

European Matrimonial Property Regulation

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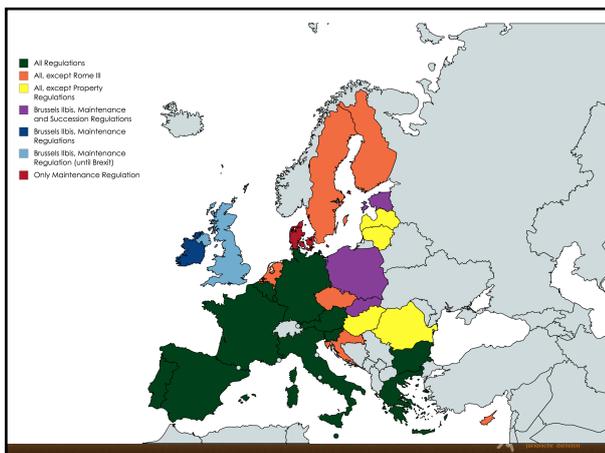
Two new instruments

Two Regulations:

- ✓ Matrimonial Property Reg. (No. 2016/1103)
- ✓ Registered Property Reg. (No. 2016/1104)

Both instruments applicable from 29 January 2019 in:

- ✓ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Greece, Finland, France, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain and Sweden



Scope

- ✓ **Substantive scope**
 - ✓ Article 1 and 3(i)(a): matrimonial property regimes
- ✓ **Geographical scope**
 - ✓ Jurisdiction: preamble: universal
 - ✓ Applicable Law: Article 20: universal
 - ✓ Recognition/enforcement: Article 36: from Reg. MS
- ✓ **Temporal scope**
 - ✓ Article 69 and 70: difference between entry into force and application
 - ✓ Article 69(1): jurisdiction procedures on/after 29.01.2019
 - ✓ Article 69(3): applicable law rules for:
 - ✓ (a) marriages concluded after 29.01.2019 or
 - ✓ (b) choice of law clauses made after 29.01.2019

SECTION I

Jurisdiction

Jurisdiction

- ✓ Connection with other cases:
 - ✓ Article 4 (*succession*) and
 - ✓ Article 5 (*divorce*)
- ✓ Other procedures: Article 6
- ✓ Choice of court:
 - ✓ Explicit: Article 7
 - ✓ Implicit: Article 8
- ✓ Residual jurisdiction: Article 9 - 11

Brussels II-bis grounds

- ✓ Art. 3(1)(a)(1) common HR of parties
- ✓ Art. 3(1)(a)(2) last common HR + one lives there
- ✓ Art. 3(1)(a)(3) HR of defendant
- ✓ Art. 3(1)(a)(4) Joint petition, HR of one party
- ✓ Art. 3(1)(a)(5) HR of petitioner for 1 year
- ✓ Art. 3(1)(a)(6) HR of petitioner for 6mths + nationality
- ✓ Art. 3(1)(b) Common nationality
- ✓ Art. 5 Conversion of judicial sep to divorce
- ✓ Art. 7 Domestic rules of jurisdiction

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Case Study



Wife (Dutch nationality)
Husband (German nationality)

Couple lives in Germany. Marriage breaks down and the wife returns to the Netherlands. She has now lived in the Netherlands for 7 months.

Case Study



Wife (Dutch nationality)

Husband (Polish nationality)

Couple lives in Poland. Marriage breaks down and the wife returns to the Netherlands. She has now lived in the Netherlands for 7 months.



SECTION II

Applicable Law



Case study



Husband and wife are Turkish nationals living in the Netherlands. They were married in 2012. In 2019 they decide to get divorced.

Does the Dutch court have jurisdiction to entertain the proceedings regarding divorce and property divisions?

Can the parties make a choice of law?



Choice of law clauses

- ✓ Which law can be chosen
- ✓ At which moment can one choose?
- ✓ Scope of the choice?
- ✓ Retroactive application? – art. 22(2) & (3)
- ✓ Validity:
 - ✓ Formal (art. 23), and
 - ✓ Substantive (art. 24)

Objective rules

- ✓ **Basic principles**
 - One court, one applicable law for procedure – but in practice?
 - Unity, one law applicable to all property (Art. 21)
 - Party autonomy – choice of law is possible (Art. 22)
 - Objective law based on closest connection (Art. 26)
 - ✓ **Hierarchy**
 - Choice of law: Art. 22
 - 1st common habitual residence: Art. 26(1)(a)
 - Common nationality: art. 26(1)(b)
 - Closest connection: art. 26(1)(c)
- Exception: art. 26(3) (adaptation of art. 26(1)(a))

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