Cross-border divorce within the EU

Jurisdiction, recognition and lis pendens

Council Regulation (EC) No 2201/2003

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The structure of jurisdiction
divorce, legal separation, marriage annulments

General rules: Art 3. - seven grounds of jurisdiction

- habitual residence, or
- last habitual residence if one of them still resides there, or
- the habitual residence of the respondent, or
- habitual residence of either spouse in case of a joint application

- the habitual residence of the applicant, provided that he or she has resided there for at least one year before making the application, or
- the habitual residence of the applicant, provided that he or she has resided there for at least six months before making the application

  and he or she is a national of that Member State, or
- common nationality (common “domicile” in the case of the UK and England)

Art.4 and 5.

- Counterclaim
  the competence belongs to the court in which proceedings are pending on the basis of Article 3

- Conversion of legal separation into divorce
  The court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce

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Has an *alternative* and *exclusive* character

- no hierarchy
  - alternativity
- depends on the choice of the claimant
  - exclusivity
- a spouse who is habitually resident in a MS or who is a national of a Member State (or who has his or her “domicile” in the United Kingdom or Ireland) may only be sued in another Member State on the basis of the rules in Article 3 to 5 of the Regulation (Art 6.)

Residual jurisdiction
Art 7.

- Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.
- If a respondent has no habitual residence in a MS,or is not a national of any MS, the claimant can refer the law of a MS in wich he/she has habitual residence.

Art 17. Examination as to jurisdiction

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

• C-523/07 case of the ECJ

Recognition

Subjects of recognition – Art. 21. and 46.

- judgements
- autenthic institutions
- agreements between parties

optional and incidental recognition Art. 21.(3) (4)

- any interested party may apply for a decision that the judgment be or not be recognised
- where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue

Grounds of refusal of recognition of a judgement – Art.22.

- the recognition would be *manifestly contrary* to the public policy of the Member State of enforcement
- the respondent does not appear: if the initiating documents were not served in time for the respondent to arrange for a defence - unless the respondent has clearly accepted the judgement

- if the judgment is irreconcilable with a judgment between the same parties in the Member State where recognition is sought, or
- if it is irreconcilable with a judgment between the same parties in another State which is capable of being recognized in the Member State where recognition is sought.

Restrictions concerning review

The court where recognition is sought may not:

- review the basis of jurisdiction of the court of the Member State of origin which issued the judgment – Art 24.
- apply the test of public policy to the jurisdiction rules set out in Articles 3 to 7 of the Regulation – Art 24.

- refuse to recognise the judgment because the law of the Member State of recognition would not have allowed a judgment in matrimonial matters on the same facts – Art 25

or

- in any event review the judgment as to its substance – Art 26

Lis pendens - proceedings are brought in two Member States

Article 19 (1)

divorce, legal separation or marriage annulment between the same parties:

the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established→

the court second seised shall decline jurisdiction in favour of the court first seized→

the party who brought the relevant action before the court second seised may bring that action before the court first seised.

1.Do I have jurisdiction under Articles 3-5?→YES NO↓	It's okay.
2.Does a court of another Member State have jurisdiction under the Article17 ? → YES NO↓	Of my own motion I shall declare that I do not have jurisdiction. (Article 17)
3.Has another court been seised already with proceedings for divorce, separation or annulment between the same parties (Article 19(1)? →YES NO↓	Of my own motion I shall stay the proceedings before me until the jurisdiction of the court first seised is established. (and go to 8)
4.I can continue to hear the case. Where no court is competent under the Regulation, I can still have jurisdiction according to my national law ("residual jurisdiction") (Article 7).	
Is the jurisdiction of the court first seised established (Article 19(3)? →YES	I decline jurisdiction.
NO→ go to 4.	