



*Tieslietu ministrija*

# Special matters of Rome III Regulation

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”*

# General insight on dissolution of marriage and legal separation

- The «red lines» set by the Member States:
  - What persons are entitled to be married (of opposite sex/of the same sex) (Article 13 of the Regulation);
  - Is there any other form of registration of cohabitation available in the corresponding member state (partnership, non-registered cohabitation) and at what extent regulation of these relationships can be compared to the regulation of marriage;
  - What are the conditions of dissolution of marriage (special exceptions – Article 10 of the Regulation)

# Situation in Member States and Latvia

- Conditions for deciding on dissolution of marriage in Member States
- The notion of a marriage in Latvia:
  - Article 110 of the Constitution of the Republic of Latvia
  - Sections 32-38 of the Civil Law
- The grounds of dissolution of marriage:
  - Sections 69-77 of the Civil Law
- Similarities and differences in regulations of Latvia and other Member States

# Legal separation

- The notion of legal separation
- The reconciliation of spouses in Latvia
  - Sections 76-77 of the Civil Law
  - Sections 238, 240 and 244<sup>5</sup> of the Civil Procedure Law
- Adjudication of the cases regarding legal separation in courts of Latvia: pros and cons
- The competence of court

# Article 9 of Rome III Regulation

- Regulation of Article 9 of Regulation
- Recitals of the preamble
- Application possibilities of the Article 9 of Regulation:
  - the conversion of legal separation into divorce, by adjudicating case in one court;
  - the conversion of legal separation into divorce, if separation decided by the court of another country.
- Special reservation of the Article 9 of Regulation

# Article 10 of Rome III Regulation

- The Scope of the Article 10 of Regulation
- Recitals of the preamble
- The conditions for the application of the law of the forum

# Article 12 of Rome III Regulation

- The translation of the term «public policy» («sabiedriskā kārtība») in Latvia:
  - The term *Public policy*;
  - The application of the term *Public policy* in the national law;
  - Public structure («sabiedriskā iekārta») – Section 24 of the Civil Law, Section 637 of the Civil Procedure Law;
  - Public order («sabiedriskā kārtība»).
- Term of the «public policy» as a general clause
- The term of exception of the public policy

# Application of the exceptional conditions of the public policy

- the compliance of the application result of the foreign substantive law provisions with the public policy of the law of the forum is being assessed at the stage of application of conflict-of-laws rules
- The theory of the topicality of the public policy and special importance in the field of family law



# Application of the Article 12 of Rome III Regulation

- The scope and the recitals of preamble of the Article 12 of Rome III Regulation
- Application analysis:
  - Does the legal provision contain conditions affecting the public policy in the law of the forum? In order to determine this, content of the public policy should be reviewed in the field of the applicable law;
  - Is it manifestly incompatible with the public policy in the law of the forum? While assessing incompatibility in regard of the observation of the principle of prohibition of discrimination especially accented in the preamble of the regulation should be taken into consideration.

# Does the foreign law affect public policy of Latvia?

- The Section 110 of the Constitution of the Republic of Latvia
- Issues for analysis:
  - What are the conditions of dissolution of marriage;
  - Who is entitled to register the marriage — state and/or church, and, in case of church — of what religious denomination.
- The conditions for the dissolution of marriage provided by the Civil Law
  - A broken down marriage
  - Special conditions

# Does the foreign law affect public policy of Latvia? II

- The protection of the basic rights of children and both parents:
  - The protection of child's interests – does Rome III influence it?
  - Property interests of spouses – does Rome III influence it?
  - Time limits for divorce
  - Breakdown of marriage due to the guilt of one of the spouses
- Persons who have the right to register marriage – does it matter?

# Does the foreign law affect public policy of Latvia? III

- Are the provisions of applicable foreign law is manifestly incompatible with the public policy of Latvia?
  - non-recognition of foreign judgment is allowable only in case its recognition and enforcement would clearly come in conflict with the public policy of the state where the enforcement of the judgment is sought and the violated legal provision is significant in the legal order of the state of enforcement.
  - the interests of society vs. rights of individual to non-discriminating attitude

# Article 13 of Rome III Regulation

- The scope and the recitals of preamble of the Article 13 of Rome III Regulation
- What kind of living together of persons is considered to be a marriage?
- Multiplicity of the person's relationships:
  - Marriage:
    - Marriage of the persons of opposite sex
    - Marriage of the persons of the same sex
  - Registered partnership:
    - Partnership of the persons of opposite sex
    - Partnerships of the persons of the same sex
  - Actual non-registered co-habitation.
- Regulation in Latvia

# Article 13 of Rome III Regulation (Part II)

- Additional conditions stipulated by the Civil Law:
  - of kin in a direct line, brothers and sisters, and half-brothers and half-sister;
  - an adopter and an adoptee.
  - a new marriage of a person who is already married.
- Conditions of majority

# Matters to be decided along with the dissolution of marriage

- Section 238 of the Civil Procedure Law
  - Determining of custody
  - Exercising of access rights
  - Means of support for children
  - Means for the provision of the previous welfare level or support of the spouse
  - Settling issues regarding joint family home and household or personal articles
  - Division of the property of spouses