



Regulation on Matrimonial Property Regimes

Regulation (EU) 2016/1103 of 24 June 2016



Portuguese Contact Point of EJN Civil - 2018

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Cooperation mechanisms



Article 63 of the MPR Regulation

Cooperation mechanisms that may be facilitated by EJN Civil contact points



With a view to making the information available to the public, contact points of EJN Civil shall provide the Commission with information on:



**National law
and**

National procedures

Scope – Article 1

Adaptation – Article 29

Evidenciary effects – Article 58

Enforceability – Article 59



**Competent
authorities:**

- acting as courts
- not acting as courts

**Chapter II
jurisdiction**



**Effects of
national law
in respect of
third parties
Article 28**



**Requirements for
registration of the
matrimonial
property regime**

Article 28(2)(b)

The autonomous concept of
matrimonial property regimes





The autonomous concept of *matrimonial property regimes*

Articles 1(1), 3(1)(a) and recital 18 – uniform interpretation.

Encopasses the following rules of **applicable law**:



The material scope of the MPR Regulation

Exclusions regarding property and registry

MATERIAL SCOPE – Article 1(1)

The **material scope** of the MPR Regulation consists on **matrimonial property regimes**.

EXCLUSION – Article 1(2)(h)

Recording in a **registry of rights** in immovable or moveable property.

EXCLUSION – Article 1(2)(g)

The **nature of rights *in rem*** relating to a property.

EXCLUSION – Article 1(2)(h)

Legal requirements, effects of recording or failing to record such rights in a register.



Authorities with competence in matters of matrimonial property regimes bound by chapter II (rules on jurisdiction)

Courts, Registry officers, Notaries, other authorities and legal professionals

Not exercising judicial functions

Article 2

The MPR Regulation shall not affect the competence of the **authorities who deal with matters of matrimonial property** within the Member States.

The rules on jurisdiction laid down on chapter II of the MPR Regulation will not apply when these authorities are not exercising judicial functions.

Exercising judicial functions

Article 3(2) and recital 29

These authorities are bound by the rules of jurisdiction set out in chapter II of the MPR Regulation when they act as courts:

- They exercise judicial functions **or**
- Act by delegation of power by, or under the control of, a judicial authority **and**
- Offer guarantees of impartiality
- Offer the right of all the parties to be heard
- Their decisions may be subject of an appeal
- Their decisions have similar force and effect as a judicial decision.



Effects in respect of third parties

Adaptation of rights in rem





Effects in respect to third parties



Whether they act as courts or not, competent authorities in the Member States are bound by the rules on applicable law of chapter III

The **applicable law** shall govern the effects of the matrimonial property regime **in respect of third parties** – Article 27(f)



However, **the law applicable to the matrimonial property regime** may not be invoked against a third party unless the later knew or should have known that law



If the **matrimonial property regime is registered** according to the requirements specified in the law of one of the States mentioned in Article 28(2)(b), which may be different from the one whose law is applicable, **the applicable law can be invoked against third parties**



The applicable **requirements for registration of the matrimonial property regime** involving immoveable property are those specified in the law of the State in which the property is situated which can be a third State – Articles 20 (universal application) and 28(2)(b)(iii)



Where the spouse/s cannot invoke the law applicable to the matrimonial property regime against a third party, **the effects in respect of third parties shall be governed by the law of the State in which the immoveable property is situated or in which the assets or rights are registered** – Article 28(3)(b)



Article 28(3) is an **exception to the principle of unity of the applicable law** laid down on Article 21

Adaptation of rights *in rem*

To allow the spouses to enjoy in another Member State the rights which have been created or transferred to them as a result of the matrimonial property regime the Regulation provides for the **adaptation of an unknown right *in rem* to the closest equivalent right under the law of that other Member State.**

To adapt the right *in rem* – **Article 29** – it is necessary to take into account:

- The **aims** of the right *in rem*
- The **interests** pursued by the right *in rem*
- The **effects** attached to the right *in rem*.

To determine the closest equivalent national right the competent authorities – **Registry officers, Notaries, Courts** – of the State whose law is applied to the matrimonial property regime may be contacted for further information on the nature and effects of the right *in rem*.

The existing networks in the area of judicial cooperation like EJM Civil can be used – recital 25.



Acceptance of authentic instruments



Acceptance of authentic instruments: cooperation facilitated by a form

Authentic instrument established in a Member State



Issuing authority in the Member State of origin fills in the form mentioned in Article 58(1) describing the evidentiary effects



Same evidentiary effects in another Member State



Authenticity challenged



Jurisdiction: Member State of origin
Applicable law: Member State of origin
Effects: it shall not produce any evidentiary effect in another Member State as long as the challenge is pending



Legal acts or legal relationships recorded in the authentic instrument



Challenged



Jurisdiction: Regulation – Chapter II or incidental [Article 58(4)]
Applicable law: Chapter III
Effects: it shall not produce any evidentiary effect in another Member State regarding the matter being challenged as long as the challenge is pending

Enforceability of authentic instruments



Enforceability of authentic instruments: cooperation facilitated by a form

Authentic instrument enforceable in a Member State



Issuing authority in the Member State of origin fills in the form mentioned in Article 59(2) attesting the enforceability of the authentic instrument



The authentic instrument is enforceable in another Member State



In case of appeal before the Courts of the Member State of enforcement
Articles 44, 49 and 50



The only ground (among those that are laid down in Article 37) for refusing or revoking the declaration of enforceability of an authentic instrument is if it is **manifestly contrary to public policy – Article 59 (3)**

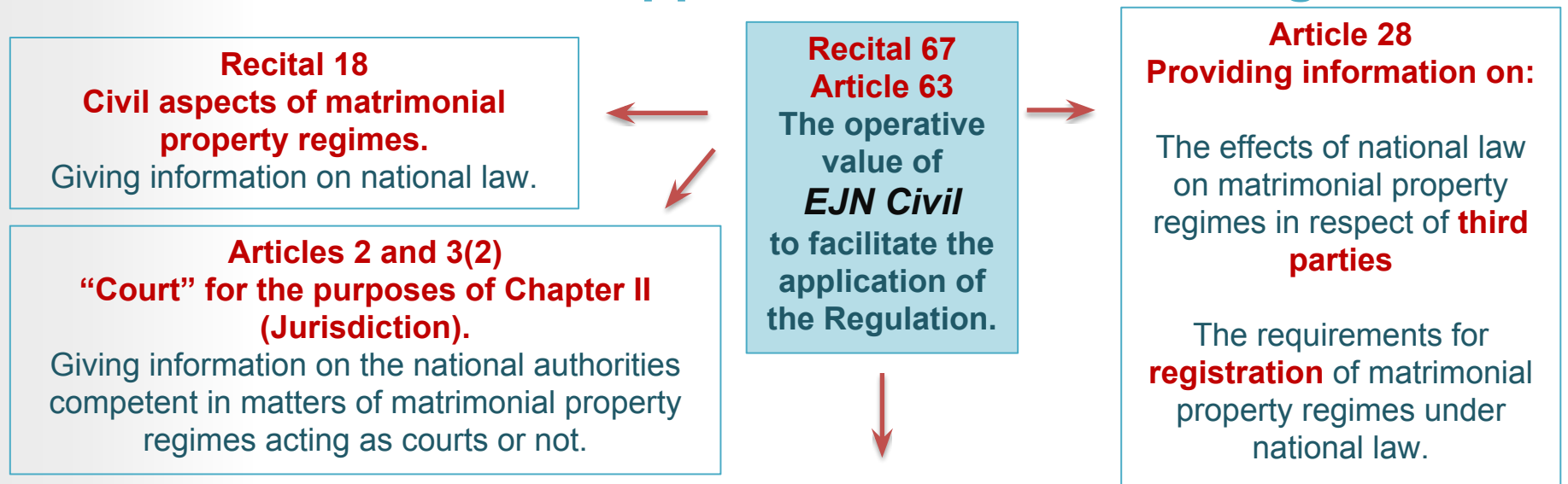




Conclusion

***How to facilitate the application of the MPR Regulation
where it is not adequate to use a mandatory form?***

How to facilitate the application of the MPR Regulation



Article 29 and Recital 25 **Adaptation of rights *in rem***

EJN Civil has a factsheet entitled *Adapting rights in rem*:
https://e-justice.europa.eu/content_adapting_rights_in_rem-486-en.do

Registry officers/other authorities in the Member States may be contacted for further information.



Thank you so much!



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