

MATRIMONIAL PROPERTY REGIMES



Explanatory Handbook on
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

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Introduction

After many years of discussions, a new European regulation was adopted on 24 June 2016 on the matrimonial property regimes of couples with a foreign element, following the enhanced cooperation mechanism. This means that the regulation will only be applicable in the Member States that expressly wanted it and not in all Member States. The Member States concerned at the time of writing are the following: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. The other EU Member States may decide to join at any time.

The regulation came into force on 28 July 2016 and will become applicable in the Member States participating in the enhanced cooperation from 29 January 2019.

The regulation establishes harmonised connecting factors to determine the law applicable to matrimonial property regimes in addition to the jurisdiction competent to rule on all civil law aspects of matrimonial property regimes, concerning both the everyday management of the couple's property and the liquidation of the matrimonial property.

The regulation simplifies the recognition and enforcement of judgments and the acceptance and enforcement of authentic instruments linked to matrimonial property regimes.

This handbook aims to present to you the main features of this new regulation and familiarise you with how to deal with a matrimonial property regime with a foreign element.

You will find the text of the regulation at the following address: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.183.01.0001.01.ENG&toc=OJ:L:2016:183:TOC.

Material, territorial and temporal scope

- The regulation applies to matrimonial property regimes with cross-border implications (with a foreign element). **Which couples are affected in particular (non-exhaustive list resulting from Recital 14)?**

Spouses with the same nationality:

- with habitual residences in different States at the time of marriage or drafting of the agreement that determines or amends their regime, or
- with assets of one of the spouses in a State other than that of his/her nationality or residence, or
- who have concluded their marriage in a State other than that of their nationality or residence.

Spouses with different nationalities, regardless of their habitual residence, the location of their assets or where their marriage was concluded.

- The regulation is only applicable in the Member States participating in the enhanced cooperation (Art. 70). At the time of writing, they are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. For these Member States, the regulation is binding and they shall recognise and accept matrimonial property regimes determined in accordance with the regulation's conflict rules.

The other EU Member States must be considered as third States for the application of the regulation.

- **Relations with existing international conventions** at the time of the regulation's adoption.

Art. 62 differentiates between the following scenarios.

- For conventions concluded between one or more Member States participating in the regulation and one or more third States, the conventions continue to apply.
- For conventions concluded between Member States participating in the regulation, the regulation shall prevail.
- An exception is provided to allow the application of specific conventions between Denmark, Finland, Iceland, Norway and Sweden, which continue to be applicable between all their parties.

- **Material scope** (Art. 1): the regulation applies to the matrimonial property regimes of the spouses. The following are excluded from the scope.

- Revenue, customs or administrative matters.
- The legal capacity of spouses (except as provided in Art. 24).
- The existence, validity or recognition of a marriage (subject to the law designated by the private international law of the forum).
- Maintenance obligations (refer to 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: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0004>; and to the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=133>).
- The succession in general, and in particular between spouses (see Regulation (EU) No 650/2012 of the European Parliament and of the

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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: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012R0650>).

- Jurisdiction and applicable law in the case of divorce, legal separation or marriage annulment (refer to 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 (Brussels IIa): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003R2201>; and 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 (Rome III): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32010R1259>).
- Social security.
- The entitlement to transfer or adjustment between spouses, in the case of divorce, legal separation or marriage annulment, of rights to retirement or disability pension accrued during marriage and which have not generated pension income during the marriage.
- The nature of rights in rem, the recording in a register of rights in immovable or moveable property and the effects of recording or failing to record such rights.

- **Application in terms of time** (Art. 69, 70 of the regulation): the regulation came into force on 28 July 2016 and will be applicable from 29 January 2019 to the following situations.
 - Chapters II, IV and V on jurisdiction, recognition, enforceability and enforcement of decisions and the acceptance and enforceability of authentic instruments will apply to all actions brought, all judgments given and all instruments drawn up on or after 29 January 2019, regardless of the date of the marriage.
 - Chapter III on applicable law concerns the following.
 - All marriages concluded on or after 29 January 2019.
 - Marriage concluded before the regulation becomes applicable when the spouses have made a choice of law applicable to their matrimonial property regime from 29 January 2019.

The applicable law in the absence of choice by the spouses

In the absence of choice of law, Art. 26 sets out the hierarchy of connecting factors to determine the applicable law, as follows.:

- The spouses' first common habitual residence after the conclusion of the marriage¹.
- Failing that, the spouses' common nationality at the time of conclusion of the marriage. This criterion cannot be used when the spouses have several common nationalities.
- Failing that, the law of the State with which the spouses jointly have the closest connection at the time of conclusion of the marriage.

By way of exception, the judicial authority having jurisdiction may decide that the law of a State other than the State of the first common habitual residence after marriage applies, if the following conditions are met:

- One of the spouses makes such an application.
- The spouses had their last common habitual residence in that other State for a significantly longer period of time than in the State of their first common habitual residence.
- Both spouses had relied on the law of that other State in arranging or planning their property relations.
- The spouses have not concluded a matrimonial property agreement before the establishment of their last common habitual residence in that other State.

In accordance with Art. 20, the law designated by this regulation shall be applied whether or not it is the law of a Member State (universal application of the regulation).

¹ Recital 49 states that the first criterion to take into account is that of the first common habitual residence of the spouses "shortly after marriage".

Examples:

1. *Swedish national Mrs Larsson has lived in Brussels with her husband, who is Greek, since their marriage in December 2019. Belgian law will be applicable to their matrimonial property regime (first common habitual residence just after marriage).*
2. *Mr and Mrs Garcia, who both have French nationality, lived in Argentina just after their marriage in June 2023. They never concluded a matrimonial property agreement. They move to France in 2027 where, a few months later, they decide to buy a property. The French notary will need to take into account Argentinian law, which is applicable to their matrimonial property regime, when drafting the purchase document for the property (first common habitual residence shortly after their marriage).*
3. *Mr and Mrs Berbatov, who have Bulgarian nationality, marry in February 2020. Mrs Berbatov continues to live in France, whereas her husband lives and works in Greece. Bulgarian law will be applicable (common nationality at the time of marriage).*
4. *Mr and Mrs Vicente, who both have dual Spanish-Colombian nationality, have lived in Spain and Colombia respectively since their marriage (in January 2021). They concluded their marriage in Spain, where they have real estate. Spanish law will be applicable (closest connections at the time of marriage).*
5. *Mr and Mrs Leeuw, who are Dutch, establish their common habitual residence immediately after their marriage in Germany. Two years later, they move to Amsterdam where they live for 15 years, considering that their matrimonial property regime is that of full community of property provided by Dutch law. When Mrs Leeuw dies, her surviving spouse discovers that the German regime of joint ownership of acquired property applies. He asks the competent court for Dutch law to be the law applicable to their matrimonial property regime.*

Choice of law

The regulation establishes the possibility to choose expressly or implicitly as the law applicable to their matrimonial property regime the law of the State of which at least one of the spouses has nationality or the law of their habitual residence at the time of the choice (Art. 22).

In order to be valid, the choice-of-law agreement must respect the following conditions:

- Formal requirements: in any case, the agreement must be expressed in writing (including in electronic form²), dated and signed by both spouses. Additional formal requirements are necessary in the following cases (Art. 23).
 - If the Member State of common residence of the spouses at the time of the choice of law imposes additional formal requirements for matrimonial property agreements, these rules apply.
 - If the spouses are resident in different Member States, it is sufficient to satisfy the formal requirements for matrimonial property agreements of either State.
 - In the case of habitual residence in different States, only one of which is a Member State, the formal requirements of this State for matrimonial property agreements must be satisfied.
- Material requirements: the existence and validity of the choice-of-law agreement are governed by the law chosen by the spouses as being applicable to the matrimonial property regime (Art. 24).

The marriage contract itself is subject to the same formal requirements as the agreement on the choice of applicable law, the only difference being that it must also satisfy any additional formal requirements laid down by the law applicable to the matrimonial property regime (Art. 25).

² Art. 23.1: *The agreement referred to in Article 22 shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.*

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 This choice can only be validly made from 29 January 2019 (Art. 69.3).

Examples:

1. *Mr and Mrs Gomes, both Portuguese, have lived in Rome since their marriage, where they decide to designate Portuguese law as the law applicable to their matrimonial property regime. Since Italy (their country of residence) imposes the authentic instrument for matrimonial property agreements, they will have to consult a notary (Italian or other) to sign a choice-of-law agreement in the form of an authentic instrument.*
2. *Mr and Mrs Konstantinidis, Greek nationals, are living in London at the time of their marriage (June 2020) where they sign a Greek choice-of-law agreement applicable to their matrimonial property regime in the form of a private agreement. This choice will be valid as regards the form in all the Member States applying the regulation³.*

³ However, the formal validity of the choice does not guarantee that it can circulate and be accepted in all cases. Only authentic instruments have credibility owing to their particular evidentiary effects (see Articles 58, 59 and 60).

Characteristics of the applicable law (both in the case of a choice of applicable law and in the absence of a choice)

Principle of universal application: in accordance with Art. 20, the law designated by this regulation applies even if this law is not the law of a Member State.

Example: Mr Dubois, a French national, and Mrs Andersen, Danish, fix their common habitual residence immediately after their marriage in Japan. → Japanese law will apply to their matrimonial property regime.

Principle of the unity of the applicable law: one law will be applied to all the couple's assets, regardless of where the assets are located (Art. 21) or the nature of these assets.

Example: Mr Schmidt, a German national, and Mrs Rossi, Italian, fix their common habitual residence in Spain shortly after their marriage. They have assets in their respective countries and in Spain. They have not concluded an agreement on the choice of applicable law. → Spanish law will apply to all the couple's moveable and immovable assets.

Principle of immutability of the applicable law: the matrimonial property regime is fixed by the law applicable since the initial moment the marriage is concluded and is not subsequently changed, unless there is a specific agreement to this end (no mobile conflict) and the exemption provided under Art. 26.3 of the regulation.

Example: Mr Schmidt, a German national, and Mrs Rossi, Italian, fix their common habitual residence in Spain after their marriage. Ten years later, one of the spouses acquires the nationality of the other, or they move to another State. → Spanish law continues to be applicable unless they conclude a specific choice-of-law agreement.

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Scope of the applicable law: as defined by Art. 27, the law applicable to the matrimonial property regime governs among others (non-exhaustive list):

- the classification of the spouses' property into categories and the transfer of property from one category to the other;
- the responsibility of the spouses for liabilities and debts of the other spouse;
- the powers, rights and obligations of the spouses with regard to property;
- the dissolution of the matrimonial property regime and the partition, distribution or liquidation of the property;
- the effects of the matrimonial property regime between spouses and with respect to third parties;
- the validity regarding the substance of the matrimonial property agreement.

The applicable law: exceptions and nuances

PUBLIC POLICY (ORDRE PUBLIC)

Article 31: *The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum*⁴.

Example: *The applicable regime only recognises the husband as possible owner of assets or as being the only member of the couple with the faculty to administer or dispose of the assets, or attributes a greater portion to the husband than to the wife in the event of liquidation of the regime. The competent jurisdiction shall not take into account discrimination based on gender and shall therefore substitute the law of the forum for the law applicable determined based on the criteria of the regulation*⁵.

MANDATORY LAW

Article 30:

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

2. *Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime pursuant to this Regulation*⁶.

⁴ Recital 54: *Considerations of public interest should also allow courts and other competent authorities dealing with matters of matrimonial property regime in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union ('Charter'), and in particular Article 21 thereof on the principle of non-discrimination.*

⁵ There is currently no notion of European public policy ("ordre public") and each country shall apply its own. The baseline is the rejection of any discrimination based on sex, religion, race or ideological persuasion or more generally anything in conflict with the Charter of Fundamental Rights of the European Union.

Example: A matrimonial property regime that does not share the family's debts and expenditure between the two spouses or that does not protect the family home could be ruled out in certain Member States for being contrary to the primary matrimonial property regime of the State concerned.

STATES WITH MULTIPLE-LAWS


The regulation does not apply to internal conflict-of-laws rules of States with several legislations on matrimonial property regimes depending on the different territories belonging to the same State (Art. 33).

In the absence of internal conflict-of-laws rules, the regulation sets out connecting factors.

In accordance with Art. 35, the regulation does not determine the applicable law for conflicts that are purely internal to a Member State.

Examples:

- 1. Mr and Mrs Jiménez are Spanish; he is Catalan, she is from Madrid. They married in April 2019 but kept separate habitual residences (his in Barcelona, hers in Paris). In accordance with the regulation, Spanish law will be applicable to their matrimonial property regime. As Spain has a multi-legislative system in matters of matrimonial property regimes, it will be necessary to refer to the conflicts-of-law rules of Spanish law in matters of matrimonial property regimes to determine the law applicable to the couple.*
- 2. Mr and Mrs Jiménez are Spanish; he is Catalan, she is from Madrid. They married in April 2019 but kept separate habitual residences (his in Barcelona, hers in Madrid). The regulation will not apply to determine the law applicable to their matrimonial property regime, since this is a conflict that is purely internal to the Spanish State that will apply its own conflict-of-laws rules.*

 At the time of writing, the only Member State concerned by a multi-law system is Spain. Since this State has its own internal conflict-of-laws rules, the rules set out by Art. 33.2 have no possible application at this stage, unless the applicable law is that of a third country with multiple legislation.

⁶ Recital 53: (...) Accordingly, the concept of 'overriding mandatory provisions' should cover rules of an imperative nature such as rules for the protection of the family home. However, this exception to the application of the law applicable to the matrimonial property regime requires a strict interpretation in order to remain compatible with the general objective of this Regulation.

ONLY SUBSTANTIVE LAW IS APPLICABLE (RENOI IS RULED OUT).

Article 32: *The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.*

The substantive law applicable to the matrimonial property law is thus the law determined by the connecting factors of the regulation (aside from exceptions of public policy/overriding mandatory provisions), without any possibility of renvoi.

EFFECTS IN RESPECT OF THIRD PARTIES

The matrimonial property regime may not be invoked against a third party unless the third party *knew or, in the exercise of due diligence, should have known of that law*⁷.

⁷ Article 28

1. *Notwithstanding point (f) of Article 27, the law applicable to the matrimonial property regime between the spouses may not be invoked by a spouse against a third party in a dispute between the third party and either or both of the spouses unless the third party knew or, in the exercise of due diligence, should have known of that law.*
2. *The third party is deemed to possess the knowledge of the law applicable to the matrimonial property regime, if:*
 - a) *that law is the law of:*
 - I) *the State whose law is applicable to the transaction between a spouse and the third party;*
 - II) *the State where the contracting spouse and the third party have their habitual residence; or*
 - III) *in cases involving immovable property, the State in which the property is situated;*
 - or*
 - b) *either spouse had complied with the applicable requirements for disclosure or registration of the matrimonial property regime specified by the law of:*
 - I) *the State whose law is applicable to the transaction between a spouse and the third party;*
 - II) *the State where the contracting spouse and the third party have their habitual residence; or*
 - III) *in cases involving immovable property, the State in which the property is situated.*
3. *Where the law applicable to the matrimonial property regime between the spouses cannot be invoked by a spouse against a third party by virtue of paragraph 1, the effects of the matrimonial property regime in respect of the third party shall be governed:*
 - a) *by the law of the State whose law is applicable to the transaction between a spouse and the third party; or*
 - b) *in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.*

The regulation sets out a certain number of cases in which the third party is supposed to know the law applicable to the matrimonial property regime of the spouses, without the possibility to prove the contrary (Art. 28.2). In all other cases, the law that must be considered by third parties as being the applicable law and that which protects them is defined by the regulation (Art. 28.3).

Example:


In the context of a matrimonial property agreement, Mr and Mrs Schulze, Austrians living in Brussels, established a separation of property regime in accordance with Austrian law. Mrs Schulze took out a loan with a Belgian bank without specifying her matrimonial property regime. In the event of non-repayment, the bank will have the right to claim the amount from both spouses, in accordance with the Belgian legal regime of community of property.

Jurisdiction (Articles 4 to 19)

The principle: Art. 2 specifies that the regulation *shall not affect the competence of the authorities of the Member States to deal with matters of matrimonial property regimes.*

The rules of jurisdiction set out by the regulation will only be applicable to the judicial authorities and other authorities and legal professionals exercising judicial functions or acting by delegation of power by a judicial authority or under its control (Art. 3.2). The Member States must notify the European Commission of these authorities or legal professionals by 29 April 2018, among which it is possible that notaries appear in some States. In these cases, they act as a judicial authority. The situation of notaries with respect to this chapter will therefore depend on the notification of their Member States.

Consequently, the rules of jurisdiction set out in the regulation are not applicable to the other authorities and legal professional that have competences in this area attributed by the respective Member State and which continue to be subject to their national law.

 Recital 31: *When notaries exercise judicial functions they should be bound by the rules of jurisdiction set out in this Regulation, and the decisions they give should circulate in accordance with the provisions of this Regulation on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they should not be bound by those rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions of this Regulation on authentic instruments (see following page).*

The general rules of jurisdiction set out by the regulation are as follows.

- The competent court for the succession has jurisdiction for matters of the matrimonial property regime in the event of the death of one of the spouses (Art. 4).

- Jurisdiction in matters of matrimonial property regimes in cases of divorce, legal separation or marriage annulment falls to the court competent to rule on the matrimonial dispute (☞ Certain cases require the spouses' agreement – see Article 5.2).
- In other cases, jurisdiction to rule on the spouses' matrimonial property regime shall lie with the courts of the Member State (Art. 6):
 - of the spouses' common habitual residence at the time the court is seised; or failing that
 - of the spouses' last habitual resident, insofar as one of them still resides there; or failing that
 - of the habitual residence of the respondent; or failing that
 - of the spouses' common nationality.

Derogations from the general rules of jurisdiction:

- Jurisdiction based on the appearance of the defendant before the court of the Member State whose law is applicable (Art. 8).
- Alternative jurisdiction: where a court having jurisdiction pursuant to the abovementioned rules does not recognise the marriage in question, it may decline jurisdiction. In this case, the spouses may agree to confer jurisdiction to any other Member State. In the absence of an agreement, the Member State of the conclusion of the marriage shall have jurisdiction (Art. 9).
- Where no court has jurisdiction, the court of the territory in which one of the spouses has immovable property shall have jurisdiction to rule in respect of the immovable property in question (Art. 10).
- Finally, the case of forum necessitatis is provided (Art. 11): where no court has jurisdiction, the courts of a Member State may, on an exceptional basis, rule on the matrimonial property regime if proceedings cannot reasonably be brought or conducted or would be impossible in a third state with which the case is closely connected.

Possibility of choice of court:

The spouses may agree that the Member State whose law is applicable or where the marriage was concluded shall have jurisdiction to rule on matters of their matrimonial property regime except for cases of death of one of the spouses or matrimonial dispute. Such an agreement shall be expressed in writing and dated and signed by the parties (Art. 7). This provision was included to ensure that in as many cases as possible the court and the applicable law were in the same place in order to facilitate the law's application.

Examples:

A bi-national homosexual couple (a Belgian and a Frenchman) concluded their marriage in Paris. Having lived in Vienna since their marriage, they preferred to submit any matters relating to their matrimonial property regime to the French courts (place marriage concluded).

The same couple will also have the possibility to submit any matter relating to its matrimonial property regime to French law and the French courts /or to Austrian law and the Austrian courts (parallel between the applicable law and the jurisdiction).

Authentic instruments

Acceptance:

Article 58.1: *An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (ordre public) in the Member State concerned.*

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 67.2 describing the evidentiary effects which the authentic instrument produces in the Member State of origin

Enforceability:

Article 59.1: *An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57 (i.e. in accordance with the procedure provided for judgments).*

The absence of any formality:

Article 61: *No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.*

Scope in terms of time:

This Regulation shall apply only to authentic instruments formally drawn up or registered on or after 29 January 2019 (Art. 69).

Examples:

1. *Mr and Mrs Ionescu, of Romanian nationality, established a matrimonial property agreement in Germany, where they have lived since their marriage. They want to buy a second home in Croatia. The matrimonial property agreement established before a notary in Germany may be*

submitted to the Croatian notary in charge of the real estate purchase, without any legalisation or similar formality. However, a translation could be necessary (depending on the language knowledge of the addressee, who will also decide, if applicable, whether the translation needs to be a sworn translation).

2. *A Dutch couple, Mr and Mrs Vekemans, live in Italy where Mrs Vekemans dies. In the context of the liquidation of the matrimonial property regime, the Italian notary in charge of the succession will have to accept, with no legalisation or other similar formality, the marriage contract established before the notary in the Netherlands in March 2022. However, a translation could be necessary.*
3. *If in the previous case the marriage contract had been established before 29 January 2019, then the Italian notary in charge of the succession would only accept the marriage contract established before the notary in the Netherlands if it fulfilled the formalities in force in accordance with Italian private international law, before Regulation 2016/1103 became applicable.*
4. *Mr and Mrs Pérez live in Salamanca (Spain). They decide to divorce after ten years of marriage. Since it is an amicable divorce, they consult a notary in Salamanca in June 2020 (as competent authority for divorce in accordance with Spanish law), who draws up an enforceable authentic instrument for liquidation of the matrimonial property regime, in which it is agreed that Mr Pérez will pay Mrs Pérez EUR 200 000 within six months, in order to compensate the amount she had spent on renovating the family home, the sale price of which will be shared equally. The deadline having passed and Mrs Pérez not having received the agreed amount, she wishes to have the authentic instrument enforced in Portugal, where her ex-husband has a bank account. She can ask the competent authority in Portugal to declare the enforceability of the authentic instrument issued in Spain, following the same procedure as for judgments (based on an attestation of the enforceability of the authentic instrument, issued by the Salamanca notary who drew up the authentic instrument).*

Information to be provided by the Member States

The Member States concerned by the regulation are obliged to make the following information available to the public.

- A short summary of their national legislation and procedures relating to matrimonial property regimes, including information on the type of authority which has competence in matters of matrimonial property regimes and on the effects in respect of third parties.
- The other authorities and legal authorities which must be considered as “courts” in the respective Member State (Art. 3.2).
- The courts or authorities with competence to deal with applications for a declaration of enforceability and with appeals against decisions on such applications in addition to the procedures to contest the decision given on appeal.

All this information will be available on the e-Justice portal: <https://e-justice.europa.eu>

The attestations and forms to apply for attestations of the enforceability of decisions and authentic instruments will also be available on this website as soon as possible, in addition to the forms describing the evidentiary effects of authentic instruments. These attestations and forms do not yet exist and will be adopted in due course by the Commission, assisted by a committee.

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