abduction Convention.

Regarding jurisdiction and in absence of the Brussels II bis Regulation and international convention as the 1996 Hague Child Protection Convention, Art. 22 quáter of the Law on Judiciary could be applied in a very residual place.

The reference to domestic laws made in Art. 14 of the Regulation shall be intended, in the absence of bilateral or multilateral conventions applicable in the given case, to Art. 22 quáter of the Law on judiciary.

However, following the entry into force in Spain of the 1996 Hague Child Protection Convention (from 1 January 2016), in a case involving a Contracting State of the Convention this instrument shall be referred to in order to determine whether the

Spanish court may have residual jurisdiction whenever no court of a Member State has jurisdiction pursuant to Brussels II bis Regulation.

2. Applicable law

The reference to domestic laws made in Art. 14 of the Regulation shall be intended, in the absence of bilateral or multilateral conventions applicable in the given case, to Art. 9.4 and 9.6 of the Spanish Civil Code.

However, following the entry into force in Spain of the 1996 Hague Child Protection Convention (from 1 January 2016), in a case involving a Contracting State of the Convention this instrument shall be referred to in order to determine whether the Spanish court may have residual jurisdiction whenever no court of a Member State has jurisdiction pursuant to Brussels II bis Regulation (see below, regarding internal conflict of Law in Spain).

3. Rules on child abduction

The Law 15/2015 on non-contentious proceedings (Ley 15/2015, 2 de julio, de la jurisdicción voluntaria) had introduced a new Chapter IV in the Law on Civil procedure (Ley de enjuiciamiento civil 1/2000 modified by Law 7/2015) regarding the measures taken for the restitution or return of the child in cases in which he/she has been wrongfully removed or retained in another State different to that of their habitual residence. The *Disposición final* 3ª, no. 10 of the Law on non-contentious proceedings has introduced this chapter with the new Art. 778 quáter, 778 quinquies and 778 sexties inside the special proceedings (matrimonial and minors). It has to be mentioned also the reform operated by the mentioned Ley 26/2015, 28-7, in relation to the infancy and adolescence.

The reform of child protection legislation done with the Law 15/2015 has modernized the Spanish legal system in the sense that it has attributed a contentious character to the procedural – not anymore voluntary – for the return of the child who has been illegally retained or transferred to another country. This change has been done in accordance with the Brussels II bis Regulation and the 1980 Hague Child Abduction Convention in order to promote the speed in the proceeding through the specialization and concentration of jurisdiction and the shortening of deadlines for the first instance as well as for appeal.

The modification of the LEC done through to the Law 15/2015 on non-contentious proceedings has become the best complement for the EU regulations and conventions in this field, according to Art. 778 quáter, first paragraph.

In this sense, also the Final Disposition no. 22nd of the LEC refers to the ways to facilitate the application in Spain of the Brussels II bis Regulation in relation to the Art. 11 (Recitals 6 and 7 of this Disposition according to the new drafting given by the Final Disposition no. 3rd of the Law 15/2015 on non-contentious proceedings (Recital 19)).

As the Regulation and the 1980 Hague Child Abduction Convention, the new chapter of the LEC aspires to promote the faster return of the child in two situations: a) After his wrongful abduction to Spain from another country (member of the EU or of the 1980 Hague Child Abduction Convention) in which the child had his habitual residence before this removal to Spain (Art. 778 quáter and Art. 778 quinquies LEC

(that refer to the "place of origin" and not to the place of "habitual residence"). b) After a wrongful abduction of a child from Spain – where he has his habitual residence – to another country (Art. 778 sexties).

All these changes are made to guarantee the best interest of the child according to the European Convention of Human Rights as well as the Law 1/1996 on Legal children protection (*Ley de protección jurídica del menor*) as reformed by the abovementioned Law 8/2015 of 22 July of modification of Infancy and Adolescence protection[56].

The guarantee of child best interest is reinforced by the reform operated by the Spanish LEC because it allows the Spanish judge "during the whole proceeding" to take *ex officio*, *ex parte* or *ex public prosecutor* the proper interim measures regarding the child protection according to Art. 773 (together to that foreseen by Art. 158 of the Spanish Civil Code). This new rule is coherent with the references established by the Brussels II bis Regulation in Art. 11 (3) ("the most expeditious procedures available in national law" and (4) ("adequate arrangements have been made to secure the protection of the child after his or her return").

Art. 778 quáter 5.º states very clearly that the proceeding will be urgent and preferential and it will be satisfied in a "inexcusable term of six weeks" from the child restitution or removal request" except by the presence of exceptional circumstances. In this regard, Art. 778 quinquies 2º establishes a period of 24 hours to admit the claim by the judicial secretary and, if this is not possible, the judge shall be informed to proceed within this period of time.

These rules would be in accordance with Art. 11 Hague Child Abduction Convention and Art. 11 (3) Brussels II bis Regulation. As it is known these rules have provoked many practical difficulties to meet this short deadline (except in some countries as UK, or the Netherlands, where this short deadline seems to have been possible).

The short term foreseen by all these laws will be only feasible in a framework of inter-state cooperation. This is the reason because Art. 778 quáter, Recital 7, alludes to the "direct communications" (predictably without intermediation as the International Legal Cooperation Act makes) between courts of different countries. This cooperation will be promoted by tools such as the assistance of Central Authorities involved, the already existing networks of legal cooperation, the members of the international network of The Hague Conference Judges and the liaison judges. This cooperation is supposed to be also reinforced in Spain by the abovementioned concentration of competences and specialization. Aspects that have been also emphasized by the new Brussels II ter Regulation of 25 June 2019.

Therefore, according to the new Spanish system, the coordination between the EU Regulation, the 1980 Hague Child Abduction Convention and the Spanish law will facilitate the speed in this type of proceedings. In particular:

– In cases in which the child has been illegally removed to Spain from another country the Spanish authorities shall order the immediate return of the child within the deadlines foreseen by Art. 778 quáter and 778 quinquies of the Law of

[56] BOE no. 175, 23.07.2015.

the Judiciary, except if some of the exceptions foreseen by the 1980 Hague Child Abduction Convention were proved.

– In cases in which Spain is the State where the child was living before his wrongful removal to other country and Spanish authorities have qualified this removal as "wrongful" (Art. 778 sexties), they will order his immediate return to Spain, although if the authorities of the other country had decided the contrary by operating the exceptions of The Hague Convention (this provisional decision can consequently be replaced by a definitive decision ordered in Spain).

Therefore, the speed of the proceeding is really relevant in this kind of cases and in practice will go on generating problems of interpretations in aspects as the hearing of the child that it is a very important aspect according to Art. 778 quinquies 8.º, of the Law on Judiciary.

Other practical difficulties derive from the localization of the child in international abduction cases. This explains that Art. 778 quinquies, Recital 3, states that if the child was not localized, the proceeding will be provisionally filed until he was found.

In this regard, Art. 778 quinquies Recital 5, refers to the cases in which the defendant does not appear or not delivers the child after his wrongful abduction, he will be declared in absentia, but the proceeding will go no, citing only the plaintiff and public prosecutor before the judge in a deadline "not superior to 5 days next".

Finally, the speed will be also relevant for the success of all these laws (LEC, EU Regulation and Hague Convention) in relation to the proofs that will be presented to except the return of the child who has been wrongfully removed according to the 1980 Hague Child Abduction Convention. This aspect is very important for the Art. 778 quinquies, cf. for instance Recital 7).

Finally, it has to be noted the relevance of Art. 778 sexties that probably has been drafted with two objectives: a) To declare the wrongful character of the removal or retention of the child. In this regard, several rules about the necessity of obtaining a certificate in this sense (according to the EU Regulation or The Hague Convention). b) To clarify the traditional confusion about the return of the child decision and that of the merits of the case.

III. SUCCESSION REGULATION

According to the 26th Final Disposition of Act 1/2000, on Civil Procedure, Spain has introduced a rule regarding the interplay between all the rules governing succession. This Disposition is called, in particular, "Measures to facilitate the application in Spain of the Succession Regulation of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession".

It has to be noted that the 26th Final Disposition was introduced by Law 29/2015, of 30 of July, on International Legal Cooperation in Civil Matters, that amended the Civil Procedure Act to this end[57].

[57] BOE, 31.07.2015.

IV. PROPERTY REGIMES REGULATION

As is known, Property Regimes Regulations apply as from 29 January 2019. In absence of these Regulations, the already mentioned Art. 22 quáter of the Law on Judiciary will be applied, in particular only in the specific matters of personal effects of the marriage because they are excluded of the scope of this Regulation.

In the Spanish PIL system the internal conflicts of laws are particularly relevant in all these matters to the extent that the main connecting factor, civil neighbourhood, is not registered and the mere statement by the spouses is not sufficient. There are cases in which, for instance, there is a marriage between a person from Aragon and another from Catalonia and they cannot prove their civil neighbourhood in Aragon. Sometimes there are several contradictory authentic instruments (separation v. universal community).

One of the main controversial issues in Spain deals with the interpretation of the "rules provided in the Chapter IV of the preliminary title of the Spanish Civil Code" (Art. 16.1), since the Matrimonial Property Regimes Regulation refers to the "internal conflict of law rules" (Art. 33 (1)) to designate the specific law (the common one or a regional one) that has to be applicable. Therefore, it has to be determine if the applicable law is that designated by Art. 9 of the Spanish Civil Code or by the Regulation itself. This issue is relevant not only for Spanish lawyers or practitioners, but also for the rest of the EU Member States bound by the Regulation, since they will deal with this issue when Spanish law has to be applied according to the conflict of law rules of the Regulation.

In general, there are two different positions: a) Static position (it interprets Art. 16.1 Civil Code literally): Spanish conflict of law rules dealing with matrimonial property regimes contained in the Civil Code will be applicable to determine if common civil law or regional law is applicable. This position is called as "static". b) Dynamic position: This position considers that Spanish conflict of law rules dealing with matrimonial property regimes contained in the Civil Code will be replaced by the Regulation. This position is called as "dynamic" since it considers that the reference to the "rules provided in the Chapter IV of the preliminary title of the Spanish Civil Code" is to those rules that are in force in every moment.

In relation to these two positions it is important to take into consideration several points. On the one hand, it can be considered that if the Spanish legislator has modified Art. 9.2 and 9.3 Civil Code, making a reference to the Regulation nothing new would happen. If we consider that Art. 9.4 and 9.6, modified during the summer of 2015, they mention explicitly the 1996 Hague Child Protection Convention in respect of parental responsibility and measures for the protection of children. Therefore, also on matrimonial property regimes the Spanish legislator could modify the domestic conflict of law rule in this field.

Those in favor of the static position could argue that if the Spanish legislator has not modified Art. 9.2 and 9.3 of the Spanish Civil is because it is their wish to keep its application to determine the specific Spanish law (the common one or a regional one) applicable for the matrimonial property regime. On the other hand, the "dynamic supporters" would say that there is no need to modify these articles, since the dynamic interpretation of Art. 16.1 does not require it. In practice, the article that

should be modified or clarified should be Art. 16.1 Civil code, in order to determine to which rule it refers.

On the other hand, whereas it is clear that the Regulation is applicable to international situations, one can also wonder if it is possible to apply the Regulation to internal cases. According to the title of Art. 35 Matrimonial Property Regimes Regulation, this is not applicable to internal cases. However, the title of this disposition is a little bit contradictory with its content, since by the wording "shall not be required to apply the Regulation" it can be understood the opposite: that it is possible to apply the Regulation to internal cases. Given the fact that the Art. 16.1 Civil Code is not supposed to be amended in short term and also considering that a New Spanish interregional Law would be the most suitable, but unlikely solution. In practice, Spanish legal operators would be free to apply if they would wish so.

V. ENFORCEMENT OF JUDGMENTS

In absence of EU regulations or International Conventions, the Spanish Law 29/2015 on International legal cooperation (*Ley de Cooperación Jurídica Internacional)* will be applied.

In particular, the Memorandum of this Law states that in the complex framework of international relations with many treaties and international agreements in force and many EU regulations, the Law of international legal cooperation must have a subsidiary character. This character is highlighted in Art. 2.a) which, by the primacy principle of the European Union, gives priority in this field to the rules of the EU and the treaties and international conventions to which Spain is a party.

The abovementioned 26th Final Disposition of Act 1/2000, on Civil Procedure has established Rules for the enforcement, enforceability and recognition of decisions of a Member State of the EU under the Succession Regulation. In this regard, any interested party may request that the enforceability of decisions included in the scope of the Succession Regulation be declared in Spain if they have been issued in a Member State of the EU where they are enforceable, in accordance with the procedure provided for in sections 2 to 7 of this provision.

In particular, decisions that have been issued in a Member State of the EU will be recognized in Spain without resorting to any procedure. However, in case of opposition, any interested party that claims for recognition and enforcement of such a resolution on a principal basis may request, by the same procedure provided in paragraph 1, that said resolution be recognized. If the denial of enforcement and recognition is requested as an incidental question before a court, the said court shall be competent to hear it, following the procedure established in Art. 388 et seq. of this law.

The Final Disposition of Act 1/2000, on Civil Procedure also states that the application for a declaration of enforceability will take the form of a claim in accordance with the requirements of Art. 437 of this law and shall be accompanied by an authentic copy of the decision and the certification provided for in Art. 46 (3) (b) Succession Regulation.

Once these formalities have been complied with, the judge shall immediately declare by order the enforceability of the decision without notifying and providing time for

allegations to the party against whom enforcement is sought, and without examining the grounds for refusal of recognition provided for in Art. 40 Succession Regulation.

In case of appeal before the Spanish *Audiencia Provincial* against the decision on the application for a declaration of enforceability this shall be dealt with through the formalities provided by the Act 1/2000, including rules on procedural representation and technical defense, but with several specialties. For instance, the appeal can only be based on one or several of the grounds provided for in Art. 40 Succession Regulation. The appellant shall accompany the appeal claim with all documents supporting it that (s)he deems necessary and, where appropriate, including the proposal of means of proof to be undertaken (see below, the annex of Spanish laws).

Michael Bogdan/Ulf Maunsbach

I. SWEDEN

I. INTRODUCTORY REMARKS

The relevant Swedish statutes are available in Swedish only. In the list below, we have added our own unofficial English translations within brackets of the headings of the individual instruments. Please note that there are usually two Swedish statutes implementing a single EU regulation, an Act of Parliament and Government Decree. The latter deals with technical details that under the Swedish Constitution can be regulated by the Government without approval by the Parliament. Some of the statutes have been amended while preserving their heading and number.

It is noteworthy that there are so far no published court decisions regarding the implementation legislation. To our knowledge, that legislation is uncontroversial and has not given rise to complications or differing views among Swedish legal authors.

From the outset, it may also be stated that the general impression is that the Swedish legislator adopts a workable (good) practice in relation to its task to issue complementary legislation regarding EU instruments. As a principal rule, these legislative acts are issued before the relevant EU instrument becomes applicable, meaning that the period of time between the entry into force and applicability of the EU instruments generally sufficed to adopt implementing legislation. One exception, commented below, is the implementation laws that were adopted in relation to the two Property Regime Regulations that became applicable on 29 January 2019.

II. BRUSSELS II BIS REGULATION

1. Implementation laws

– Lag (2008:450) med kompletterande bestämmelser till Bryssel II-förordningen (Act (2008:450) with Provisions Supplementing the Brussels II Regulation), issued on 5 June 2008. It replaced the prior Act, Lag (2001:394) med kompletterande bestämmelser till Bryssel II-förordningen (Act (2001:394) with Provisions Supplementing the Brussels II Regulation), issued on 31 of May 2001.
– Förordning (2005:97) med kompletteerande bestämmelser till Bryssel II-förordningen (Decree (2005:97) with Provisions Supplementing the Brussels II Regulation), issued on 26 February 2005.

2. Assessment

The Brussels II bis Regulation became (as a principal rule) applicable on 1 March 2005 and the Swedish implementation laws were adopted before that time. Hence the period of time between entry into force and applicability of the Regulation sufficed to adopt the implementing legislation. Note that there have been several Acts complementing the Brussels II Regulation (in its different shapes), the last and still applicable being the one from 2008.

III. BRUSSELS II BIS RECAST

1. Implementation laws

This Regulation will not become applicable until 1 August 2022 and there is so far no Swedish legislation implementing it.

IV. ROME III REGULATION

Rome III Regulation does not apply in Sweden and there is consequently no Swedish legislation implementing it.

V. MAINTENANCE REGULATION AND 2007 MAINTENANCE PROTOCOL

1. Implementation laws

- Lag (2011:603) med kompletterande bestämmelser till EU:s underhållsförordning och 2007 års Haagkonvention om underhållsskyldighet (Act (2001:603) with Provisions Supplementing the EU Maintenance Regulation and the 2007 Hague Maintenance Convention), issued on 26 May 2011.
- Förordning (2011:704) med kompletterande bestämmelser till EU:s underhållsförordning och 2007 års Haagkonvention om underhållsskyldighet (Decree (2011:704) with Provisions Supplementing the EU Maintenance Regulation and the 2007 Hague Maintenance Convention), issued on 9 June 2011.

2. Assessment

The Maintenance Regulation became (as a principal rule) applicable on 18 June 2011 and the Swedish implementation laws were adopted before that time. Hence the period of time between entry into force and applicability of the Regulation sufficed to adopt the implementing legislation.

VI. PROPERTY REGIMES REGULATIONS

1. Implementation laws

- Lag (2019:234) om makars och sambors förmögenhetsförhållanden i internationella situationer (Act (2019:234) on Property Relations of Spouses and Cohabitees in International Situations), issued on 2 May 2019, entered into force on 1 June 2019. Chapter 2 of this Act fills some gaps in the two Regulations, whereas the other Chapters deal with intra-Nordic situations, non-European situations and property relations of cohabiting couples.
- Förordning (2019:240) med kompletterande bestämmelser till EU:s förordningar om makars och registrerade partners förmögenhetsförhållanden (Decree (2019:240) with Provisions Supplementing the EU Regulations on Property Relations of Spouses and Registered Partners), issued on 2 May 2019, entered into force on 1 June 2019.

2. Assessment

Both Property Regulations became (as a principal rule) applicable on 29 January 2019. It is worth mentioning that the two Swedish statutes mentioned above, entered into force more than four months after that day. Hence, in this specific case it seems that the period of time between entry into force and applicability of the Regulations did not suffice to adopt the implementing legislation. There may be several reasons for this delay, and we can only speculate in this regard. One aspect that likely has had an influence is the fact that the prior Swedish legislation remains applicable in a majority of cases for many years to come and that, in connection with the adoption of the implementing legislation, the Swedish legislator chose to adopt new rules even for Nordic and non-European situations as well as for cohabitating couples. It thus

became a more multifaceted project that required a thorough investigation, resulting in a more time-consuming process. This delay cannot, of course, stand in the way of the application of the directly applicable provisions of the two Regulations.

VII. SUCCESSION REGULATION

1. Implementation laws

– Lag (2015:417) om arv i internationella situationer (Act (2015:417) on Succession in International Situations), issued on 25 June 2015. Chapter 2 of this Act supplements the EU Succession Regulation, whereas the other Chapters deal with intra-Nordic situations and with the recognition and enforcement of certain non-European decisions.
– Förordning (2015:422) med kompletterande bestämmelser till EU:s arvsförordning (Decree (2015:422) with Provisions Supplementing the EU Succession Regulation), issued on 25 June 2015.

2. Assessment

The Succession Regulation became (as a principal rule) applicable on 17 August 2017 and the Swedish implementation laws were adopted before that time. Hence the period of time between entry into force and applicability of the Regulation sufficed to adopt the implementing legislation.

VIII. PUBLIC DOCUMENTS REGULATION

1. Implementation laws

Förordning (2018:1199) med kompletterande bestämmelser till EU:s handlingsförordning (Decree (2018:1199) with Provisions Supplementing the EU Documents Regulation), issued on 20 June 2018.

2. Assessment

The Public Documents Regulation became (as a principal rule) applicable on 16 February 2019 and the Swedish implementation law was adopted before that time. Hence the period of time between entry into force and applicability of the Regulation sufficed to adopt the implementing legislation.

J. COMPARATIVE REMARKS

The national reports have shown that implementation laws indeed constitute an important bridge between European family and succession law and the domestic legal order. In lack of an uniform European court and executive system on a national level, the application of European law in general and of European family law in particular is highly dependent on the judiciary and administration of the Member States. Thus, the quantity and quality of implementation laws as defined above (A.II.2.) are highly likely to cater to or hinder the *effet utile* of European family and succession law.

The aim of these remarks is to compare the implementation laws of various Member States as presented in the national reports above, to identify parallels and particularities, and to critically discuss various matters which surfaced through the national reports. Ultimately, this section endeavors to engage in a comparative assessment and to propose suggestions for good and bad practices relating to the implementation of European family and succession law in the national legal order.

These comparative remarks focus on some of the more prominent matters addressed in the national reports. After various general observations regarding the contents and modes of implementation measures (I.), this section will discuss the distribution of European tasks amongst national courts and other authorities (II.) and shed light on the recurring theme of signposting, i.e. declaratory references in national law to the pertinent European regulation and international conventions (III.). Moreover, this section will address the manners in which Member States fill the gaps resulting from the fragmentary character of European family and succession law (IV.) and look into the informative measures taken by Members States in order to raise awareness amongst stakeholders (V.). It will conclude by summarizing and assessing the current state of implementation laws (VI.).

I. GENERAL OBSERVATIONS

1. Substantive coverage of the national implementation

The national reports have shown that the vast majority of implementation laws cover procedural aspects. Predominantly, national measures deal with the designation of competent courts or other authorities for numerous tasks stemming from European or international law, such as adjudicative jurisdiction for different types of cross-border cases, the recognition and enforcement of foreign decisions, and the issuing of forms and certificates. In general, the courts and authorities appointed by implementation laws already perform comparable functions pursuant to national law and are additionally assigned with corresponding cross-border tasks within the European and international framework. These functions will be addressed in greater detail below (II.).

2. Modalities of implementation

When it comes to the modalities of implementation, the national reports revealed considerable differences amongst Member States. While some Member States opted for conventional legislative techniques[58], such as acts of parliament or governmental

[58] E.g. Germany, Spain and Sweden.

decrees, some have taken a different approach by employing informal modes of implementation, such as circulars of a more informative nature. Some Member States, quite on the contrary, refrained from taking implementing measures altogether and rely on the pre-existing framework designed for purely domestic cases.[59] This typically involves the extrinsic application of domestic rules, e.g. by means of analogy, or the distribution of competences by informal judicial and administrative cooperation.

3. Timely or tardive implementation

The preparation of the implementation for newly introduced European legislation in the national legal order may be time-consuming, particularly when Member States employ formal legislative techniques. Additionally, it has to be borne in mind that the designated authority will have to make itself acquainted with its new tasks and will generally have to set up the necessary infrastructure and workflows, e.g. in relation with the IMI Regulation[60] (cf. Art. 13 Public Documents Regulation). For that reason, regulations in the field of family and succession law entail an implementation period between entry into force and applicability. This period ranges from one year for the Brussels II bis Regulation, which had the benefit of being based on experience with the predecessor Brussels II Regulation, to three years for the Succession Regulation, which introduced multiple novelties for most Member States.

The national reports have shown that in most cases, the implementation period sufficed for a timely adoption of national implementing measures. The minor exceptions that were observed are generally deemed to be the result of external circumstances, such as the fact that the implementing legislation was part of a broader reform of private international law[61]. Even in the instances where implementation was delayed, national legislation was adopted no later than several months after the respective regulation became applicable. For those Member States refraining from formal implementation it cannot readily be assessed whether implementation occurred in a timely manner. The risk of tardive implementation may be greater in those Member States as informal adaption of judicial and administrative practices bears the risk of commencing only after the first cases appear in practice.

II. DISTRIBUTION OF COMPETENCES

1. Central Authority

Several regulations rely on a system of Central Authorities, e.g. the Brussels II bis Regulation and the Maintenance Regulation. Therefore, Member States are required to designate the competent Central Authority for their country and the respective instrument. Member States can either set up a new entity or charge a pre-existing authority with additional tasks. In any instance, the accomplishment of the tasks is largely dependent on sufficient financial, human, and material resources. The

[59] E.g. Greece and Italy.

[60] Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation').

[61] Cf. Swedish national report.

designation and equipment of Central Authorities constitutes an important object of implementation.

2. Jurisdiction *ratione materiae* and local jurisdiction

Jurisdiction *ratione materiae* and local jurisdiction in connection with cross-border family and succession cases are accordingly dealt with in implementation laws. When it comes to jurisdiction *ratione materiae*, some Member States generally treat international cases similarly and apply the procedural provisions designed for domestic cases.[62] Other Member States explicitly designate a proper jurisdiction *ratione materiae* and means of appeal for cases involving European regulations and international conventions.[63] For instance, Member States may provide for a special appeal mechanism against decisions of the Central Authority. Finally, Member States may opt for specialization by introducing dedicated chambers or even entire courts competent for cross-border cases. Such specialized panels may have advantages and disadvantages alike. On the one hand, specialization leads to an accumulation of knowledge on and experience in relation to cross-border cases. On the other hand, it may result in an unclear delineation of jurisdiction, both when it comes to the internationality of the case itself as well as for annexing matters or temporary measures[64].

While some regulations govern both international as well as local jurisdiction (e.g. Art. 3 Maintenance Regulation "the court for the place"), other regulations merely determine the former. For example, both the Brussels II bis Regulation and the Succession Regulation mention "the courts of the Member State" in plural (cf. Art. 3 and 4 respectively) and thereby leave the matter of local jurisdiction to the Member States. The attribution of local jurisdiction can again be accomplished either by applying pre-existing domestic rules or by introducing rules governing cross-border cases. Various Member States even opted for concentrated local jurisdiction, e.g. for child abduction cases, which essentially leads to specialization of the locally competent courts.[65] Furthermore, in cases where the courts of a Member State have international jurisdiction but no local jurisdiction can be established pursuant to national law, implementation laws may designate a local residual jurisdiction.[66]

In the stage of recognition and enforcement, implementation laws mirror the requirements laid down by the pertinent regulation which are often significantly lower than the conditions under which decisions from third States are recognized and enforced. In addition, most regulations do not contain provisions on enforcement jurisdiction. Therefore, national implementation laws have to lay down the situations in and conditions under which foreign decisions are enforced in the Member State in question.[67] In addition, assuming a Member State indeed exercises enforcement

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[62] Cf. Greek and Italian national reports.

[63] Cf. French and German national reports.

[64] Cf. Croatian national report.

[65] C.f. Croatian, German, Italian, and Spanish national reports.

[66] Cf. German national report.

[67] Cf. Spanish national report.

jurisdiction, the competent authority and the modes of enforcement will have to be determined.

3. Forms and certificates

The regulations in the area of European family and succession law introduced numerous forms and certificates, either annexed to the respective regulation (e.g. to the Brussels II bis Regulation) or included in a European implementing regulation as is in the case of the Succession Regulation[68]. Therefore, national implementation laws often designate the authority competent for issuing and, where applicable, correcting these forms and certificates. Even within an authority, it may be advisable to precisely determine the officer in whose remits the matter falls. For example, in one Member State it appears to be unclear whether the judge himself or the court advisor is competent for issuing a certain document.[69]

Particularly in connection with the ECS, Member States may be confronted with foreign modes of acquisition of property unknown in their national legal orders. Examples are the acquisition of property without prior legalization of the acceptance of inheritance[70] or the direct acquisition of property by means of a legacy by vindication while the legal order affected is only acquainted with legacies by damnation[71]. National authorities, in these cases, are likely to be hesitant to act in accordance with the ECS as such a course of action would make superfluous the formalized procedure laid down by national law. Nonetheless, European instruments such as the ECS prevail over national particularities as is evidenced by the CJEU's judgment *Kubicka*-case.[72] For legal operators and affected citizens, it may be advantageous and more expedient when national legislators subsequently adopt codifying implementation laws as these may reduce legal uncertainty und complexity.

4. Special procedures

The regulations occasionally contain procedural mechanisms with which some Member States may not be familiar. A notable example is the *forum conveniens* rule of Art. 15 Brussels II bis Regulation which allows a competent court to refer the case to a court of another Member State better placed to hear the case. As such a doctrine of *forum conveniens* is traditionally rather unknown in civil law jurisdictions,[73] competent courts appear to be reluctant to make use of this provision. A search in the EUFams II case law database confirms that in the vast majority of cases in which Art. 15 Brussels II bis Regulation played a role, the transfer of jurisdiction was indeed

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[68] Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

[69] Cf. Croatian national report.

[70] Cf. Italian national report.

[71] CJEU, 12.10.2017, C-218/16 (*Kubicka*).

[72] CJEU, 12.10.2017, C-218/16 (*Kubicka*).

[73] Cf. explicitely Croatian national report.

declined.[74] Against this background, national implementation laws may provide valuable guidance on the practical application of unknown procedural mechanisms.

While expedited procedures are not entirely unknown in most Member States, European family law occasionally requires particularly expedient proceedings. For instance, Art. 11 (3) Brussels II bis Regulation calls for a decision on the return of the child in abduction cases no later than six weeks after the application for the return was lodged. Contrary to interim decisions or summary proceedings in national law where the court only takes temporary measures and subsequently decides again on the matter in the main proceedings, the court in child abduction cases takes a definitive decision on the return of the child and leaves the final decision on parental responsibility to the foreign court. Against this background, implementation laws must strike a balance between expediting proceedings and safeguarding substantively tolerable outcomes. This may require Member States to lower thresholds for proper service of documents, for the parties' rights to be heard, and other formalities of the proceedings.[75]

III. SIGNPOSTING

The national reports have shown that various Member States employ the legislative technique of "signposting".[76] Signposting can be understood as various forms of declaratory references in national implementation laws to the pertinent European regulation und international conventions. The legal framework in family and succession matters consists of a multitude of European and international instruments as well as domestic rules and is therefore characterized by a high degree of complexity. Against this background, the search for the pertinent provision can be troublesome and questions of demarcation as well as interplay are likely to arise. The aim of signposting is to direct legal operators to the relevant legal sources and structure their thought process. Ultimately, signposting is an important mechanism for the reduction of complexity. It should, however, be borne in mind that signpost provisions, at least when it comes to European regulations, are of a merely declaratory nature as regulations prevail over national law on the basis of the supremacy of European law and the direct applicability of regulations (cf. Art. 288 (2) TFEU).

Two major forms of signposting can be observed. Some Member States employ this legislative technique in a more general manner. The national private international law act may contain, typically at the very beginning, an enumeration of European regulations and international conventions in order to guide the legal operator through the multi-layered system of private international law.[77] Such an enumeration can be exhaustive or non-exhaustive. An important advantage of exhaustive enumerations is that legal operators can exclusively rely on the signpost and may for this purpose refrain from consulting additional legal literature. From the legislative perspective, however, a disadvantage of such an exhaustive signpost is that it forces the legislator to continuously keep the provision up to date. This will generally requires repetitive

[74] http://www2.ipr.uni-heidelberg.de/eufams/index.php?site=entscheidungsdatenbank.

[75] Cf. Croatian and Spanish national reports.

[76] E.g. Croatia and Germany.

[77] Cf. German national report.

formal legislative measures for each new instrument. Where the legislator fails to do so, the reliability of the signpost is undermined.[78] For those reasons, Member States tend to employ non-exhaustive signposts which in turn bears the disadvantage that legal operators will nonetheless have to consult secondary legal sources. A general critique regarding signposting concerns the fact that this legislative technique results in redundancies and lacks added value.[79]

In addition, some Member States make use of signposting for specific substance matters.[80] For instance, a provision of the national private international law act may refer the legal operator for questions of succession to the Succession Regulation. Insofar, as this Regulation does not apply, a domestic conflict rule is provided. This method is particularly helpful when it comes to the search for the pertinent rules in the case at hand, yet it may potentially distracts the legal operator from the assessment of preliminary questions and the substantive scope of the instrument within which the case at hand may not fall.

IV. GAP-FILLING

While domestic provisions with a gap-filling function, by their very nature, do not implement specific regulations, they cater greatly to the actual functioning of the legal framework of family and succession law as the pertinent regulations are of a fragmentary character. Such provisions can therefore be considered as implementation laws in a broader sense. Gap-filling may be particularly necessary where regulations exclude specific matters or preliminary questions from their substantive scope.

In general, three methods of gap-filling can be observed where European regulations do not apply. Firstly, a Member State may opt for a proper domestic rule which materially deviates from the rule provided by the non-applicable regulation. For example, while the Succession Regulations relies on the notion of habitual residence as a connecting factor, the gap-filling provision applying insofar as the Succession Regulation is not applicable, may adhere to the principle of nationality. Secondly, the gap-filling provision may regardless of its non-applicability refer to the regulation which is then to be applied by virtue of national law. In the previous example, the domestic gap-filling provision may refer to the Succession Regulation despite its non-applicability pursuant to European law.[81] Thirdly, national law may declare a regulation applicable in principle, be it with certain modifications. For instance, in the aftermath of the *Sahyouni*-decision, a national legislator may, in principle, declare the Rome III Regulation applicable to all forms of private divorces, yet with the modification that instead of Art. 10 and 12 Rome III Regulation, the domestic concept of *ordre public* shall apply.[82]

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[78] Cf. Croatian national report.

[79] Cf. Luxembourgish national report.

[80] Cf. Croatian, Luxembourgish, and Spanish national reports.

[81] Cf. German national report.

[82] Cf. German national report.

The second form of gap-filling entails a reference to the regulation which will have to be applied either directly by virtue of European law or indirectly by virtue of domestic law. This form of gap-filling, which also entails signposting, considerably reduces complexity and promotes legal certainty. While the third form of gap-filling is accordingly accompanied by signposting, it may not perform the function of reduction of complexity as the source of the applicability will have to be established nevertheless.

V. INFORMATION CAMPAIGNS

Informative measures can complement the implementation strategy of a Member State. These measures may entail newsletters, updates, circulars, and announcements on newly introduced instruments.[83] Moreover, some Member States provide additional information, e.g. in the form of an online compendium with useful weblinks.[84] The aim of such informative measures is to raise awareness of novelties relating to the legal framework of European and international family and succession law amongst stakeholders, e.g. judges, state officers, lawyers, and notaries. In spite of their non-binding character, such informative measures play an important role when it comes to the factual implementation as legal professionals may lack familiarity with newly introduced instruments.[85]

VI. SUMMARY AND OVERALL ASSESSMENT

Substantive coverage: Implementation laws mainly cover procedural aspects, such as the designation of competent courts and authorities.

Modalities: Member States employ a wide variety of implementation strategies, ranging from conventional legislation to informal mechanisms to no designated implementing measures whatsoever.

Timeframe: The length of the period between the entry into force and the applicability of new regulations suffices in the vast majority of instances for Member States to adopt implementation laws in due time.

Distribution of competences:

Central Authorities: The designation and sufficient equipment of Central Authorities constitutes an important object of implementation laws.

Jurisdiction: Implementation laws often contain provisions relating to jurisdiction *ratione materiae* as well as to local jurisdiction for international cases. On the contrary, provisions on enforcement jurisdiction especially designed for cross-border cases are occasionally searched for in vain. Furthermore, some Member States have opted for specialization and concentration within the judiciary for international cases which may likely entail learning effects, accumulation of knowledge, and economies of scale.

Forms and certificates: The European framework of family and succession law heavily relies on various forms and certificates which requires Member States to distribute competences amongst national authorities in a precise manner.

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[83] Cf. French, Greek, and Luxembourgish national reports.

[84] Cf. Luxembourgish national report.

[85] Cf. French, Greek, and Luxembourgish national reports.

Special procedures: European family law contains provisions on special procedures, such as a *forum conveniens* rule and heavily expedited proceedings in child abduction cases. For these special procedures, national courts, which are often not acquainted with such proceedings, are in need of additional guidance and national procedural measures. These could be provided by implementation laws.

Signposting: Signposting entails various forms of declaratory references in national implementation laws to pertinent European and international conventions. Depending on the actual conception of such rules, signposts may reduce complexity by steering the legal operator through an ever-expending European and international framework. Against this background, signposting efforts by national legislators are generally to be welcomed.

Gap-filling: Gap-filling may be necessary where regulations deal with a substance matter in principle but exclude specific issues or preliminary questions from their substantive scope. In such a situation, Member States possess various options to fill these gaps. A good legislative practice could be to adopt a domestic provision referring to the regulation even where it is not applicable *per se*.

Informative measures: Measures aimed at informing legal operators on European initiatives in the field of family and succession law may complement the implementation strategy of a Member State. Informative measures play an important role when it comes to the factual implementation.

Overall assessment: National implementation laws are an important intermediary between European and international family and succession law on the one hand and domestic legal orders on the other hand. As evidenced by this report, implementation laws appear in many shapes and sizes. Member States have adopted diverging implementing approaches and have managed to find workable solutions. While the current national implementation framework constitutes a solid foundation, the exchange of good practices and mutual learning can significantly contribute to an increasingly effective and efficient application of European family and succession law.

ANNEX: LEGAL PROVISIONS AND TRANSLATIONS

Marcel Zühlsdorff

I. GERMANY

English translations of the IntFamRVG are available via the following link:

http://www.gesetze-im-internet.de/englisch_intfamrvg/index.html

English translations of the AUG are available via the following link:

http://www.gesetze-im-internet.de/englisch_aug/index.html

1. § 2 IntErbRVG

Original	Translation
(1) Das Gericht, das die Verfahrensparteien in der Gerichtsstandsvereinbarung bezeichnet haben, ist örtlich ausschließlich zuständig, sofern sich die internationale Zuständigkeit der deutschen Gerichte aus den folgenden Vorschriften der Verordnung (EU) Nr. 650/2012 ergibt:	(1) The court specified by the parties in the choice of court agreement shall have exclusive local jurisdiction to the extent that the international jurisdiction of the German courts is based on the following provisions of Regulation (EU) No. 650/2012:
1. Artikel 7 Buchstabe a in Verbindung mit Artikel 6 Buchstabe b Alternative 1 und mit Artikel 5 Absatz 1 Alternative 1 der Verordnung (EU) Nr. 650/2012 oder	1. Article 7 letter a in combination with Article 6 letter b alternative 1 and with Article 5 section 1 alternative 1 of Regulation (EU) No. 650/2012 or
2. Artikel 7 Buchstabe b Alternative 1 in Verbindung mit Artikel 5 Absatz 1 Alternative 1 der Verordnung (EU) Nr. 650/2012.	2. Article 7 letter b alternative 1 in combination with Article 5 section 1 alternative 1 of Regulation (EU) No. 650/2012.
(2) Ergibt sich die internationale Zuständigkeit der deutschen Gerichte aus Artikel 7 Buchstabe c der Verordnung (EU) Nr. 650/2012, ist das Gericht örtlich ausschließlich zuständig, dessen Zuständigkeit die Verfahrensparteien ausdrücklich anerkannt haben.	(2) Insofar as the international jurisdiction of the German courts is based on Article 7 letter c of Regulation (EU) No. 650/2012, the court shall have exclusive local jurisdiction whose jurisdiction was explicitly accepted by the parties.
(3) Ergibt sich die internationale Zuständigkeit der deutschen Gerichte aus Artikel 9 Absatz 1 der Verordnung (EU) Nr. 650/2012 in Verbindung mit den in den vorstehenden Absätzen aufgeführten Vorschriften der Verordnung (EU) Nr. 650/2012, ist das Gericht, das seine Zuständigkeit nach den Absätzen 1 oder 2 ausübt, weiterhin örtlich ausschließlich zuständig.	(3) Insofar as the international jurisdiction of the German courts is based on Article 9 section 1 of Regulation (EU) No. 650/2012 in combination with the provisions of Regulation (EU) No. 650/2012 listed in the previous sections, the court exercising its jurisdiction pursuant to section 1 or 2 shall continue to have exclusive local jurisdiction.

(4) Ergibt sich die internationale Zuständigkeit der deutschen Gerichte aus anderen Vorschriften des Kapitels II der Verordnung (EU) Nr. 650/2012, ist das Gericht örtlich zuständig, in dessen Bezirk der Erblasser im Zeitpunkt seines Todes seinen gewöhnlichen Aufenthalt hatte. Hatte der Erblasser im Zeitpunkt seines Todes seinen gewöhnlichen Aufenthalt nicht im Inland, ist das Gericht örtlich zuständig, in dessen Bezirk der Erblasser seinen letzten gewöhnlichen Aufenthalt im Inland hatte. Hatte der Erblasser keinen gewöhnlichen Aufenthalt im Inland, ist das Amtsgericht Schöneberg in Berlin örtlich zuständig.

(4) Insofar as the international jurisdiction of the German courts is based on other provisions of chapter II of Regulation (EU) No. 650/2012, the court shall have local jurisdiction in the district of which the deceased was habitually resident at the time of death. If the deceased was, at the time of death, not habitually resident in Germany, the court shall have local jurisdiction in the district of which the deceased last had a habitual residence in Germany. If the deceased did not have a habitual residence in Germany, the Schöneberg Local Court in Berlin shall have local jurisdiction.

(5) Mit Ausnahme der §§ 27 und 28 der Zivilprozessordnung gelten neben Absatz 4 auch die Vorschriften in den Titeln 2 und 3 des Ersten Abschnitts des Ersten Buches der Zivilprozessordnung.

(5) The provisions in titles 2 and 3 of first part of the first book of the Civil Procedure Code may, with the exception of §§ 27 and 28, also be applied in addition to section 4.

2. § 3 IntGüRVG

Original

(1) Ergibt sich in Fragen des ehelichen Güterstands oder in Fragen güterrechtlicher Wirkungen eingetragener Partnerschaften die internationale Zuständigkeit deutscher Gerichte, so ist folgendes Gericht örtlich zuständig:

1. im Fall des Artikels 4 der Verordnung (EU) 2016/1103 oder des Artikels 4 der Verordnung (EU) 2016/1104 ausschließlich das Gericht, das nach § 2 des Internationalen Erbrechtsverfahrensgesetzes angerufen worden ist,

2. im Fall des Artikels 5 Absatz 1 oder Absatz 2 der Verordnung (EU) 2016/1103 ausschließlich das Gericht, das nach § 122 des Gesetzes über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit in der Ehesache angerufen worden ist,

Translation

Insofar as German courts have international jurisdiction in matters concerning matrimonial property regimes or property consequences of registered partnerships, the following court shall have local jurisdiction:

1. in case of Article 4 of Regulation (EU) 2016/1103 or of Article 4 of Regulation (EU) 2016/1104 exclusively the court that has been seized pursuant to § 2 of the International Succession Law Procedure Act,

2. in case of Article 5 section 1 or section 2 of Regulation (EU) 2016/1103 exclusively the court that has been seized for the matrimonial matter pursuant to § 122 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction,

3. im Fall des Artikels 5 Absatz 1 der Verordnung (EU) 2016/1104 ausschließlich das Gericht, das nach den §§ 122 und 270 des Gesetzes über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit in der Lebenspartnerschaftssache angerufen worden ist,	3. in case of Article 5 section 1 of Regulation (EU) 2016/1104 exclusively the court that has been seized for the partnership matter pursuant to § 122 and § 270 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction,
4. im Fall des Artikels 6 der Verordnung (EU) 2016/1103 oder des Artikels 6 Buchstabe a bis d der Verordnung (EU) 2016/1104 in dieser Reihenfolge	4. in case of Article 6 of Regulation (EU) 2016/1103 or Article 6 letter a to d of Regulation (EU) 2016/1104 with the following priority
a) das Gericht des Ortes, an dem	a) the court in the district of which
aa) die Ehegatten oder eingetragenen Partner ihren gewöhnlichen Aufenthalt haben,	aa) the spouses or registered partners are both habitually resident,
bb) die Ehegatten oder eingetragenen Partner zuletzt ihren gewöhnlichen Aufenthalt hatten, sofern einer von ihnen zum Zeitpunkt der Anrufung des Gerichts ihn dort noch hat, oder	bb) the spouses or registered partners were last habitually resident, to the extent that one of them is still habitually resident there at the time of the commencement of the legal proceedings, or
cc) der Antragsgegner zum Zeitpunkt der Anrufung des Gerichts seinen gewöhnlichen Aufenthalt hat, oder	cc) the defending party is habitually resident at the time the court is seized, or
b) das Amtsgericht Schöneberg in Berlin,	b) the Local Court Schöneberg in Berlin,
5. im Fall des Artikels 6 Buchstabe e der Verordnung (EU) 2016/1104 das Gericht, in dessen Bezirk die eingetragene Partnerschaft begründet worden ist,	5. in case of Article 6 letter e of Regulation (EU) 2016/1104 the court in the district of which the registered partnership was established.
6. im Fall des Artikels 7 Absatz 1 der Verordnung (EU) 2016/1103 oder des Artikels 7 Absatz 1 der Verordnung (EU) 2016/1104 ausschließlich das Gericht, das die Beteiligten bestimmt haben; ist kein Gericht bestimmt, so gelten für die örtliche Zuständigkeit die Nummern 4 und 5 entsprechend,	6. in case of Article 7 section 1 of Regulation (EU) 2016/1103 or Article 7 section 1 of Regulation (EU) 2016/1104 exclusively the court specified by the parties; if no court is specified, numbers 4 and 5 shall apply mutatis mutandis,
7. im Fall des Artikels 9 Absatz 2 erster Unterabsatz der Verordnung (EU) 2016/1103 oder des Artikels 9 Absatz 2 erster Unterabsatz der Verordnung (EU) 2016/1104 gilt für die örtliche Zuständigkeit Nummer 6 entsprechend;	7. in case of Article 9 section 2 first subsection of Regulation (EU) 2016/1103 or Article 9 section 2 first subsection of Regulation (EU) 2016/1104, number 6 shall apply in regard to the local jurisdiction mutatis mutandis; in case of

in den Fällen internationaler Zuständigkeit nach Artikel 9 Absatz 2 zweiter Unterabsatz der Verordnung (EU) 2016/1103 oder nach Artikel 9 Absatz 2 zweiter Unterabsatz der Verordnung (EU) 2016/1104 gelten für die örtliche Zuständigkeit die Nummern 4 oder 5 entsprechend, wobei in Fällen der Verordnung (EU) 2016/1103 Nummer 4 um die Zuständigkeit des Gerichts am Ort der Eheschließung ergänzt wird,

international jurisdiction pursuant to Article 9 section 2 second subsection of Regulation (EU) 2016/1103 or Article 9 section 2 second subsection of Regulation (EU) 2016/1104, numbers 4 and 5 shall apply mutatis mutandis in regard to the local jurisdiction with the modification that, in case of Regulation (EU) 2016/1103, number 4 is to be amended with jurisdiction of the court at the place where the marriage was concluded,

8. im Fall des Artikels 10 der Verordnung (EU) 2016/1103 oder des Artikels 10 der Verordnung (EU) 2016/1104 das Gericht des Ortes, an dem das unbewegliche Vermögen belegen ist,

8. in case of Article 10 of Regulation (EU) 2016/1103 or Article 10 of Regulation (EU) 2016/1104, the court of the place where the immoveable property is located,

9. im Fall des Artikels 11 der Verordnung (EU) 2016/1103 oder des Artikels 11 der Verordnung (EU) 2016/1104 das Amtsgericht Schöneberg in Berlin.

9. in case of Article 11 of Regulation (EU) 2016/1103 or Article 11 of Regulation (EU) 2016/1104, the Local Court Schöneberg in Berlin.

(2) Die Landesregierungen werden ermächtigt, die Zuständigkeiten nach Absatz 1 Nummer 4, 5, 7, soweit es in dieser Nummer auf den Ort der Eheschließung ankommt, und Absatz 1 Nummer 8 und 9 durch Rechtsverordnung einem anderen Gericht des Oberlandesgerichtsbezirks oder, wenn in einem Land mehrere Oberlandesgerichte errichtet sind, einem Gericht für die Bezirke aller oder mehrerer Oberlandesgerichte zuzuweisen. Die Landesregierungen können diese Ermächtigung durch Rechtsverordnung auf die Landesjustizverwaltungen übertragen

(2) The governments of the federal states are authorized to assign the jurisdiction pursuant to section 1 numbers 4, 5, 7, to the extent that this number depends on the place where the marriage was concluded, and numbers 8 and 9 by means of legal ordinance to another court of the judicial district of the Higher Regional Court, or, if more Higher Regional Courts have been established in that state, to do so for the judicial district of all or of some of the Higher Regional Courts. The governments of the federal states may by legal ordinance transfer this authorization to the judicial administrations of the federal states.

3. Art. 17 (1), (2) EGBGB

Original

(1) Soweit vermögensrechtliche Scheidungsfolgen nicht in den Anwendungsbereich der Verordnung (EU) 2016/1103 oder der Verordnung (EG) Nr. 4/2009 fallen oder von anderen

Translation

(1) Insofar as the proprietary consequences of divorces do not fall within the scope of application of Regulation (EU) No. 2016/1103 or Regulation (EC) No. 4/2009 and they are

Vorschriften dieses Abschnitts erfasst sind, unterliegen sie dem nach der Verordnung (EU) Nr. 1259/2010 auf die Scheidung anzuwendenden Recht.

not subject to other provisions of this chapter, they are subject to the law that is applicable to the divorce according to Regulation (EU) No. 1259/2010.

(2) Auf Scheidungen, die nicht in den Anwendungsbereich der Verordnung (EU) Nr. 1259/2010 fallen, finden die Vorschriften des Kapitels II dieser Verordnung mit folgenden Maßgaben entsprechende Anwendung:

(2) To divorces that do not fall within the scope of application of Regulation (EU) No. 1259/2010, the provisions of chapter II of this Regulation shall apply mutatis mutandis with the following modifications:

1. Artikel 5 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 1259/2010 ist nicht anzuwenden;

1. Article 5 section 1 letter d of Regulation (EU) No. 1259/2010 is not to be applied;

2. in Artikel 5 Absatz 2, Artikel 6 Absatz 2 und Artikel 8 Buchstabe a bis c der Verordnung (EU) Nr. 1259/2010 ist statt auf den Zeitpunkt der Anrufung des Gerichts auf den Zeitpunkt der Einleitung des Scheidungsverfahrens abzustellen;

2. in Article 5 section 2, Article 6 section 2 and Article 8 letter a to c of Regulation (EU) No. 1259/2010 it is to be referred to the point in time at which the divorce proceedings are initiated, instead of that at which the court is seized;

3. abweichend von Artikel 5 Absatz 3 der Verordnung (EU) Nr. 1259/2010 können die Ehegatten die Rechtswahl auch noch im Laufe des Verfahrens in der durch Artikel 7 dieser Verordnung bestimmten Form vornehmen, wenn das gewählte Recht dies vorsieht;

3. differing from Article 5 section 3 of Regulation (EU) No. 1259/2010, the spouses may still choose the applicable law in the course of the proceedings in accordance with the formal requirements specified in Article 7, if such is allowed under the chosen law;

4. im Fall des Artikels 8 Buchstabe d der Verordnung (EU) Nr. 1259/2010 ist statt des Rechts des angerufenen Gerichts das Recht desjenigen Staates anzuwenden, mit dem die Ehegatten im Zeitpunkt der Einleitung des Scheidungsverfahrens auf andere Weise gemeinsam am engsten verbunden sind, und

4. in case of Article 8 letter d of Regulation (EU) No. 1259/2010, the law of the State both spouses are, at the time at which the divorce proceedings are initiated, otherwise jointly most closely connected with is to be applied instead of the law of the court seized, and

5. statt der Artikel 10 und 12 der Verordnung (EU) Nr. 1259/2010 findet Artikel 6 Anwendung.

5. instead of Articles 10 and 12 of Regulation (EU) No. 1259/2010, Article 6 shall be applied.

4. Art. 17 b (4) EGBGB

Original

(4) Gehören die Ehegatten demselben Geschlecht an oder gehört zumindest ein Ehegatte weder dem weiblichen noch dem männlichen Geschlecht an, so

Translation

(4) Where the spouses are of the same sex or where at least one of the spouses is neither of male nor of female sex, section 1 to 3 shall apply mutatis

gelten die Absätze 1 bis 3 mit der Maßgabe entsprechend, dass sich das auf die Ehescheidung und auf die Trennung ohne Auflösung des Ehebandes anzuwendende Recht nach der Verordnung (EU) Nr. 1259/2010 richtet. Die güterrechtlichen Wirkungen unterliegen dem nach der Verordnung (EU) 2016/1103 anzuwendenden Recht.

mutandis with the modification that the applicable law to divorce and legal separation is determined by Regulation (EU) No. 1259/2010. The property consequences are governed by the law that is applicable according to Regulation (EU) 2016/1103.

5. Art. 25 EGBGB

Original	Translation
Soweit die Rechtsnachfolge von Todes wegen nicht in den Anwendungsbereich der Verordnung (EU) Nr. 650/2012 fällt, gelten die Vorschriften des Kapitels III dieser Verordnung entsprechend.	Insofar as the succession doesn't fall within the scope of application of Regulation (EU) No. 650/2012 chapter III of this Regulation shall apply mutatis mutandis.

6. § 122 FamFG

Original	Translation
Ausschließlich zuständig ist in dieser Rangfolge:	The exclusive jurisdiction of a court shall take priority as follows:
1. das Gericht, in dessen Bezirk einer der Ehegatten mit allen gemeinschaftlichen minderjährigen Kindern seinen gewöhnlichen Aufenthalt hat;	1. the court in the district of which one of the spouses has his place of habitual residence with all of the common minor children;
2. das Gericht, in dessen Bezirk einer der Ehegatten mit einem Teil der gemeinschaftlichen minderjährigen Kinder seinen gewöhnlichen Aufenthalt hat, sofern bei dem anderen Ehegatten keine gemeinschaftlichen minderjährigen Kinder ihren gewöhnlichen Aufenthalt haben;	2. the court in the district of which one of the spouses has his place of habitual residence with some of the common minor children, to the extent that none of the common minor children have their place of habitual residence with the other spouse;
3. das Gericht, in dessen Bezirk die Ehegatten ihren gemeinsamen gewöhnlichen Aufenthalt zuletzt gehabt haben, wenn einer der Ehegatten bei Eintritt der Rechtshängigkeit im Bezirk dieses Gerichts seinen gewöhnlichen Aufenthalt hat;	3. the court in the district of which the spouses together most recently had their place of habitual residence when one of the spouses had his place of habitual residence in the district of this court at the time of the commencement of the legal proceedings;
4. das Gericht, in dessen Bezirk der Antragsgegner seinen gewöhnlichen Aufenthalt hat;	4. the court in the district of which the respondent has his place of habitual residence;

5. das Gericht, in dessen Bezirk der Antragsteller seinen gewöhnlichen Aufenthalt hat;	5. the court in the district of which the applicant has his place of habitual residence;
6. in den Fällen des § 98 Absatz 2 das Gericht, in dessen Bezirk der Ehegatte, der im Zeitpunkt der Eheschließung das 16., aber nicht das 18. Lebensjahr vollendet hatte, seinen Aufenthalt hat;	6. in case of § 98 (2), the court in whose district the spouse is habitually resident who, at the time of marriage, had already completed 16 years of age but not 18;
7. das Amtsgericht Schöneberg in Berlin.	7. the Schöneberg Local Court in Berlin.

7. § 152 FamFG

Original	Translation
(1) Während der Anhängigkeit einer Ehesache ist unter den deutschen Gerichten das Gericht, bei dem die Ehesache im ersten Rechtszug anhängig ist oder war, ausschließlich zuständig für Kindschaftssachen, sofern sie gemeinschaftliche Kinder der Ehegatten betreffen.	(1) During the pendency of a marital matter the court before which the marriage issue is or was pending in the first instance shall have exclusive jurisdiction for parent and child matters among German courts insofar as the matter concerns common children of the spouses.
(2) Ansonsten ist das Gericht zuständig, in dessen Bezirk das Kind seinen gewöhnlichen Aufenthalt hat.	(2) Otherwise the court in the district of which the child has his place of habitual residence shall have jurisdiction.
(3) Ist die Zuständigkeit eines deutschen Gerichts nach den Absätzen 1 und 2 nicht gegeben, ist das Gericht zuständig, in dessen Bezirk das Bedürfnis der Fürsorge bekannt wird.	(3) If the jurisdiction of a German court is not determined by subsections (1) or (2), the court in the district of which the need for care became known shall have jurisdiction.
(4) Für die in den §§ 1693 und 1846 des Bürgerlichen Gesetzbuchs und in Artikel 24 Abs. 3 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche bezeichneten Maßnahmen ist auch das Gericht zuständig, in dessen Bezirk das Bedürfnis der Fürsorge bekannt wird. Es soll die angeordneten Maßnahmen dem Gericht mitteilen, bei dem eine Vormundschaft oder Pflegschaft anhängig ist.	(4) As to measures designated in sections 1693 and 1846 of the Civil Code and in article 24 (3) of the Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch; EGBGB) the court in the district of which the need for care became known shall also have jurisdiction. It shall communicate the ordered measures to the court before which a guardianship or curatorship matter is pending.

II. GREECE

1. Art 905 para 1 CCP

Original	Translation
«1. Με επιφύλαξη αυτών που ορίζουν διεθνείς συμβάσεις και κανονισμοί της Ευρωπαϊκής Ένωσης μπορεί να γίνει στην Ελλάδα αναγκαστική εκτέλεση βασισμένη σε αλλοδαπό τίτλο από τότε που θα τον κηρύξει εκτελεστό απόφαση του μονομελούς πρωτοδικείου της περιφέρειας όπου βρίσκεται η κατοικία και, αν δεν έχει κατοικία, η διαμονή του οφειλέτη και, αν δεν έχει ούτε διαμονή, του μονομελούς πρωτοδικείου της πρωτεύουσας του Κράτους. Το μονομελές πρωτοδικείο δικάζει κατά τη διαδικασία των άρθρων 740 έως 781.»	'1. Subject to provisions of international conventions and EU regulations, enforcement may be pursued in Greece on the basis of a foreign title from the moment the title is declared enforceable by a judgment of the single member court of first instance of the district where the debtor has her/his domicile or, in the absence of a domicile, where the debtor has her/his residence or, in the absence of residence, by the single member court of first instance of the capital of the State. The single member court of first instance proceeds according to the procedure laid down in articles 740 to 781.'

2. Law 4478/2017 (Government Gazette A 91/23.6.2017) – Article 33 (refers to Art. 56 Brussels II bis) – Summary

Paragraph 1 designates the department of international judicial cooperation in civil and criminal matters of the Ministry of Justice as the central authority for receiving applications regarding the placement of a child in institutional care or with a foster family pursuant to art 56 of the Brussels II bis Regulation.

Paragraph 2 designates the Prosecutor of the minors' department of the Athens Court of First Instance Public Prosecution Office as the competent authority to approve these applications.

3. Law 4020/2011 (Ratification of the 1996 Hague Child Protection Convention, GG A 217/30.9.2011)

a) Article second – Summary

Paragraph 1 designates the Ministry of Justice as the central authority pursuant to art 29 of the Convention

Paragraph 2 designates the secretariats of the courts which have taken measures of protection as authorities within the meaning of art 40 para 3 of the Convention.

b) Article third – Summary

Greece makes use of the reservations provided for by art 55 of the convention: 1) Greece reserves the international jurisdiction of its own courts for measures of security on immovable property of the child which is located in its territory 2) Greece reserves the right not to recognize parental responsibility or a measure contrary to a measure adopted by Greek authorities with regard to immovable property of the child.

4. Law 2102/1992 (Ratification of the 1980 Hague Child Abduction Convention, GG A 193/2.12.1992) – Article first – Summary

Paragraph 1 provides that Greece shall not be bound to assume any costs referred to in the second paragraph of Article 26 resulting from the participation of a lawyer or a legal adviser or from court fees, except insofar as those costs concern cases of free legal aid.

Paragraph 2 designates the Ministry of Justice as the Central Authority.

Paragraph 3 designates that the Central Authority and those persons and authorities, who have the right to request the return of the child, shall be represented before the courts by the Legal Council of the State and, if that is not possible, by an appointed lawyer of the state.

Paragraph 4 designates the Ministry of Health and its institutions as competent to watch over the child until the child's return, pursuant to an order of the Public Prosecutor.

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III. ITALY

1. Matrimonial matters

a) Circular No. 13 of 20 July 2018 of the Ministry of Home Affairs

Original (relevant excerpts)	Translation
Quanto invece all'accordo concluso davanti all'ufficiale dello stato civile (art. 12 cit.), il Ministero della Giustizia (…) ha confermato che l'atto destinato a circolare non è stato formato né davanti né con l'intervento dell'ufficio giudiziario bensì è formato in modo integrale dall'autorità amministrativa, cui dunque va riconosciuta la competenza al rilascio del certificato in parola.	With regard to the agreement concluded before the civil status registrar (Art. 12 [Decree Law No. 132/2014, converted with amendments into Law No. 162/2014]), the Ministry of Justice (…) confirmed that the document subject to circulation was issued neither before nor with the intervention of the judicial authority, but rather under the full competence of the administrative authority, which shall be further vested with the necessary power to issue the certificate [required by Art. 39 of Brussels II bis Regulation].

b) Circular No. 19 of 22 May 2018 of the Ministry of Justice

Original (relevant excerpts)	Translation
Nel caso in cui l'accordo sia stato concluso davanti all'ufficiale di stato civile, (…) l'adempimento in parola non può certo essere richiesto al tribunale e, applicando i principi generali, dovrebbe essere invece richiesto all'autorità pubblica che ha formato l'atto, ossia, nella specie, all'ufficiale di stato civile.	In case the agreement was concluded before the civil status registrar, (…) [the certificate provided by Art. 39 of Brussels II *bis* Regulation] cannot be issued by the court. Therefore, in accordance with the general principles, the same public authority before which the agreement was concluded (i.e. the civil status registrar) shall issue the certificate.
Con riguardo, invece, agli accordi conclusi in sede di negoziazione assistita da avvocati, deve ritenersi che il certificato ex art. 39 cit. debba essere emesso dalla procura della Repubblica che ha autorizzato l'accordo o ha rilasciato il nullaosta (…). [O]ve il pubblico ministero si sia rifiutato di autorizzare l'accordo e l'autorizzazione sia stata adottata dal presidente del tribunale (ex art. 6, comma 2, del decreto-legge),	With regard to the agreements concluded through lawyers' counselling, the certificate provided in Art. 39 should be issued by the public prosecutor who authorised the agreement or issued a clearance (…). In case the public prosecutor refused to do so and the authorisation was issued by the President of the court (pursuant to Art. 6, para. 2, of the Decree Law [132/2014], the competent judicial authority shall issue

sarà invece l'ufficio giudiziario giudicante a dover rilasciare il certificato in parola.

the certificate.

c) Circular No. 24 of 23 June 2006 issued by the Ministry of Home Affairs

Original (relevant excerpts)	Translation
[L]a trascrizione nei registri dello stato civile delle sentenze comunitarie deve avvenire, su istanza di parte, sulla base della sola produzione del certificato relativo alle decisioni in materia matrimoniale di cui all'art. 39 del regolamento, senza alcuna necessità di richiedere una traduzione in lingua italiana del certificato. Parimenti non sarà necessario richiedere una copia della sentenza.	EU judgments can be entered into the civil status records, upon the request from the interested party, on the basis of the certificate provided in Art. 39 of [Brussels II bis] Regulation, without the need to provide an Italian translation of the certificate. Also, a copy of the decision is not required.
Solo nei casi, di carattere assolutamente straordinario, in cui dal predetto certificato emergano evidenti elementi idonei a far ritenere sussistenti uno dei casi di non riconoscibilità dell'efficacia della sentenza straniera ai sensi dell'art. 22 del Regolamento (…), l'Ufficiale di Stato Civile potrà chiedere alla parte interessata, prima di opporre un rifiuto, l'eventuale documentazione aggiuntiva (ivi inclusa copia della sentenza tradotta) che consenta di chiarire i dubbi e procedere alla trascrizione.	Only in those exceptional cases where the certificate contains data pointing to the existence of possible grounds of non-recognition pursuant to Art. 22 of the Regulation, the civil status registrar can ask the interested party for additional documents (including a translated copy of the decision) that can clarify possible doubts. Otherwise, the civil status registrar can refuse to enter the decision into the records.

d) Art. 32 Italian PIL Act (Law No. 218 of 31 May 1995)

Original	Translation[86]
In materia di nullità e di annullamento del matrimonio, di separazione personale e di scioglimento del matrimonio, la giurisdizione italiana sussiste, oltre che nei casi previsti dall'articolo 3, anche quando uno dei coniugi è cittadino italiano o il matrimonio è stato celebrato in Italia.	In addition to the cases where there is Italian jurisdiction under art 3, Italian jurisdiction extends to cases of nullity, annulment, separation and dissolution of marriage when one of the spouses is an Italian citizen or the marriage was celebrated in Italy.

[86] A complete English translation of the Italian PIL Act, which however does not contain the most recent amendments, can be found in the *Encyclopedia of Private International Law* (Edward Elgar Publishing).

e) Art. 32 *bis* Italian PIL Act (Law No. 218 of 31 May 1995)

Original	Translation
Il matrimonio contratto all'estero da cittadini italiani con persona dello stesso sesso produce gli effetti dell'unione civile regolata dalla legge italiana.	The marriage contracted abroad between an Italian national and a same-sex spouse produces the effects of the registered partnership governed by Italian law.

f) Art. 32 *quater* Italian PIL Act (Law No. 218 of 31 May 1995)

Original	Translation
1. In materia di scioglimento dell'unione civile la giurisdizione italiana sussiste, oltre che nei casi previsti dagli articoli 3 e 9, anche quando una delle parti è cittadina italiana o l'unione è stata costituita in Italia. I medesimi titoli di giurisdizione si applicano anche in materia di nullità o di annullamento dell'unione civile.	1. Regarding the dissolution of a registered partnership, Italian jurisdiction extends, besides where it is provided by Arts. 3 and 9 [of this Law], to the cases where one of the partners is an Italian national or the partnership agreement was concluded in Italy. The same grounds of jurisdiction apply also with regard to nullity and annulment of the registered partnership.
2. Lo scioglimento dell'unione civile è regolato dalla legge applicabile al divorzio in conformità al regolamento n. 1259/2010/UE del Consiglio del 20 dicembre 2010 relativo ad una cooperazione rafforzata nel settore della legge applicabile al divorzio e alla separazione personale.	2. The dissolution of the registered partnership is governed by the law applicable as determined pursuant to the Council Regulation (EU) No. 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

2. Parental responsibility matters and child abduction

a) Art. 7 of the Law No. 64 of 15 January 1994

Original (relevant excerpts)	Translation
1. Le richieste tendenti ad ottenere il ritorno del minore presso l'affidatario al quale è stato sottratto, o a ristabilire l'esercizio effettivo del diritto di visita, sono presentate per il tramite dell'autorità centrale a norma degli articoli 8 e 21 della convenzione de L'Aja del 25 ottobre 1980.	1. Application for the return of the child to the person from whom he/she was abducted, or applications for access rights, are lodged with central authorities pursuant to Arts. 8 and 21 of the 1980 Hague Child Abduction Convention.
2. L'autorità centrale (…) trasmette senza indugio gli atti al procuratore della Repubblica presso il tribunale per i minorenni del luogo in cui si trova il	2. The central authority shall immediately forward the application to the public prosecutor of the juvenile court of the district where the child is located. The

minore. Il procuratore della Repubblica richiede con ricorso in via d'urgenza al tribunale l'ordine di restituzione o il ripristino del diritto di visita.	prosecutor files an urgent petition requesting the return order or the order establishing the rights of access.
3. Il presidente del tribunale, assunte se del caso sommarie informazioni, fissa con decreto l'udienza in camera di consiglio, dandone comunicazione all'autorità centrale. Il tribunale decide con decreto entro trenta giorni dalla data di ricezione della richiesta di cui al comma 1 (…).	3. The President of the juvenile court can acquire summary information and shall set a date for the hearing in chambers. This shall be communicated to the central authority. The court shall issue a decree within 30 days from the receipt of the application referred to in paragraph 1 (…).
4. Il decreto è immediatamente esecutivo. Contro di esso può essere proposto ricorso per cassazione. La presentazione del ricorso non sospende l'esecuzione del decreto.	4. The decree is immediately enforceable and can be appealed before the court of cassation. The appeal shall not stay the enforcement of the decree.
(…)	(…)

b) Art. 30 of the Legislative Decree No. 150 of 1 September 2011

Original	Translation
1. Le controversie aventi ad oggetto l'attuazione di sentenze e provvedimenti stranieri di giurisdizione volontaria di cui all'articolo 67 della legge 31 maggio 1995, n. 218, sono regolate dal rito sommario di cognizione.	1. Disputes concerning the enforcement of judgments and non-contentious decisions provided by Art. 67 of the Law No 218 of 31 May 1995 [Italian PIL Act] are governed in the form of expedited proceedings.
2. È competente la corte di appello del luogo di attuazione del provvedimento.	2. The territorial competence lies with the Court of Appeal of the district where the place of enforcement of the decision is located.

c) Art. 42 Italian PIL Act (Law No. 218 of 31 May 1995)

Original (relevant excerpts)	Translation
1. La protezione dei minori è in ogni caso regolata dalla Convenzione dell'Aja del 5 ottobre 1961, sulla competenza delle autorità e sulla legge applicabile in materia di protezione dei minori, resa esecutiva con la legge 24 ottobre 1980, n. 742.	1. The Hague Convention of October 5, 1961 on the powers of authorities and the law applicable in respect of the protection of infants rendered effective in Italy by the law of October 24, 1980, No. 742 shall, in every case, govern the protection of minors.

3. Succession matters – Article 32 of Law 20 October 2014 No 161

Original	Translation
1. Il certificato successorio europeo di cui agli articoli 62 e seguenti del regolamento (UE) n. 650/2012 del Parlamento europeo e del Consiglio, del 4 luglio 2012, è rilasciato, su richiesta di una delle persone di cui all'articolo 63, paragrafo 1, del regolamento stesso, da un notaio, in osservanza delle disposizioni di cui agli articoli da 62 a 73 del citato regolamento.	1. The European Certificate of Succession referred to in Articles 62 et seq. of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 shall be issued, upon the request of one of the persons referred to in Article 63(1) of that Regulation, by a notary, in accordance with Articles 62 to 73 of that Regulation.
2. Avverso le decisioni adottate dall'autorità di rilascio ai sensi dell'articolo 67 del regolamento (UE) n. 650/2012 è ammesso reclamo davanti al tribunale, in composizione collegiale, del luogo in cui è residente il notaio che ha adottato la decisione impugnata. Si applicano le disposizioni di cui all'articolo 739 del codice di procedura civile.	2. A complaint against decisions taken by the issuing authority pursuant to Article 67 of Regulation (EU) No 650/2012 may be lodged with the court of the place of residence of the notary who delivered the contested decision. The provisions of Article 739 of the Code of Civil Procedure shall apply.
3. Nei territori in cui vige il sistema del libro fondiario continuano ad applicarsi le disposizioni di cui al titolo II del regio decreto 28 marzo 1929, n. 499, in materia di rilascio del certificato di eredità e di legato.	3. In the territories where the land register system is in force, the provisions of Title II of Royal Decree No 499 of 28 March 1929 on the issue of certificates of inheritance and bequest shall continue to apply.

4. Property regimes matters

a) Art. 32 *ter* Italian PIL Act (Law No. 218 of 31 May 1995)

Original (relevant excerpts)	Translation
4. I rapporti personali e patrimoniali tra le parti sono regolati dalla legge dello Stato davanti alle cui autorità l'unione è stata costituita. A richiesta di una delle parti il giudice può disporre l'applicazione della legge dello Stato nel quale la vita comune è prevalentemente localizzata. Le parti possono convenire per iscritto che i loro rapporti patrimoniali sono regolati dalla legge dello Stato di cui almeno una di esse è cittadina o nel quale almeno una di esse risiede.	4. The personal and property regimes between the parties shall be governed by the law of the State before whose authorities the union was formed. At the request of one of the parties, the court may order the application of the law of the State in which the common life is predominantly located. The parties may agree in writing that their property regime shall be governed by the law of the State of which at least one of them is a national or in which at least one of them resides.

b) Art. 32 *quinquies* Italian PIL Act (Law No. 218 of 31 May 1995)

Original	Translation
1. L'unione civile, o altro istituto analogo, costituiti all'estero tra cittadini italiani dello stesso sesso abitualmente residenti in Italia produce gli effetti dell'unione civile regolata dalla legge italiana.	1. A civil union, or other similar institution, formed abroad between Italian citizens of the same sex habitually resident in Italy produces the effects of civil union governed by Italian law.

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IV. SPAIN

1. General rules on jurisdiction

Original (relevant excepts)	Translation
Ley orgánica 6/1985 del poder judicial (según reforma por Ley orgánica 7/2015)	**Organic Law 6/1985 on Judiciary (as reformed by Organic Law 7/2015**
Art. 21.1.	**Art. 21.1.**
Los Tribunales civiles españoles conocerán de las pretensiones que se susciten en territorio español con arreglo a lo establecido en los tratados y convenios internacionales en los que España sea parte, en las normas de la Unión Europea y en las leyes españolas.	1. Spanish Civil Courts will hear claims that arise within Spanish territory in accordance with the stipulations of the international conventions and treaties to which Spain is a party, the regulations of the European Union and Spanish laws.

2. Matrimonial matters

Original (relevant excepts)	Translation
Ley 1/2000 de Enjuiciamiento Civil.	**Law 1/2000 on civil procedure**
22ª Disposición final Medidas para facilitar la aplicación en España del Reglamento (CE) n.o 2201/2003 del Consejo, de 27 de noviembre de 2003, relativo a la competencia, el reconocimiento y la ejecución de resoluciones judiciales en materia matrimonial y de responsabilidad parental (redactada conforme a la sección 19 de la Disposición final 3ª de la Ley 15/2015 de jurisdicción voluntaria (BOE, 3 Julio 2015)	22nd Final Disposition of the Civil Procedure Act on Measures tofacilitate the application in Spain of Council Regulation (EC) No 2201/2003 of November 27, 2003, regarding jurisdiction, recognition and enforcement of judicial decisions in matrimonial matters and parental responsibility (Drafted by section 19 of the 3rd Final Disposition of Law 15/2015, of July 2, on Voluntary Jurisdiction ("B.O.E." 3 July 2015).
1. La certificación relativa a las resoluciones judiciales en materia matrimonial y en materia de responsabilidad parental, prevista en el artículo 39 del Reglamento (CE) n.o 2201/2003, se expedirá por el secretario judicial de forma separada y mediante diligencia, cumplimentando el formulario correspondiente que figura en los anexos I y II del Reglamento citado (ver abajo).	1. The certification concerning judicial decisions in matrimonial matters and in matters of parental responsibility provided for in article 39 of Regulation (EC) No 2201/2003, shall be issued by the cout clerk in a separate manner and through clerk order (*diligencia*), filling in the relevant form contained in Annexes I and II of the abovementioned Regulation (see below).

Ley 6/1985 orgánica del poder judicial (reformada por ley 7/2015)	**Law 6/1985 on the Judiciary (reformed by Law 7/2015)**
Art. 22 quáter	**Art. 22 quáter**
En defecto de los criterios anteriores, los Tribunales españoles serán competentes:	In the absence of the aforementioned criteria, Spanish Courts will be competent (…):
c) En materia de relaciones personales y patrimoniales entre cónyuges, nulidad matrimonial, separación y divorcio y sus modificaciones, siempre que ningún otro Tribunal extranjero tenga competencia, cuando ambos cónyuges posean residencia habitual en España al tiempo de la interposición de la demanda o cuando hayan tenido en España su última residencia habitual y uno de ellos resida allí, o cuando España sea la residencia habitual del demandado, o, en caso de demanda de mutuo acuerdo, cuando en España resida uno de los cónyuges, o cuando el demandante lleve al menos un año de residencia habitual en España desde la interposición de la demanda, o cuando el demandante sea español y tenga su residencia habitual en España al menos seis meses antes de la interposición de la demanda, así como cuando ambos cónyuges tengan nacionalidad española.	c) In matters concerning the personal and property relationships between spouses, marriage annulment, separation and divorce and their modification, providing that no foreign Court proves competent, where both spouses have a habitual residence in Spain when the lawsuit was lodged or where their last habitual residence was in Spain and one of them lives there, or where Spain is the habitual residence of the defendant, or in the case of a joint petition for divorce, where one of the Spouses resides in Spain, or where the plaintiff has his or her habitual residence in Spain for at least a year since the petition was lodged, or where the plaintiff is Spanish and has his or her habitual residence in Spain for at least six months prior to the lodging of the petition, and where both spouses are of Spanish nationality.
Código civil	**Civil code**
Art. 107.1	**Art. 107.1**
La nulidad del matrimonio y sus efectos se determinarán de conformidad con la ley aplicable a su celebración.	Marriage annulment and its effects will be determined in accordance with the Law applicable to its perfomance.
Art. 107.2	**Art. 107.2**
La separación y el divorcio se regularán por las reglas de la Unión Europea o el Derecho internacional privado español.	The separation and legal divorce shall be governed by the rules of the European Union or Spanish Private International Law

3. Parental responsibility matters and child abduction

Original (relevant excerpts)	Translation
22ª Disposición final Medidas para facilitar la aplicación en España del Reglamento (CE) n.o 2201/2003 del Consejo, de 27 de noviembre de 2003,	**22nd Final Disposition of the Civil Procedure Act on Measures to facilitate the application in Spain of Council Regulation (EC) No 2201/2003 of**

relativo a la competencia, el reconocimiento y la ejecución de resoluciones judiciales en materia matrimonial y de responsabilidad parental (redactada conforme a la sección 19 de la Disposición final 3ª de la Ley 15/2015 de jurisdicción voluntaria (BOE, 3 Julio 2015)

1. La certificación relativa a las resoluciones judiciales en materia matrimonial y en materia de responsabilidad parental, prevista en el artículo 39 del Reglamento (CE) n.o 2201/2003, se expedirá por el secretario judicial de forma separada y mediante diligencia, cumplimentando el formulario correspondiente que figura en los anexos I y II del Reglamento citado.

2. La certificación judicial relativa a las resoluciones judiciales sobre el derecho de visita, previstas en el apartado 1 del artículo 41 del Reglamento (CE) n.o 2201/2003, se expedirá por el juez de forma separada y mediante providencia, cumplimentando el formulario que figura en el anexo III de dicho Reglamento.

3. La certificación judicial relativa a las resoluciones judiciales sobre la restitución del menor, previstas en el apartado 1 del artículo 42 del Reglamento (CE) n.o 2201/2003, se expedirá por el juez de forma separada y mediante providencia, cumplimentando el formulario que figura en el anexo IV del Reglamento citado.

4. El procedimiento para la rectificación de errores en la certificación judicial, previsto en el artículo 43.1 del Reglamento (CE) n.o 2001/2003, se resolverá de la forma establecida en los tres primeros apartados del artículo 267 de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial. No cabrá recurso alguno contra la resolución en que se resuelva sobre la aclaración o rectificación de la certificación judicial a

November 27, 2003, regarding jurisdiction, recognition and enforcement of judicial decisions in matrimonial matters and parental responsibility (The 22nd Final Disposition of this Act has been drafted by section 19 of the 3rd Final Disposition of Law 15/2015, of July 2, on Voluntary Jurisdiction ("B.O.E." July 3).

1. The certification concerning judicial decisions in matrimonial matters and in matters of parental responsibility provided for in article 39 of Regulation (EC) No 2201/2003, shall be issued by the cout clerk in a separate manner and through clerk order (*diligencia*), filling in the relevant form contained in Annexes I and II of the abovementioned Regulation.

2. The court certification concerning judicial decisions on the right to visit provided for in Article 41 (1) of Regulation (EC) No 2201/2003, shall be issued by the judge in a separate manner and through court order (*diligencia*), filling in the relevant form contained in in Annex III of the abovementioned Regulation.

3. The court certification concerning judicial decisions on the return of the child provided for in Article 42 (1) of Regulation (EC) No 2201/2003, shall be issued by the judge in a separate manner and through clerk order, filling in the relevant form contained in annex IV of the cited Regulation.

4. The procedure for rectifying errors in court certifications, provided for in article 43.1 of Regulation (EC) No 2001/2003, shall be resolved in the manner established in the first three sections of article 267 of Organic Law 6/1985, of July 1, on the Judiciary. There will be no remedy against the decision resolving the clarification or rectification of the court certification referred to in the two previous sections.

que se refieren los dos anteriores apartados.

5. La denegación de la expedición de la certificación a la que se refieren los apartados 1, 2 y 3 de este artículo se adoptará de forma separada y mediante decreto en el caso del apartado 1 y mediante Auto en el caso de los apartados 2 y 3, y podrá impugnarse por los trámites del recurso directo de revisión en el caso del apartado 1 y por los trámites del recurso de reposición en el caso de los apartados 2 y 3.

5. The refusal of the issuance of the certification referred to in sections 1, 2 and 3 of this article shall be adopted separately and by decree in the case of section 1 and by order in the case of sections 2 and 3, and may be challenged by the proceedings of the direct appeal for review in the case of paragraph 1 and by the procedures for the appeal for replacement in the case of paragraphs 2 and 3.

6. La transmisión a la que se refiere el artículo 11.6 del Reglamento (CE) n.o 2201/2003, incluirá una copia de la resolución judicial de no restitución con arreglo al artículo 13 del Convenio de La Haya de 25 de octubre de 1980, y una copia de la grabación original del acta de la vista en soporte apto para la grabación y reproducción del sonido y de la imagen, así como de aquellos documentos que el órgano jurisdiccional estime oportuno adjuntar en cada caso como acreditativos del cumplimiento de las exigencias de los artículos 10 y 11 del Reglamento.

6. The transmission referred to in Article 11.6 of Regulation (EC) No 2201/2003 shall include a copy of the court decision of non-return pursuant to Article 13 of the 1980 Hague Convention, and a transcript of the hearings before the court in an apparatus suitable for the recording and reproduction of the sound and the image, as well as of those documents that the court deems appropriate to attach in each case as accrediting compliance with the requirements of the Articles 10 and 11 of the Regulation.

7. La reclamación a la que se refiere el artículo 11.7 del Reglamento (CE) n.o 2201/2003, se sustanciará con arreglo al procedimiento previsto en la vigente Ley de Enjuiciamiento Civil para los procesos que versen exclusivamente sobre guarda y custodia de hijos menores, si bien la competencia judicial para conocer del mismo se determinará con arreglo a lo previsto para el proceso que regula las medidas relativas a la restitución de menores en los supuestos de sustracción internacional.

7. The claim referred to in Article 11.7 of Regulation (EC) No 2201/2003, shall be substantiated in accordance with the procedure established in the current Civil Procedure Act for proceedings that exclusively deal with custody and custody of minor children, although jurisdiction to hear about it will be determined in accordance with the provisions of the proceedings that regulates measures related to the return of minors in cases of international abduction.

Ley orgánica del poder judicial

Art. 22 quáter

Law on the judiciary

Art. 22 quáter

En defecto de los criterios anteriores, los Tribunales españoles serán competentes

In the absence of the aforementioned criteria, Spanish Courts will be competent

(…):

(…):

d) En materia de filiación y de relaciones paterno-filiales, protección de menores y de responsabilidad parental, cuando el hijo o menor tenga su residencia habitual en España al tiempo de la interposición de la demanda o el demandante sea español o resida habitualmente en España o, en todo caso, al menos desde seis meses antes de la presentación de la demanda.

d) In matters relating to filiation and relations between parents and offspring, the protection of minors and parental responsibility, where the child or minor has his or her habitual residence in Spain when the lawsuit is lodged or where the plaintiff is Spanish or habitually resides in Spain or, in any event, at least six months prior to the lodging of the lawsuit.

Código civil

Art. 9.4.2.

La ley aplicable al contenido de la filiación, por naturaleza o por adopción, y al ejercicio de la responsabilidad parental, se determinará con arreglo al Convenio de La Haya, de 19 de octubre de 1996, relativo a la competencia, la ley aplicable, el reconocimiento, la ejecución y la cooperación en materia de responsabilidad parental y de medidas de protección de los niños.

Civil code

Art. 9.4.2.

The law applicable to the consent of the parent-child relationship and to the exercise of parental responsibility shall be determined in accordance with The Hague Convention, 19 October 1996, on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children".

Art. 9.6.1.

La ley aplicable a la protección de menores se determinará de acuerdo con el Convenio de La Haya, de 19 de octubre de 1996, a que se hace referencia en el apartado 4 de este artículo.

Art. 9.6.1.

The law applicable to the protection of minors shall be determined in accordance with The Hague Convention, 19 October 1996, referred to in paragraph 4.

4. Maintenance obligations

Original (relevant excepts)

Ley orgánica del poder judicial

Art. 22 quáter

En defecto de los criterios anteriores, los Tribunales españoles serán competentes (…):

f) En materia de alimentos, cuando el acreedor o el demandado de los mismos tenga su residencia habitual en España o, si la pretensión de alimentos se formula como accesoria a una cuestión sobre el estado civil o de una acción de

Translation

Law on the judiciary

Art. 22 quáter

In the absence of the aforementioned criteria, Spanish Courts will be competent (…):

f) In matters relating to alimony, where the creditor or the defendant have their habitual residence in Spain or, if the claim for alimony is formulated as an ancillary to a question relation to marital status or an action relation to parental

responsabilidad parental, cuando los Tribunales españoles fuesen competentes para conocer de esta última acción.

responsibility, where the Spanish Courts are competent to hear this action.

Código civil

Art. 9.7.

La ley aplicable a las obligaciones de alimentos entre parientes se determinará de acuerdo con el Protocolo de La Haya, de 23 de noviembre de 2007, sobre la ley aplicable a las obligaciones alimenticias o texto legal que lo sustituya

Civil code

Art. 9.7.

The law applicable to maintenance obligations arising from a family relationships shall be determined in accordance with the Hague Protocol, 23 November 2007, on the law applicable to maintenance obligations, or the legal text that replaces it.

5. Successions

Original (relevant excepts)

Ley orgánica 1/1985 del poder judicial (reformada por Ley 7/2015)

Art. 22 quáter

En defecto de los criterios anteriores, los Tribunales españoles serán competentes (…):

g) En materia de sucesiones, cuando el causante hubiera tenido su última residencia habitual en España o cuando los bienes se encuentren en España y el causante fuera español en el momento del fallecimiento. También serán competentes cuando las partes se hubieran sometido a los Tribunales españoles, siempre que fuera aplicable la ley española a la sucesión. Cuando ninguna jurisdicción extranjera sea competente, los Tribunales españoles lo serán respecto de los bienes de la sucesión que se encuentren en España.

Translation

Law 1/1985 on the judiciary (reformed by Law 7/2015).

Art. 22 quáter

In the absence of the aforementioned criteria, Spanish Courts will be competent (…):

g) In matters relating to inheritance, where the testator's last habitual residence was in Spain or where the assets are in Spain and the testator was Spanish at the time of death. The will also be competent where the parties have submitted themselves to the Spanish Courts, providing that the Spanish law on inheritance is applicable. Where no foreign jurisdiction is competent, the Spanish Courts will be competent with regards to estate that is in Spain.

Código civil

Art. 9.8.

La sucesión por causa de muerte se regular por la ley nacional del causante en el momento de su fallecimiento, cualesquiera que sean la naturaleza de los bienes y el pais donde se encuentren (…).

Civil code

Art. 9.8.

Succession mortis causa shall be governed by the national law of the decedent at the time of the death, whatever the nature of the property and the country in which is located (…).

Disposición final 26ª de la Ley 1/2000 de Enjuiciamiento. Medidas para facilitar la

26th Final Disposition of Act 1/2000, on Civil Procedure. Measures to facilitate the

aplicación en España del Reglamento (UE) n. 650/2012 del Parlamento Europeo y del Consejo, de 4 de julio de 2012, relativo a la competencia, la ley aplicable, el reconocimiento y la ejecución de las resoluciones, a la aceptación y la ejecución de los documentos públicos en materia de sucesiones «mortis causa» y a la creación de un certificado sucesorio europeo (ver abajo).

application in Spain of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (see below).

6. Matrimonial properties

Original (relevant excepts)

Código civil

Art. 9.2.

Los efectos del matrimonio se regirán por la ley personal común de los cónyuges al tiempo de contraerlo; en defecto de esta ley, por la ley personal o de la residencia habitual de cualquiera de ellos, elegida por ambos en documento auténtico otorgado antes de la celebración del matrimonio; a falta de esta elección, por la ley de la residencia habitual común inmediatamente posterior a la celebración, y, a falta de dicha residencia, por la del lugar de celebración del matrimonio.

Translation

Civil Code

Art. 9.2.

The effects of marriage shall be governed by the personal law common to the spouses at the time of the marriage; in the absence of thereof, by the personal law or the law of the place of residence of any of them, chosen by both in an authentic instrument executed prior to the marriage ceremony; in the absence of such decision, by the law of the place of habitual residence common to both immediately after the ceremony and, in the absence of such residence, by that of the place of the marriage ceremony.

7. Recognition and enforcement

Original (relevant excepts)

Ley 29/205, de 30 de julio, de cooperación jurídica internacional

Art. 2. Fuentes.

La cooperación jurídica internacional en materia civil y mercantil, se rige por: a) Las normas de la Unión Europea y los tratados internacionales en los que España sea parte. b) Las normas especiales del Derecho interno. c) Subsidiariamente, por la presente ley.

Translation

Law 29/2015, of 30 of July, on International Legal Cooperation in Civil Matters

Art. 2. Sources.

International legal cooperation in civil and commercial matters is regulated by: a) The rules of the European Union and International treaties to which Spain is a party. b) Special rules of internal law. c) Subsequently, by this Law.

Disposición final 26ª de la Ley 1/2000 de

26th Final Disposition of Act 1/2000, on

Enjuiciamiento. Medidas para facilitar la aplicación en España del Reglamento (UE) n. 650/2012 del Parlamento Europeo y del Consejo, de 4 de julio de 2012, relativo a la competencia, la ley aplicable, el reconocimiento y la ejecución de las resoluciones, a la aceptación y la ejecución de los documentos públicos en materia de sucesiones «mortis causa» y a la creación de un certificado sucesorio europeo

Civil Procedure. Measures to facilitate the application in Spain of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

1. Reglas de ejecución y reconocimiento de resoluciones de un Estado miembro de la Unión Europea al amparo del Reglamento (UE) n.o 650/2012.

1. Rules for the enforcement, enforceability and recognition of decisions of a member state of the European Union under Regulation (EU) No 650/2012.

1.ª Cualquier parte interesada podrá solicitar que se declare la fuerza ejecutiva en España de una resolución incluida en el ámbito de aplicación del Reglamento (UE) n.o 650/2012, y dictada en un Estado miembro de la Unión Europea que tenga en éste fuerza ejecutiva, con arreglo al procedimiento previsto en los apartados 2 a 7 de esta disposición.

1st. Any interested party may request that the enforceability of decisions included in the scope of Regulation (EU) No 650/2012 be declared in Spain if they have been issued in a Member State of the European Union where they are enforceable, in accordance with the procedure provided for in sections 2 to 7 of this provision.

2.ª Las resoluciones dictadas en un Estado miembro de la Unión Europea serán reconocidas en España sin necesidad de recurrir a procedimiento alguno. No obstante, en caso de oposición, cualquier parte interesada que invoque el reconocimiento a título principal de una resolución de ese tipo podrá solicitar, por el mismo procedimiento previsto en el apartado 1, que se reconozca dicha resolución.

2nd. Decisions issued in a Member State of the European Union will be recognized in Spain without resorting to any procedure. However, in case of opposition, any interested party that claims for recognition and enforcement of such a resolution on a principal basis may request, by the same procedure provided in paragraph 1, that said resolution be recognized.

Si la denegación del reconocimiento se invocara como una cuestión incidental ante un órgano judicial, dicho órgano será competente para conocer de la misma, siguiendo el procedimiento establecido en los artículos 388 y siguientes de esta ley, quedando limitada la eficacia de dicho reconocimiento a lo resuelto en el proceso principal del que

If the denial of enforcement and recognition is requested as an incidental question before a court, the said court shall be competent to hear it, following the procedure established in articles 388 et seq. of this law. However, the effectiveness of this incidental resolution will be limited to the decision in the main proceedings in which the incidental

el incidente trae causa, y sin que pueda impedirse que en proceso aparte se resuelva de forma principal sobre el reconocimiento de la resolución.

question has been raised, and without being able to prevent a separate proceeding from resolving principally on the enforcement and recognition of the decision.

En cualquier caso, el órgano judicial ante el que se haya solicitado el reconocimiento podrá suspender el procedimiento si dicha resolución es objeto de un recurso ordinario en el Estado miembro de origen.

In any case, the court before which enforcement and recognition has been requested may suspend the proceeding if the decision at stake is subject to an ordinary appeal in the Member State of origin.

2. Competencia.

2. Jurisdiction

La competencia para conocer del procedimiento de fuerza ejecutiva corresponderá a los Juzgados de Primera Instancia del domicilio de la parte frente a la que se solicita el reconocimiento o la ejecución, o del lugar de ejecución en el que la resolución deba producir sus efectos.

Jurisdiction to deal with an enforcement proceeding corresponds to the Courts of First Instance of the domicile of the party against which enforcement and recognition is sought, or of the place of enforcement.

3. Asistencia jurídica gratuita.

3. Free legal aid.

1.ª La asistencia jurídica gratuita en este procedimiento se ajustará a las normas generales aplicables en España.

1st. Free legal aid in this proceedings will conform to the general rules applicable in Spain.

2.ª Sin perjuicio de lo dispuesto en el apartado anterior, el solicitante que en el Estado miembro de origen haya obtenido total o parcialmente el beneficio de justicia gratuita o una exención de las costas y gastos, gozará en este procedimiento del beneficio de justicia gratuita más favorable o de la exención más amplia posible conforme a las normas generales aplicables en España.

2nd. Without prejudice to the provisions of the preceding paragraph, the applicant who has obtained in the Member State of origin, in whole or in part, the benefit of free legal aid or an exemption from costs and expenses, shall enjoy in this proceeding the most favorable benefit of free legal aid or of the broadest possible exemption in accordance with the general rules applicable in Spain.

4. Procedimiento de declaración de fuerza ejecutiva de una resolución.

4. Procedure for declaration of enforceability.

1.ª La solicitud de declaración de fuerza ejecutiva se presentará mediante demanda que se ajustará a los requisitos del artículo 437 de esta ley y deberá ir acompañada de los siguientes documentos:

1st. Application for a declaration of enforceability will take the form a claim in accordance with the requirements of article 437 of this law and shall be accompanied by the following documents:

a) Una copia auténtica de la resolución.

a) an authentic copy of the decision.

b) La certificación prevista en el artículo

b) the certification provided for in article

46.3.b) del Reglamento (UE) n.o 650/2012

46.3. b) of Regulation (EU) No. 650/2012.

2.ª Si no se presentara la certificación prevista en el apartado anterior, el órgano judicial podrá fijar un plazo para su presentación, aceptar un documento equivalente o dispensar de ellos si considera que dispone de suficiente información.

2nd. If the certification referred to in the preceding paragraph is not provided, the court may set a deadline for its presentation, accept an equivalent document or waive them if the court considers that it has sufficient information.

Podrá pedir también el órgano judicial una traducción de los documentos realizada por una persona cualificada para realizar traducciones en uno de los Estados miembros.

The court may also request a translation of the documents made by a qualified person to perform translations in one of the Member States.

3.ª El solicitante no estará obligado a tener dirección postal en España ni a actuar representado por procurador ni asistido de letrado.

3rd. The applicant is not obliged to have postal address in Spain or to act represented by legal procurator (Procurador de los Tribunales) or assisted by counsel.

4.ª El solicitante podrá instar la adopción de medidas provisionales o cautelares de conformidad con lo previsto en esta ley. La declaración de fuerza ejecutiva incluirá la autorización para adoptar cualesquiera medidas cautelares.

4th. The applicant may urge the adoption of interim or provisional measures in accordance with the provisions of this law. The declaration of enforceability shall include authorization to adopt any provisional or interim measures.

5.ª Cumplidas las formalidades previstas en las reglas 1.ª y 2.ª, el juez mediante auto declarará inmediatamente la fuerza ejecutiva de la resolución, sin dar traslado para alegaciones a la parte contra la cual se solicite la declaración y sin proceder al examen de los motivos de denegación del reconocimiento previstos en el artículo 40 del Reglamento (UE) n.o 650/2012.

5th. Once the formalities provided for in rules 1st and 2nd have been complied with, the judge shall immediately declare by order the enforceability of the decision without notifying and providing time for allegations to the party against whom enforcement is sought, and without examining the grounds for refusal of recognition provided for in article 40 of Regulation (EU) No. 650/2012.

Si la resolución objeto de la declaración contiene varias pretensiones y no puede declararse la fuerza ejecutiva de todas ellas, el auto declarará la fuerza ejecutiva de las que procedan.

If the decision whose declaration is sought contains several claims and the enforceability of all them cannot be declared, the order will declare the enforceability of all applicable ones.

La notificación a la parte contra la que se haya solicitado la declaración irá acompañada de los documentos a los que se refieren las reglas 1.ª y 2.ª de este apartado.

Notice provided to the party against whom the enforceability is sought shall be accompanied by the documents referred to in rules 1st and 2nd of this section.

5. Recursos contra la resolución sobre la solicitud de declaración de fuerza ejecutiva.

1.ª La resolución sobre la solicitud de declaración de fuerza ejecutiva podrá ser recurrida por cualquiera de las partes en el plazo de treinta días naturales. Si la parte contra la que se solicitó la declaración estuviera domiciliada fuera de España, tendrá un plazo de sesenta días naturales para interponer el recurso; este plazo no admitirá prórroga por razón de la distancia a España de su domicilio.

La competencia para conocer del recurso corresponderá a la Audiencia Provincial.

2.ª Durante el plazo del recurso contra la declaración de fuerza ejecutiva y hasta que se resuelva sobre el mismo, solamente se podrán adoptar medidas cautelares sobre los bienes de la parte contra la que se haya solicitado la ejecución.

3.ª Contra la sentencia dictada en segunda instancia cabrá, en su caso, recurso extraordinario por infracción procesal y recurso de casación en los términos previstos por esta ley.

6. Procedimiento del recurso contra la resolución sobre la solicitud de declaración de fuerza ejecutiva.

El recurso previsto en la regla 1.ª del apartado anterior se sustanciará por los cauces del recurso de apelación, incluidas las normas sobre representación procesal y defensa técnica, con las siguientes especialidades:

a) Sin perjuicio de la alegación de infracción de normas o garantías procesales en la primera instancia, el recurso solamente podrá basarse en alguno o algunos de los motivos previstos en el artículo 40 del Reglamento (UE) n.o 650/2012; el recurrente acompañará al escrito de interposición los

5. Appeals against the decision on the application for a declaration of enforceability.

1st. The decision on the application for a declaration of enforceability may be appealed by either party within the period of 30 calendar days. If the party against whom the declaration was sought were domiciled outside Spain, (s)he will have 60 calendar days to appeal. This period will not be extended on grounds of the distance between his/her domicile and Spain.

The appeal will be lodged before a provincial court (Audiencia Provincial).

2nd. During the period of appeal against the declaration of enforceability and until the latter is resolved, provisional or interim measures can be adopted only on the assets of the party against whom enforceability is sought.

3rd. The decision issued in second instance can be challenged by means of the extraordinary appeal on procedural infringement and cassation in the terms provided for by this law.

6. Procedure to contest the decision given on appeal.

The appeal provided by rule 1st of the preceding section shall be dealt with through the formalities provided by this law for appeals, including rules on procedural representation and technical defense, with the following specialties:

a) Notwithstanding the allegation of infringement of procedural rules or guarantees in the first instance, the appeal can only be based on one or several of the grounds provided for in article 40 of Regulation (EU) No. 650/2012. The appellant shall accompany the appeal claim with all

documentos justificativos de su pretensión que considere necesarios y, en su caso, contendrá la proposición de los medios de prueba cuya práctica interese.

documents supporting it that (s)he deems necessary and, where appropriate, including the proposal of means of proof to be undertaken.

b) El secretario judicial dará traslado del escrito de recurso y de los documentos que lo acompañen a las demás partes, emplazándolas por veinte días naturales para que presenten los escritos de oposición o impugnación, a los que se adjuntarán los documentos justificativos que consideren necesarios y, en su caso, contendrá la proposición de los medios de prueba cuya práctica interesen.

b) The court clerk will notify the appeal claim and the accompanying documents accompanying to the other parties, summoning them to present their writings of opposition or challenge within a 20 calendar days period, including all relevant supporting documents that they may deem necessary and, where appropriate, proposal of means of proof to be undertaken.

c) En caso de incomparecencia de la parte contra la que se solicite la declaración de fuerza ejecutiva, si su residencia habitual estuviera fuera de España, se aplicará lo dispuesto en el artículo 16 del Reglamento (UE) n.o 650/2012.

c) If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 16 of Regulation (EU) 650/2012 shall apply where the party against whom enforcement is sought is not domiciled in Spain.

7. Suspensión de los recursos.

7. Staying of appeal proceeding.

El tribunal ante el que se interpusiera cualquiera de los recursos previstos en el apartado 5 suspenderá el procedimiento, a instancia de la parte contra la que se solicite la declaración de fuerza ejecutiva, si tal fuerza ejecutiva ha sido suspendida en el Estado miembro de origen por haberse interpuesto un recurso.

The court with which an appeal is lodged under section 5 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

8. Fuerza ejecutiva de los documentos públicos.

8. Enforceability of authentic instruments

Los documentos públicos que tengan fuerza ejecutiva en el Estado miembro de origen serán declarados, a petición de cualquiera de las partes interesadas, con fuerza ejecutiva en España de conformidad con el procedimiento regulado en los apartados 2 a 7 de esta disposición final, debiéndose presentar la certificación prevista en el apartado 4.1.ª b) de conformidad con lo dispuesto en el artículo 60.2 del Reglamento (UE)

Public documents which are enforceable in the Member State of origin shall be declared, upon request of either of the parties concerned, enforceable in Spain in accordance with the procedure set out in paragraphs 2 to 7 of this disposition, and submit the certification referred to in section 4.1. ª b) in accordance with the provisions of article 60.2 of Regulation (EU) No. 650/2012.

n.o 650/2012.

El tribunal ante el que se interpusiera cualquiera de los recursos previstos en el apartado 16 de esta disposición sólo desestimará o revocará la declaración de fuerza ejecutiva de un documento público cuando la misma fuera manifiestamente contraria al orden público.

The court with which an appeal is lodged under section 16 of this disposition shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (ordre public).

9. Fuerza ejecutiva de las transacciones judiciales.

9. Enforceability of court settlements.

Las transacciones judiciales que tengan fuerza ejecutiva en el Estado miembro de origen serán declaradas, a petición de cualquiera de las partes interesadas, con fuerza ejecutiva en España de conformidad con el procedimiento regulado en los apartados 2 a 7 de esta disposición final, debiéndose presentar la certificación prevista en el apartado 4.1.ª b) de conformidad con lo dispuesto en el artículo 61.2 del Reglamento (UE) n.o 650/2012.

Court settlements that are enforceable in the Member State of origin will be declared, upon request of either of the parties concerned, enforceable in Spain in accordance with the procedure set out in paragraphs 2 to 7 of this disposition, and submit the certification referred to in section 4.1. ª b) in accordance with the provisions of article 61.2 of Regulation (EU) No. 650/2012.

El tribunal ante el que se interpusiera cualquiera de los recursos previstos en el apartado 5 sólo desestimará o revocará la declaración de fuerza ejecutiva de una transacción judicial cuando la misma fuera manifiestamente contraria al orden público.

The Court before which any of the resources referred to in paragraph 5 is lodged shall refuse or revoke a declaration of enforceability of a court settlement when it was manifestly contrary to the public policy.

10. Expedición de la certificación de una resolución, documento público o transacción judicial a efectos de su fuerza ejecutiva en otro Estado miembro.

10. Issuance of the attestation of a decision, authentic instrument or court settlement for the purpose of its enforceability in another Member State.

1.ª A los efectos de la aplicación del artículo 46.3 del Reglamento, la expedición de la certificación prevista en ese precepto corresponderá al órgano judicial que haya dictado la resolución y se hará de forma separada mediante providencia, utilizando el modelo de formulario previsto en dicho artículo.

1st. For the purpose of the application of article 46.3 of Regulation (EU) 650/2012, the issuance of the attestation provided for in that provision corresponds to the court that has issued the decision and it will proceed to issuing it in a separate manner by order (providencia) using the model form provided for in that article.

Lo mismo se hará, a los efectos de la aplicación del artículo 61 del Reglamento, cuando se trate de una

The same applies for the purpose of the application of article 61 of Regulation (EU) 650/2012, in case of a court

transacción judicial, utilizando para la expedición de la certificación el modelo de formulario previsto en dicho artículo.

settlement, using the form provided for in the provision.

2.ª En el caso de documentos públicos, la certificación a la que se refiere el artículo 60 del Reglamento, será expedida por el notario autorizante, o quien legalmente le sustituya o suceda en el protocolo, utilizando el modelo de formulario previsto en dicho artículo. De esa expedición se dejará constancia mediante nota en la matriz, en la que se incorporará copia auténtica siendo el original del certificado el documento que circulará. Si no fuera posible la incorporación a la matriz, se relacionará, mediante nota, el acta posterior a la que deberá ser incorporada.

2nd. In the case of authentic instruments, attestation to which article 60 of Regulation (EU) 650/2012 refers to, shall be issued by the notary that authorized it, or who has legally replaced him/her or follows in accordance with protocol, using the model form provided for in that provision. The issuance of attendance shall be recorded by a note in the matrix, to which an authentic copy shall be incorporated being the original of the certificate the document that will be circulated. If the incorporation to the matrix would not be feasible, it will be indicated by note the later act to which it will be incorporated.

11. Expedición por órgano judicial del certificado sucesorio europeo.

11. Issuance by a court of a European Certificate of Succession.

1.ª La expedición por un órgano judicial de un certificado sucesorio europeo se adoptará de forma separada y mediante providencia, en la forma prevista en el artículo 67 del Reglamento (UE) n.o 650/2012, previa solicitud que podrá presentarse mediante el formulario previsto en el artículo 65.2 del mismo Reglamento.

1st. A court shall issue a European Certificate of Succession in a separate manner and by order (providencia), in accordance with the form provided for in article 67 of Regulation (EU) No. 650/2012, upon request that may be submitted using the form provided for in article 65.2 of the same Regulation.

2.ª La competencia para expedir judicialmente un certificado sucesorio europeo corresponderá al mismo tribunal que sustancie o haya sustanciado la sucesión. Del certificado sucesorio se expedirá testimonio, que se entregará al solicitante.

2nd. Jurisdiction to issue a European Certificate of Succession is granted to the same court that deals with or has deal with the succession proceedings. A certified copy of the Certificate of Succession (testimonio) will be issued and delivered to the applicant.

3.ª Toda persona que tenga derecho a solicitar un certificado podrá recurrir las decisiones adoptadas por el órgano judicial correspondiente.

3rd. Any person who is entitled to apply for a Certificate may appeal the decisions taken by the competent court.

12. Rectificación, modificación o anulación del certificado sucesorio europeo emitido por un órgano judicial.

12. Rectification, modification or withdrawal of the European Certificate of Succession issued by a court.

1.ª El procedimiento para la rectificación

1st. The proceeding for rectification of a

de un certificado sucesorio europeo, tal como está previsto en el artículo 71.1 del Reglamento (UE) n.o 650/2012 se resolverá en la forma prevista en los apartados 1 a 4 del artículo 267 de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial.

European Certificate of Succession as provided for in article 71.1 of the Regulation (EU) No. 650/2012 will be resolved as provided in paragraphs 1 to 4 of section 267 of the Organic Law 6/1985, of 1 July, on the Judiciary.

2.ª El procedimiento para la modificación o anulación de la emisión de un certificado sucesorio europeo a que se refiere el artículo 71.1 (sic) del Reglamento (UE) n.o 650/2012 se tramitará y resolverá, en única instancia, de conformidad con lo previsto para el recurso de reposición regulado en esta ley.

2nd. The proceeding for modification or withdrawal of European Certificate of Succession as provided by article 71.1 of the Regulation (EU) No. 650/2012 shall be dealt with and resolved, in a single instance, in accordance with the provisions for the appeal for reversal (reposición) regulated by this law.

3.ª En todo caso, conforme al artículo 71.3 del Reglamento (UE) n.o 650/2012 el tribunal comunicará sin demora, a todas las personas a las que se entregaron copias auténticas del certificado en virtud del artículo 70.1 del mismo Reglamento, cualquier rectificación, modificación o anulación del mismo.

3rd. In any case, in accordance with article 71.3 of Regulation (EU) No. 650/2012, the court shall notify all persons to whom a certified copy of the Certificate of Succession was issued pursuant to article 70.1 of Regulation (EU) No. 650/2012 without delay, any rectification, modification or withdrawal thereof.

13. Denegación por un órgano judicial de la emisión del certificado sucesorio europeo.

13. Refusal by a court of the issuance of a European Certificate of Succession.

La denegación de emisión de un certificado sucesorio europeo se adoptará de forma separada mediante auto y podrá impugnarse, en única instancia, por los trámites del recurso de reposición.

The refusal of issuance of a European Certificate of Succession shall be adopted in a separate manner by order (providencia) and can be challenged in a single instance, in accordance with the provisions for the appeal for reversal (reposición) regulated by this law.

14. Expedición por notario del certificado sucesorio europeo.

14. Issuance by a notary of the European Certificate of Succession.

1.ª Previa solicitud, compete al notario que declare la sucesión o alguno de sus elementos o a quien legalmente le sustituya o suceda en su protocolo, la expedición del certificado previsto en el artículo 62 del Reglamento (UE) n.o 650/2012, debiendo para ello usar el formulario al que se refiere el artículo 67

1st. Upon request, the notary who declares the succession or any of its elements or the notary who legally substitutes or replaces the latter in his/her Protocol is the one competent to issue the Certificate referred to in article 62 of Regulation (EU) No. 650/2012, having to do so using the form referred to

del mismo Reglamento. La solicitud de la expedición de un certificado sucesorio podrá presentarse mediante el formulario previsto en el artículo 65.2 del mismo Reglamento.

in article 67 thereof. The application for the issuance of a Certificate of Succession may be made using the form provided for in article 65.2 of Regulation (EU) No. 650/2012.

2.ª De dicha expedición del certificado sucesorio europeo, que tendrá el carácter de documento público conforme al artículo 17 de la Ley del Notariado de 28 de mayo de 1862, se dejará constancia mediante nota en la matriz de la escritura que sustancie el acto o negocio, a la que se incorporará el original del certificado, entregándose copia auténtica al solicitante.

2nd. The issuance of a European Certificate of Succession, which has the character of a public document in accordance with article 17 of the Law 28 May 1862, on Notaries, shall be recorded by a note in the matrix of the public document recording the act or business, and accompanied by the original of the Certificate, delivering a certified copy to the applicant.

Si no fuera posible la incorporación a la matriz, se relacionará, mediante nota, el acta posterior a la que deberá ser incorporado el original del certificado.

If the incorporation to the matrix would not be feasible, it will be indicated by note the later act to which it will be incorporated.

15. Rectificación, modificación o anulación del certificado sucesorio europeo emitido por notario.

15. Rectification, modification or withdrawal of the European Certificate of Succession issued by notary.

1.ª Corresponderá al notario en cuyo protocolo se encuentre, la rectificación del certificado sucesorio europeo en caso de ser observado en él un error material, así como la modificación o anulación previstas en el artículo 71.1 del Reglamento (UE) n.o 650/2012.

1st. The notary in whose protocol the Certificate is incorporated is competent to rectify it where it has been established that the Certificate or individual elements thereof are not accurate, as well as to modify or withdraw it in accordance with article 71.1 of the Regulation (EU) No. 650/2012.

2.ª En todo caso, conforme al artículo 71.3 del Reglamento (UE) n.o 650/2012, el notario comunicará sin demora, a todas las personas a las que se entregaron copias auténticas del certificado en virtud del artículo 70.1, cualquier rectificación, modificación o anulación del mismo.

2nd. In any case, in accordance with article 71.3 of Regulation (EU) No. 650/2012, the notary shall notify all persons to whom a certified copy of the Certificate of Succession was issued pursuant to article 70.1 of Regulation (EU) No. 650/2012 without delay, any rectification, modification or withdrawal thereof.

16. Recurso.

16. Appeal.

1.ª Las decisiones adoptadas por un notario relativas a un certificado sucesorio europeo podrán ser recurridas por quien tenga interés legítimo conforme a los artículos 63.1 y 65 del Reglamento

1st. Decisions made by a notary concerning a European Certificate of Succession may be appealed by anyone with a legitimate interest pursuant to articles 63.1 and 65 of Regulation (EU)

(UE) n. 650/2012.

2.ª La negativa de un notario a rectificar, modificar, anular o expedir un certificado sucesorio europeo podrá ser recurrida por quien tenga interés legítimo conforme a los artículos 71 y 73 apartado 1, letra a) del Reglamento (UE) n. 650/2012.

3.ª El recurso, en única instancia, contra las decisiones a las que se refieren las reglas 1.ª y 2.ª de este apartado será interpuesto directamente ante el juez de Primera Instancia del lugar de residencia oficial del notario, y se sustanciará por los trámites del juicio verbal.

17. Efectos del recurso.

1.ª Si, como consecuencia del recurso contemplado en el apartado anterior, resulta acreditado que el certificado sucesorio europeo expedido no responde a la realidad, el órgano judicial competente ordenará que el notario emisor lo rectifique, modifique o anule según la resolución judicial recaída.

2.ª Si, como consecuencia del recurso resulta acreditado que la negativa a expedir el certificado sucesorio europeo era injustificada, el órgano judicial competente expedirá el certificado o garantizará que el notario emisor vuelva a examinar el caso y tome una nueva decisión acorde con la resolución judicial recaída.

3.ª En todo caso, deberá constar en la matriz de la escritura que sustancie el acto o negocio y en la del acta de protocolización del certificado sucesorio europeo emitido, nota de la rectificación, modificación o anulación realizadas, así como de la interposición del recurso y de la resolución judicial recaída en el mismo.

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2nd. The refusal of a notary to rectify, modify, withdraw, or issue a European Certificate of Succession may be appealed by anyone with a legitimate interest in accordance with articles 71 and 73 (1), letter a) of Regulation (EU) No. 650/2012.

3rd. The appeal, in a single instance, against the decisions to which rules 1st and 2nd of this section referred, shall be brought directly before the court of first instance of the official residence of the notary, and shall be dealt with by the verbal trial procedure.

17. Effects of the appeal.

1st. If, as a consequence of the appeal referred to in the preceding paragraph, it is accredited that the European Certificate of Succession is not in line with the reality, the competent court will order the issuing notary to rectify, modify or withdraw it in accordance with the rendered judicial decision.

2nd. If, as a consequence of the appeal it is accredited that the refusal to issue the European Certificate of Succession was unjustified, the competent court shall issue the Certificate or shall ensure that the issuing notary to re-examine the case and take a new decision in accordance with the rendered judicial decision.

3rd. In any case, a note on the ordered and carried out rectification, modification or withdrawal as well as the filing of the appeal and the judgment resolving it, shall be included in the matrix of the public document recording the act or business and in the act protocoling the issued European Certificate of Succession, note carried out rectification, modification, or cancellation.