



Tieslietu ministrija

Introduction into private international law

Provisions and practical application of Rome III Regulation
Riga – 29-30 November 2012

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Project No JUST/2010/JCIV/AG/0011-30-CE-0421092/00-75 „Developments in the field of cross-border family matters within EU: maintenance obligations and law applicable to divorce”

Scope of private international law

- It provides for conditions to determine which state's court (also an institution) is competent to review a specific claim, which contains as foreign element (jurisdiction issues);
- It defines the applicable law (also conflict-of-law norms);
- It regulates the issue regarding the recognition and enforcement of a foreign judgment (also the International Civil Procedure).

Why private international law is necessary?

- Consequences of *Lex fori* application
- The basic task – to ensure fair judicial functions
- Effect of the mobility of persons

Applicable law

- Determination of applicable law – one of basic tasks of the regulation of private international law
- Private international law does not provide for a regulation for the solution of a specific dispute

Harmonisation

- Family law – reflection of national history, culture, moral, and ethics
- Directions of harmonisation in family law:
 - the harmonisation of substantive law,
 - harmonisation of private international law.
- The importance of the EU and the Hague Conference on Private International Law

Introduction into adoption of EU legal enactments

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EU competence within the adoption of legal enactments in the field of family law

- Article 81 of the Treaty
- The importance of Art. 81 paragraph 3
- The importance of enhanced cooperation

What is enhanced cooperation

- Enhanced cooperation – the last chance if the Council of the European Union cannot reach agreement
- Article 20 of the Treaty on European Union
- Articles 326 to 334 of the Treaty on the Functioning of the European Union

Why did the EU arrive at enhanced cooperation in the field of family law?

- Harmonisation process takes place since 1998
- Regulation in the matters of family law at national level is still fragmented and very different in the Member States of the EU
- The importance of the Hague Conference on Private International Law in formation of the regulation
- Situation in the field of the dissolution of marriage and achievements in the European Union

Enhanced cooperation mechanism

- The decision of Council of Ministers on inability to reach unanimity
- The proposal submitted by 9 EU Member States indicating they would like to commence enhanced cooperation
- The proposal of the Commission for a Council decision and a new regulation
- The conclusions of the Commission on the need for regulation;
- Further actions of the Council

Arguments why Latvia decided to join enhanced cooperation mechanism

- Current legal uncertainty
- Choice of the law applicable by the parties is not allowed
- Family law is a very important field of law, where it is crucial to express our point of view
- The mobility of the inhabitants of Latvia in the EU

The most important matters for Latvia working on regulation wording

- Formal requirements for the contracts of Parties on the applicable law (retaining sufficient flexibility);
- Sufficiently wide opportunities to reach the law of the forum, which is a traditional approach of Latvia;
- Reservation protecting the different standards of the substantive law of the Member States on the matters of marriage, for example, matter of the same sex marriage, etc.
- Determination of hierarchy for the choice of the applicable law.

Application of foreign law for dissolution of marriage

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Most important terms

- *Lex fori*
- Nationality of the parties
- Place of residence of the parties
- Choice of the parties

Situation in the EU Member States

- The regulation of Latvia until the coming into force of the regulation
- Situation in the Member States
- Members of the Regulation

Situation in Latvia

- Special matter – place of residence of the parties
 - Section 7 of the Civil Law
 - Section 3 of Declaration of Place of Residence Law
- The importance and role of the declared place of residence in public and private relations

What is court notary supposed to do while applying foreign law

- First of all jurisdiction should be determined – Latvian or foreign
- In case of Latvia – competent body:
 - competency of court (Sections 69 and 70 of the Civil Law, Section 233 of the Civil Procedure Law)
 - competency of notary (Section 325 of the Notarial Law)
- Territorial jurisdiction of court
- Finding out the applicable law
- Recognition and enforcement of a foreign judgment, if necessary

Finding out the content of foreign law

- Foreign law – a fact or a law?
- Situation in Latvia – Section 20 of the Civil Law and Chapter 80 of the Civil Procedure Law
- References in the preamble of Rome III regulation
- Conditions for court and notary for finding out the content of foreign law
- Additional factors

Jurisdiction and recognition

- Introduction of Brussels *Ibis* Regulation in Latvia
- Jurisdiction – Sections 233 and 234 of the Civil Procedure Law, pay attention to the new version of the Sections
- Potential issues of Forum shopping
- Peculiarities of jurisdiction in Latvia – the place of residence issue
- The competence of the notary
- Jurisdiction in cases the action of legal separation is brought