

## **Marriage Without Borders**

Our law firm is often contacted by spouses of different nationalities who want to settle their property relations. In our series of articles, we describe Council Regulation (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (hereinafter referred to as the Matrimonial Property Regulation or Regulation) regardless of the fact that Hungary has not acceded to the Convention.

### **1. General Information:**

The Matrimonial Property Regulation was adopted on 24 June 2016 in conjunction with Council Regulation (EU) 2016/1104 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, which two Regulations form an integral unit. Since Member States may not choose to apply only one or the other of the uniformly prepared and drafted regulations, if a Member State does not intend to apply one of the above-mentioned regulations, it does not have the right to apply the other. Both Regulations contain the most comprehensive set of rules, laying down conflict-of-law rules on the one hand, and procedural issues such as jurisdiction, recognition and enforcement of judgments on the other. From 29th January 2016, the above-mentioned Regulations will be applied in the following Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. Apart from Hungary, Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Romania and Slovakia have not acceded to the Conventions. It is important to note that since the Regulation only entered into force in January 2019, the Court of Justice of the European Union has not yet ruled on its application and interpretation, so it has no case law yet. Since Hungary has not acceded to the Regulations, domestic courts do not have to apply this legislation, though there may be cases where Hungarians living abroad choose to apply the Regulation.

In the following, the first part of this study describes the most important general rules of the Matrimonial Property Regime, its main provisions on jurisdiction, applicable law and recognition.

## **2. Scope and Definitions of the Regulation**

### *i.) The Concept of Marriage, the Matrimonial Property Regime*

Article 1 of the Matrimonial Property Regulation sets out the scope of the law in matrimonial property regimes, emphasizing that it shall not apply to, in particular, revenue, customs or administrative matters. However, the Regulation is not limited to opposite-sex marriages as far as marriage is concerned, as it does not define the concept of "marriage", which is defined by the national law of the Member States<sup>1</sup>. It follows that in those Member States where same-sex partners are able to marry, the Regulation applies to the property relations of both opposite-sex and same-sex spouses.

### *ii) The Concept of a Matrimonial Property Regime*

Article 3 of the Regulation defines the matrimonial property regime as ‘a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution’, while matrimonial property agreement means ‘any agreement between spouses or future spouses by which they organise their matrimonial property regime’. In the interpretation of the Regulation, the matrimonial property regime is to be understood in a broad sense, and this interpretation includes the provisions of the law of property by operation of law and of choice, the relations of the spouses between themselves and towards third parties, the question of the administration of property, and the property consequences of the settlement of matrimonial property relations during the period of the dissolution or separation<sup>2</sup>.

### *iii) Scope of the Regulation*

The Matrimonial Property Regulation explicitly excludes from its scope a number of matters which are related to matrimonial property law and which could also be considered as a preliminary issue. Pursuant to Article 1 (2) of the Matrimonial Property Regulation, the Regulation does not apply to the legal capacity of spouses or the existence, validity or recognition of a marriage. Furthermore, matters governed by other European Union

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<sup>1</sup> (17) This Regulation does not define ‘marriage’, which is defined by the national laws of the Member States.

<sup>2</sup> (18) The scope of this Regulation should include all civil-law aspects of matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses. For the purposes of this Regulation, the term ‘matrimonial property regime’ should be interpreted autonomously and should encompass not only rules from which the spouses may not derogate but also any optional rules to which the spouses may agree in accordance with the applicable law, as well as any default rules of the applicable law. It includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any property relationships, between the spouses and in their relations with third parties, resulting directly from the matrimonial relationship, or the dissolution thereof.

regulations but related to matrimonial property regimes, such as maintenance obligations and inheritance after a deceased spouse, are also excluded from the scope of the Regulation. It furthermore excludes from its scope issues relating to the transfer or adjustment between spouses of old-age pension rights or invalidity pension rights acquired during marriage and not having accrued pension income during marriage, which affect entitlements of any kind, taking into account the specific systems existing in the Member States.

Nor shall it apply to the nature of rights *in rem* in property, to the registration of rights in immovable or moveable property, to the legal requirements for such registration and to the effects of failure to register or of registering such rights.

In the continuation of our article, we will deal with the Regulation's jurisdiction, applicable law, choice of law and the recognition and enforcement of judgments.