

INDEX

- aims of Rome III 0.03–0.05, 5.03, 17.01
- allocation of jurisdiction
 - Brussels II *bis* regime *see* Brussels II *bis* Regulation (2201/2003/EC)
 - choice of court agreements 0.10, 0.15, 5.43
 - forum non conveniens* 0.09
 - see also* private international law
- annulment of marriage 0.14, 1.24–1.25, 2.04
- Apostolides v Orams and Orams* (C-420/07) (ECJ) 12.09
- applicable law
 - agreements on *see* choice of law agreements
 - choice by parties *see* choice of applicable law by parties (Article 5)
 - lex fori see lex fori*
 - objective rules *see* applicable law in absence of choice by parties (Article 8)
 - see also* private international law
- applicable law in absence of choice by parties (Article 8) 0.30, 0.33, 8.01
- Article 9 context 9.37–9.43, 10.07
 - see also* conversion of legal separation into divorce (Article 9)
- connecting factors 9.41–9.42
 - see also* habitual residence; nationality as connecting factor
- failure of, *lex fori* as subsidiary solution 2.10, 8.39–8.41, 10.24–10.25, 14.17
 - see also lex fori*, default application (Article 10)
- habitual residence when court seized 8.04, 8.07, 8.09–8.22
- last common habitual residence 0.33, 5.04, 8.23–8.27
- nationality 0.34, 3.33, 5.37, 8.28–8.38, 10.24–10.25
 - in states with multiple legal systems *see* territorial conflicts (Article 14)
 - succession of (Kegel's ladder) 8.02–8.10
- triggering circumstances
 - choice of law agreement invalid 8.01
 - choice of law agreement revoked 5.49
 - failure of Article 5 connecting factors 5.32
 - see also* choice of applicable law by parties (Article 5)
- application date *see* entry into force and application date (Article 21)
- area of freedom, security and justice
 - mutual trust principle 0.24, 12.09
 - TFEU Article 81(3) as legal basis of Rome III 0.21, 4.04
- Austria 12.03, 19.14
- autonomy of parties *see* party autonomy principle
- Belgium, public policy exception 12.03, 12.05, 12.12
- Borrás Report on the Brussels II Convention (1998) 5.31
- Brussels II *bis* Regulation (2201/2003/EC) 0.18
 - Article 3: general jurisdiction 0.04, 0.35, 3.31, 8.09, 8.34, 9.23
 - Article 5: conversion of legal separation into divorce 9.18, 9.19
 - Article 16: seising of court 5.44, 6.19, 8.13, 18.06
 - Article 19: *lis pendens* and dependent actions 0.04
 - Article 21: recognition of judgments 9.20
 - Article 22: grounds for non-recognition of judgments 2.05

- Article 46: authentic instruments and agreements 3.17
- participating Member States 2.05
- proposed reforms 10.28, 12.28
- Rome III relationship with (Article 2)
- Article 9 context 9.47–9.48
- see also* conversion of legal separation into divorce (Article 9)
- connecting factors 8.09–8.10, 8.13
- consistent interpretation principle 0.20, 0.22, 1.13, 1.25, 2.06–2.08, 3.24, 8.09
- favor divortii* (right to divorce) principle 0.35
- independent application of instruments 1.25, 2.04–2.05
- lex fori* application in consequence 0.08, 2.09–2.11
- purpose of Article 2 2.01–2.03
- Brussels IIa recast Regulation (2019/1111/EU) 0.10
- capacity of parties 1.20–1.21, 6.11
- Charter of Fundamental Rights of the European Union 12.08
- Article 21: non-discrimination 0.08, 0.23, 10.21, 12.08
- see also* non-discrimination principle
- children
- favor divortii* (right to divorce) principle, implications for children 0.36
- habitual residence of 5.29, 5.31, 6.20, 8.20
- parental responsibility
- excluded from scope of Rome III 0.18, 1.27
- Hague Child Protection Convention 1996 0.18, 14.05, 14.14, 14.25, 14.32, 15.04, 19.16
- choice of applicable law by parties (Article 5) 0.26, 5.01–5.10
- Article 9 context 9.22–9.32
- see also* conversion of legal separation into divorce (Article 9)
- capacity to choose 1.20–1.21, 6.11
- choice of law agreements, modification and revocation 5.48–5.49
- see also* choice of law agreements
- connecting factors 7.01
- see also* habitual residence; nationality as connecting factor
- in choice of law agreements 5.33–5.34
- common habitual residence 5.25–5.27, 5.32
- failure of 5.32
- future connecting factors 5.20
- last common habitual residence 0.31, 2.08, 5.25, 5.32
- nationality 3.32, 5.35–5.39, 14.27–14.31
- informed choice *see* informed choice principle
- lex fori* selections 2.10, 5.40–5.43
- see also* *lex fori*
- limitations on freedom of choice
- favor divortii* (right to divorce) principle 0.35
- proceedings to be commenced in participating Member State 5.06
- public policy exceptions *see* public policy (Article 12)
- in states with multiple legal systems 14.21–14.22
- void choices of religious laws *see* religious law divorces, void choices of religious laws
- modalities of choice 5.15–5.16
- implied choices 5.17–5.18, 7.02
- private divorce *see* private divorce, choice of applicable law
- procedural law 5.50–5.52
- timing of choice 5.44–5.47
- during course of proceedings 5.50–5.52
- see also* applicable law in absence of choice by parties (Article 8); party autonomy principle
- choice of court agreements 0.10, 0.15, 5.43
- choice of law agreements
- choice of court agreements combined with 0.15
- consent and material validity *see* consent and material validity of choice of law agreements (Article 6)

- formal validity *see* formal validity of
choice of law agreements (Article 7)
- habitual residence as connecting factor
5.33–5.34
- implied agreements 7.02
- invalid agreements, Article 8 triggered
8.01
see also applicable law in absence of
choice by parties (Article 8)
- modification and revocation 5.48–5.49
- prenuptial agreements 5.47, 7.06
- Rome III applicable to 0.12, 3.06
- transitional provisions 18.08–18.13
see also transitional provisions (Article
18)
- see also* choice of applicable law by parties
(Article 5)
- CIEC Convention on the Recognition of
Decisions relating to the Matrimonial
Bond 1967 19.12, 19.14
- civil partnerships *see* same-sex couples,
registered partnerships
- Coester-Waltjen, Dagmar 1.15
- Coman and others v Inspectoratul General
pentru Imigrări and Ministerul Afacerilor
Interne* (C-673/16) (ECJ) 0.25, 1.08,
3.23
- common habitual residence *see* habitual
residence
- conferral principle of EU law 0.26
- conflict of laws
Article 13 on *see* differences in national
law (Article 13)
Article 14 on *see* territorial conflicts
(Article 14)
Article 15 on *see* inter-personal conflicts
(Article 15)
Article 16 on *see* states with multiple legal
systems, non-application of Rome III
to internal conflicts (Article 16)
- ‘conflict of laws situations’ 0.16, 1.16–1.17
see also private international law
- connecting factors 3.27
habitual residence *see* habitual residence
- Kegel’s ladder approach 8.02–8.10
- lex fori see lex fori*
- nationality *see* nationality as connecting
factor
- Rome III and Brussels II *bis* relationship
8.09–8.10, 8.13
- consent and material validity of choice of
law agreements (Article 6) 0.32,
6.01–6.04
- capacity of parties 1.21, 6.11
- informed choice 5.46, 6.03
see also informed choice principle
- invalid agreements, Article 8 triggered
8.01
see also applicable law in absence of
choice by parties (Article 8)
- material validity, chosen law determining
purpose of rule 6.05–6.06
scope of rule 6.07–6.12
- non-consent, law of habitual residence
determining
see also habitual residence
- habitual residence at date of referral
6.19
- implementation of rule 6.21
- purpose of rule 6.13–6.18
- reasonableness condition 6.22
- see also* choice of law agreements; formal
validity of choice of law agreements
(Article 7)
- consistent interpretation principle 0.20, 0.22,
1.13, 1.25, 2.06–2.08, 3.24, 8.09
see also Brussels II *bis* Regulation
(2201/2003/EC), Rome III
relationship with (Article 2)
- conversion of legal separation into divorce
(Article 9) 8.12
- Brussels II *bis*, relationship with
9.47–9.48
- conflict of laws rules
1. party autonomy 9.22–9.32
 2. *lex separationis* 9.04, 9.33–9.36
 3. applicable law under Article 8
9.37–9.43, 10.07
see also applicable law in absence of
choice by parties (Article 8)
- failure of all three rules 9.44–9.46
- future perspective 9.49–9.50

- nature, structure and purposes of Article 9
9.01–9.11
- separation judgments that may be
converted 9.16–9.21
- see also* legal separation
- ‘court’ definition *see* definitions (Article 3),
‘court’
- de Lima Pinheiro, Luis 8.40
- definitions (Article 3) 3.01
- concepts not defined 3.19
- divorce and legal separation 1.05
- habitual residence 5.28–5.31, 6.20,
8.14–8.22, 8.26
- marriage 3.20–3.26, 13.10
- ‘court’ 1.10, 3.09
- notarial offices or other public
authorities 3.10, 3.14–3.18
- religious courts 1.12–1.14, 3.09,
3.12–3.13, 3.14
- ‘participating Member State’ *see*
participating Member States
- Denmark 2.05
- devolved jurisdictions *see* states with multiple
legal systems
- differences in national law (Article 13) 0.02,
13.01–13.03
- Article 10, relationship with 10.02, 13.07
- see also* *lex fori*, default application
(Article 10)
- Article 12, relationship with 12.01–12.02,
12.14
- see also* public policy (Article 12)
- concerns 13.35–13.36
- forum necessitatis* clause needed 13.39
- free movement of persons 0.25, 13.38,
13.43
- legal certainty 13.37
- sexual orientation discrimination 1.23,
13.38
- divorce law differences 12.06–12.07, 12.14
- divorce prohibited (‘Maltese clause’)
13.04–13.09
- as public policy violations 12.15–12.18
- invalid marriage escape clause 0.25, 0.30,
3.05, 9.12, 13.10–13.13
- see also* marriage recognition
- causes of invalidity 13.14–13.16
- domestic law as source of invalidity
13.17–13.23
- law applicable to divorce as source of
invalidity 13.28
- law applicable to marriage as source of
invalidity 13.24–13.27
- same-sex marriage application 0.25,
3.21–3.22, 13.15–13.16,
13.19–13.20, 13.22–13.23, 13.38
- no parallel in other EU private
international law instruments
13.40–13.43
- procedural regime 13.32–13.34
- discretionary decision-making
13.29–13.31
- direct effect of Rome III 0.22
- disconnection clauses 19.09–19.11
- see also* international conventions, Rome
III relationship with (Article 19)
- discrimination *see* non-discrimination
principle
- dissolution of registered partnerships 1.06,
1.15, 3.24–3.25
- see also* same-sex couples
- divorce
- and children *see* children
- differences in national law *see* differences
in national law (Article 13)
- EU vision of 0.35
- ‘institution’ of proceedings 6.19, 8.13,
18.06
- maintenance *see* maintenance obligations
- private divorce *see* private divorce
- private international law *see* private
international law, on divorce and
legal separation
- religious law divorces *see* religious law
divorces
- right to divorce
- under international human rights law
12.11
- under Rome III (*favor divortii*
principle) 0.35–0.36, 3.18, 9.09,
10.05
- same-sex marriages *see* same-sex couples,
marriage and divorce

- as subject matter of Rome III *see* subject matter
- see also* legal separation
- domestic abuse 12.16
- domestic laws *see* differences in national law (Article 13)
- dual nationality situations 3.30–3.33, 5.36–5.38, 8.31–8.36
- refugees or stateless persons 5.39, 8.37–8.38
- see also* nationality as connecting factor
- e-justice portal 6.03, 19.10, 19.12
- effectiveness principle of EU law 0.27
- enhanced cooperation procedure 0.06–0.10, 2.02, 3.03–3.04, 3.07, 19.03
- entry into force and application date (Article 21) 0.06, 0.11–0.12, 3.04, 18.01, 19.03–19.05, 21.01
- non-retroactivity principle 18.03–18.05
- transitional provisions *see* transitional provisions (Article 18)
- equal rights of spouses 0.29
- informed choice principle *see* informed choice principle
- non-discrimination principle *see* non-discrimination principle
- public policy exceptions *see* public policy (Article 12)
- equivalence principle of EU law 0.27
- escape clauses *see* differences in national law (Article 13)
- Estonia
- late participation in Rome III 0.06, 3.08, 18.02, 19.05
- notarial deeds formalising choice of law agreements 7.04, 17.02
- EU citizenship 0.05, 9.10
- EU law
- fundamental rights *see* Charter of Fundamental Rights of the European Union
- principles
- conferral 0.26
- consistent interpretation 0.20, 0.22, 1.13, 1.25, 2.06–2.08, 3.24, 8.09
- direct effect 0.22
- equivalence and effectiveness 0.27
- free movement of persons 0.05, 0.25, 1.08, 13.38, 13.43
- mutual trust 0.24, 12.09
- primacy of EU law 0.22
- of Rome III *see* Rome III Regulation (1259/2010/EU), principles
- private international law *see* private international law
- public policy, EU guidelines on 12.08–12.11
- TFEU *see* Treaty on the Functioning of the European Union (TFEU)
- European Judicial Network 0.28, 4.11, 5.14, 17.01
- evidence, foreign law 5.41, 5.52
- see also* procedural laws
- ex officio* application of Rome III 0.26
- excluded subject matter *see* subject matter, excluded matters
- exclusion of *renvoi* *see* *renvoi*, exclusion from Rome III (Article 11)
- extra-judicial divorce *see* private divorce
- favor divortii* (right to divorce) principle 0.35–0.36, 3.18, 9.09, 10.05
- federal states *see* states with multiple legal systems
- financial provision *see* maintenance
- Finland 0.07
- flexibility 0.03, 0.05, 0.31, 3.26, 5.03, 8.08, 17.01, 19.10
- foreign law
- application of *see* universal application (Article 4)
- methods of ascertaining
- e-justice portal 6.03, 19.10, 19.12
- European Justice Network 0.28, 4.11, 5.14, 17.01
- procedural laws *see* procedural laws
- formal validity of choice of law agreements (Article 7) 0.32, 7.01, 7.06–7.08
- additional formalities required by law of
- habitual residence 7.03–7.05
- notarial deeds 7.04, 7.06, 17.02

- and informed choice 5.16
- invalid agreements, Article 8 triggered 8.01
 - see also* applicable law in absence of choice by parties (Article 8)
- non-application in procedural setting 5.50
- professional advice requirement 5.12
- professional drafting not required 7.02
- writing requirement 5.17, 6.16, 7.01
 - electronic versions 7.01–7.02
- see also* choice of law agreements; consent and material validity of choice of law agreements (Article 6)
- forum, law of *see lex fori*
- forum non conveniens* 0.09
- forum shopping concerns 0.04, 0.09, 3.07, 4.09
- fragmentation of laws 0.15, 0.18–0.20, 1.04
 - in states with multiple legal systems *see* states with multiple legal systems
 - see also* private international law, on divorce and legal separation
- France
 - divorce law 12.07
 - marriage recognition 13.09
 - notarial divorce system 1.09, 3.16, 3.17, 5.42
 - public policy exception 12.03
 - renvoi* 11.01
- free movement of persons principle 0.05, 0.25, 1.08, 13.38, 13.43
- fundamental rights
 - EU Charter *see* Charter of Fundamental Rights of the European Union
 - non-discrimination *see* non-discrimination principle
 - and public policy exceptions 0.23, 12.11, 12.13
 - right to divorce
 - under international human rights law 12.11
 - under Rome III 0.35–0.36, 3.18, 9.09, 10.05
- future development of Rome III 1.06, 9.49
- future participating Member States 3.08
- Germany
 - choice of law agreements, formal requirements 7.04–7.05, 17.02
 - Decision II-3 UF 267/12 (OLG Hamm) 5.17
 - public policy exception 12.03
 - Sahyouni v Mamisch* (C-281/15 and C-372/16) (ECJ) 1.12–1.14, 3.09, 3.10, 3.14, 3.16
 - waiting period before divorce 12.16
- get* (Jewish law divorce) 10.17
- Giuliano-Lagarde Report on Rome Convention (1980) 6.05, 6.07, 6.15, 6.21
- Greece
 - Islamic law application 14.10, 15.09, 15.12, 16.08, 16.14
 - late participation in Rome III 0.06, 3.08, 18.02, 19.05
 - private divorce regime 1.09, 3.13
- habitual residence 3.28–3.29, 5.05
 - choice of law agreements, habitual residence as connecting factor 5.33–5.34
 - concept 5.28–5.31, 6.20, 8.14–8.22, 8.26
 - ‘common habitual residence’ 5.26–5.27, 5.32, 14.19–14.20
 - in states with multiple legal systems *see* territorial conflicts (Article 14), ‘habitual residence’ interpretation
- future habitual residence 5.20
- last common habitual residence
 - Article 5 purposes 0.31, 2.08, 5.25, 5.32
 - Article 8 purposes 0.33, 5.04, 8.23–8.27
- law of habitual residence, applications of formal validity of choice of law agreements 7.03–7.05
 - non-consent to choice of law agreements *see* consent and material validity of choice of law agreements (Article 6)
- more than one habitual residence, whether possible 8.27

- prominence as connecting factor 8.07
see also applicable law in absence of choice
 by parties (Article 8); choice of
 applicable law by parties (Article 5)
- Hadadi v Mesko* (C-168/08) (ECJ) 3.31,
 3.33, 8.34
- Hague Convention on Jurisdiction,
 Applicable Law, Recognition,
 Enforcement and Co-operation in
 Respect of Parental Responsibility and
 Measures for the Protection of
 Children 1996 0.18, 14.05, 14.14,
 14.25, 14.32, 15.04, 19.16
- Hague Convention on the International
 Protection of Adults 2000 1.20, 14.05,
 14.14, 14.25, 14.32, 15.04
- Hague Convention on the Recognition of
 Divorces and Legal Separations
 1970 19.12–19.14
- Hague Principles on Choice of Law in
 International Commercial Contracts
 2015 11.23
- Hague Protocol on the Law Applicable to
 Maintenance Obligations 2007 0.18,
 1.28, 2.08
- states with multiple legal systems
 inter-personal conflicts 15.04
 territorial conflicts 14.05, 14.14, 14.25,
 14.32
- Hammje, Petra 8.41
- human rights *see* fundamental rights
- implied choice of law 5.17–5.18, 7.02
see also choice of applicable law by parties
 (Article 5)
- information provision by participating
 Member States (Article 17)
 application date 0.11
 choice of law during course of
 proceedings, whether possible 5.51,
 17.03
- European Judicial Network 0.28, 4.11,
 5.14, 17.01
- formal requirements 7.04, 17.02
see also formal validity of choice of law
 agreements (Article 7)
- informed choice principle 0.29, 0.32,
 5.11–5.14, 5.16, 5.43
 and choice of law agreements 5.46, 6.03
see also consent and material validity
 of choice of law agreements
 (Article 6)
- foreign law, methods of ascertaining *see*
 foreign law, methods of ascertaining
see also choice of applicable law by parties
 (Article 5); party autonomy principle
- inheritance law matters 1.29
see also Succession Regulation
 (650/2012/EU)
- ‘institution’ of divorce and legal separation
 proceedings 6.19, 8.13, 18.06
- inter-faith marriages 10.13, 15.20
see also religious law divorces
- inter-personal conflicts (Article 15) 5.22,
 14.01, 15.01–15.03
 Article 14, relationship with 14.12,
 15.11–15.12
see also territorial conflicts (Article 14)
- parallels in other EU private international
 law instruments 15.04, 15.16
- public policy considerations 15.20
- scope of application 15.05–15.10
- two-step rule 15.13–15.15
1. inter-personal conflicts rules of that
 state 15.16–15.20
 2. system with which spouse(s) has
 closest connection 15.21–15.23
- see also* states with multiple legal systems
- international conventions
 Hague Conference instruments *see under*
 Hague
- Rome III relationship with (Article 19)
 0.19, 1.26, 4.10, 11.16
- concepts and definitions 19.01–19.08
- disconnection clauses 19.09–19.11
- existing conventions 19.12–19.14
- future conventions 0.21, 19.15–19.17
- international public policy exception 6.12,
 13.19
see also public policy (Article 12)
- Ireland, waiting period before divorce 12.06,
 12.16

- Islamic law divorce 3.13, 10.16
 Greece, Islamic law application 14.10,
 15.09, 15.12, 16.08, 16.14
Sahyouni v Mamisch (C-281/15 and
 C-372/16) (ECJ) 1.12–1.14, 3.09,
 3.10, 3.14, 3.16
talaq (repudiation of marriage by
 husband) 10.15–10.16, 10.22, 10.24,
 10.27, 10.29
- Italy
 legal separation rules 9.13, 10.06, 12.06
 notarial divorce system 1.09, 3.10, 3.15,
 5.42
Orlandi and others v Italy (26431/12;
 26742/12; 44057/12; 60088/12)
 (ECtHR) 1.08
renvoi 11.05
- Jewish law divorce 10.17
- jurisdiction, allocation of *see* allocation of
 jurisdiction
- Kegel's ladder approach to connecting
 factors 8.02–8.10
*Kozłowski (Proceedings concerning the
 execution of a European arrest warrant
 issued against)* (C-66/08) (ECJ) 8.18
- Kruger, Thalia 8.33
- last common habitual residence *see* habitual
 residence, last common habitual
 residence
- legal capacity of parties 1.20–1.21, 6.11
- legal certainty 0.03, 0.05, 0.10, 0.31, 0.33,
 3.05, 4.09, 5.03, 6.01, 6.03, 7.02, 7.06,
 11.11, 13.37, 14.03, 15.02, 17.01,
 18.03
- legal pluralism *see* states with multiple legal
 systems
- legal separation
 compulsory recognition by participating
 Member States 9.12
 conversion into divorce *see* conversion of
 legal separation into divorce
 (Article 9)
 'institution' of proceedings 6.19, 8.13,
 18.06
 Italian rules 9.13, 10.06, 12.06
 as subject matter of Rome III *see* subject
 matter
 types 9.13–9.15
 when unavailable under applicable law
 5.24, 10.06
see also divorce
 legislative history of Rome III 0.06–0.10,
 2.02, 3.03–3.04, 3.07, 19.03
- lex fori*
 Article 9 context 9.23, 10.07
see also conversion of legal separation
 into divorce (Article 9)
 choice of procedural law, *lex fori*
 determining 5.50
 chosen by parties (Article 5(d)) 2.10,
 5.40–5.43
 combined application of Rome III and
 Brussels II *bis*, consequence of 0.08,
 2.09–2.11
 default application *see lex fori*, default
 application (Article 10)
 Member States with *lex fori* traditions
 0.07, 0.09
lex fori, default application (Article 10) 0.08,
 4.12, 10.01–10.04
 Article 11, relationship with 11.19–11.21
see also renvoi, exclusion from Rome
 III (Article 11)
 Article 12, relationship with 10.02, 10.18,
 10.26, 12.01–12.03, 12.14
see also public policy (Article 12)
 Article 13, relationship with 10.02, 13.07
see also differences in national law
 (Article 13)
 discriminatory law chosen 10.14–10.15
 discriminatory consequences of divorce
 10.27
 discriminatory religious laws 5.23,
 10.15–10.17, 10.22, 10.24, 10.27,
 10.29, 12.17
 three interpretative approaches
 10.18–10.26, 10.29
 divorce unavailable under applicable law
 0.35, 10.05
 general restriction to absolute
 impediments 10.08–10.09
 inter-faith marriages 10.13, 15.20

- 'limping marriage' situations
 - 10.10–10.12
 - same-sex couples 10.13
- other triggering circumstances
 - failure of connecting factors (Article 8(d)) 2.10, 8.39–8.41, 10.24–10.25, 14.17
 - failure of inter-personal conflicts rules 15.23
 - foreign rules of pleading and proof, non-compliance 5.52
 - legal separation unavailable under applicable law 5.24, 10.06
 - public policy violations 12.23–12.25
 - private divorce, non-application of Article 10 10.28–10.29
- Lima Pinheiro, Luis de 8.40
- 'limping marriage' situations 0.02, 10.10–10.12
 - see also *lex fori*, default application (Article 10)
- Lithuania 0.06, 3.08, 18.02, 19.05
- Magdalena Fernandez v Commission of the European Communities* (C-452/93 P) (ECJ) 8.15, 8.18
- maintenance obligations
 - excluded from scope of Rome III 0.18, 1.28
 - Hague Protocol *see* Hague Protocol on the Law Applicable to Maintenance Obligations 2007
 - Maintenance Regulation (4/2009/EC) 0.18, 1.28, 2.08, 13.42
- Malta 3.05, 9.15, 10.05, 13.03–13.08
- marriage agreements 5.47, 7.06
 - see also* choice of law agreements
- marriage annulment 0.14, 1.24–1.25, 2.04
- marriage recognition
 - excluded from scope of Rome III 1.22–1.23, 3.22, 13.11–13.12, 13.21, 13.28
 - 'limping marriage' situations 10.10–10.12
 - see also *lex fori*, default application (Article 10)
- 'marriage' not defined under Article 3
 - 3.20–3.26, 13.10
- as public policy violation 13.26
- same-sex marriages 1.07–1.08, 3.21–3.22, 13.23
 - Article 13 escape clause applied to 0.25, 3.21–3.22, 13.15–13.16, 13.19–13.20, 13.22–13.23, 13.38
 - see also* differences in national law (Article 13), invalid marriage escape clause
- material scope 1.02
 - conflict of laws situations 0.16, 1.16–1.17
 - subject matter *see* subject matter
- material validity of choice of law agreements
 - see* consent and material validity of choice of law agreements (Article 6)
- Matrimonial Property Regulation (2016/1103/EU) 0.18, 3.07, 13.41
- marriage concept 1.23
- matrimonial property agreements, validity of 6.04, 7.05
- multiple nationality situations 3.32, 5.38, 8.33
- states with multiple legal systems
 - inter-personal conflicts 15.04
 - non-application to internal conflicts 16.04
 - territorial conflicts 14.05, 14.14, 14.25, 14.32
- Member States
 - legal differences between *see* differences in national law (Article 13)
 - non-participants in Rome III 0.07, 0.09–0.10, 3.06
 - participants in Brussels II *bis* 2.05
 - participants in Rome III *see* participating Member States
 - see also* individual Member States
 - multiple nationality situations 3.30–3.33, 5.36–5.38, 8.31–8.36
 - refugees or stateless persons 5.39, 8.37–8.38
 - see also* nationality as connecting factor
- mutual trust principle of EU law 0.24, 12.09

- national laws *see* differences in national law (Article 13)
- nationality as connecting factor
 Article 5 purposes 3.32, 5.35–5.39, 14.27–14.31
 Article 8 purposes 0.34, 3.33, 5.37, 8.28–8.38, 10.24–10.25
 evidence of nationality 8.29–8.30
 future nationality 5.20
 multiple nationality situations 3.30–3.33, 5.36–5.38, 8.31–8.36
 refugees or stateless persons 5.39, 8.37–8.38
 nationality-based discrimination 8.36, 14.26
 reasons for choosing 5.10
 reasons for not choosing 8.07
 in states with multiple legal systems *see* territorial conflicts (Article 14), ‘nationality’ interpretation
see also applicable law in absence of choice by parties (Article 8); choice of applicable law by parties (Article 5)
- non-discrimination principle 0.08, 0.23
 Article 10 safeguard *see lex fori*, default application (Article 10)
 Article 12 safeguard *see* public policy (Article 12)
- nationality-based discrimination 8.36, 14.26
- sex discrimination 0.08, 10.15
 discriminatory religious laws 5.23, 10.15–10.17, 10.22, 10.24, 10.27, 10.29, 12.17
 as public policy exception 12.04
 wife’s free choice of discriminatory law 10.21–10.22, 12.19, 12.23
 sexual orientation discrimination 1.23, 13.38
see also same-sex couples
- non-retroactivity principle 18.03–18.05
- notarial deeds formalising choice of law agreements 7.04, 7.06, 17.02
- notarial divorce *see* private divorce
- objective rules *see* applicable law in absence of choice by parties (Article 8)
- Opinion 1/13* (ECJ) 19.15–19.16
- ordre public* *see* public policy (Article 12)
- Orejudo Prieto de los Mozos, Patricia 1.25
- Orlandi and others v Italy* (26431/12; 26742/12; 44057/12; 60088/12) (ECtHR) 1.08
- out-of-court divorce *see* private divorce
- parental responsibility
 excluded from scope of Rome III 0.18, 1.27
 Hague Child Protection Convention 1996 0.18, 14.05, 14.14, 14.25, 14.32, 15.04, 19.16
see also children
- participating Member States 3.02
 ‘courts’ of *see* definitions (Article 3), ‘court’
 founder participants 0.06, 3.03
 future participants 3.08
 information provision by *see* information provision by participating Member States (Article 17)
- internal conflicts of law *see* states with multiple legal systems, non-application of Rome III to internal conflicts (Article 16)
- late joiners (Lithuania, Greece and Estonia) 0.06, 3.08, 18.02, 19.05
- legal differences between *see* differences in national law (Article 13)
- Rome III application by 3.04, 3.06–3.07, 4.07
 Article 13 escape clauses *see* differences in national law (Article 13)
- direct effect 0.22
- international conventions taking precedence *see* international conventions, Rome III relationship with (Article 19)
- legal separation cases 9.12
- no competence to conclude alternative agreements 0.21
- public policy exceptions *see* public policy (Article 12)
- regardless of other connecting factors 1.17

- party autonomy principle 0.05, 0.10
 Article 9 context 9.22–9.32
see also conversion of legal separation
 into divorce (Article 9)
ex officio application of Rome III 0.26
 informed choice principle *see* informed
 choice principle
 limitations
 connecting factors *see* connecting
 factors
 lex fori, default application *see* *lex fori*,
 default application (Article 10)
 proximity requirements *see* applicable
 law in absence of choice by parties
 (Article 8)
 renvoi excluded 11.13–11.14,
 11.22–11.24
 see also *renvoi*, exclusion from Rome
 III (Article 11)
 weaker spouse, safeguards for 0.29
 rationale 5.01–5.10
see also choice of applicable law by parties
 (Article 5)
- personal scope of Rome III 0.13
 Philippines, divorce unavailable 9.15, 9.38
 pleading, foreign law 5.41, 5.52
see also procedural laws
- pluralism *see* states with multiple legal
 systems
- Portugal 3.10
- predictability 0.03, 0.05, 0.33, 3.05, 3.33,
 4.09, 7.02, 8.08–8.09, 9.11, 13.37,
 17.01
- prenuptial agreements 5.47, 7.06
see also choice of law agreements
- primacy of EU law principle 0.22
- principles
 of EU law *see* EU law, principles
 of Rome III *see* Rome III Regulation
 (1259/2010/EU), principles
- private divorce 0.15, 1.09–1.11, 3.09–3.10
 Article 10 not applicable 10.28–10.29
see also *lex fori*, default application
 (Article 10)
 Article 12 not applicable 12.28
see also public policy (Article 12)
 choice of applicable law
 lex fori 5.42
 timing of 5.45
 ‘institution’ of proceedings 18.07
 notarial offices or other public authorities
 as ‘courts’ 3.10, 3.14–3.18
 see also religious law divorces
- private international law 0.17
 allocation of jurisdiction *see* allocation of
 jurisdiction
 applicable law *see* applicable law
 ‘conflict of laws situations’ 0.16, 1.16–1.17
 on divorce and legal separation
 Brussels II *bis* *see* Brussels II *bis*
 Regulation (2201/2003/EC)
 Brussels IIa recast Regulation
 (2019/1111/EU) 0.10
 consistent interpretation principle 0.20,
 0.22, 1.13, 1.25, 2.06–2.08, 3.24,
 8.09
 see also Brussels II *bis* Regulation
 (2201/2003/EC), Rome III
 relationship with (Article 2)
 coordination of rules 5.09
 forum shopping concerns 0.04, 0.09,
 3.07, 4.09
 fragmentation concerns 0.15,
 0.18–0.20, 1.04
 Maintenance Regulation (4/2009/EC)
 0.18, 1.28, 2.08, 13.42
 Matrimonial Property Regulation *see*
 Matrimonial Property Regulation
 (2016/1103/EU)
 Rome III *see* Rome III Regulation
 (1259/2010/EU)
 rules and principles originating from
 divorce context 0.01
- Hague Conference instruments *see under*
 Hague
renvoi *see* *renvoi*
- Rome I *see* Rome I Regulation
 (593/2008/EC)
- Rome II *see* Rome II Regulation
 (864/2007/EC)
- procedural laws
 Article 13 procedural regime 13.32–13.34
see also differences in national law
 (Article 13)

- discretionary decision-making 13.29–13.31
- equivalence and effectiveness principles 0.27
- ex officio* application of Rome III 0.26
- pleading and proof rules 5.41, 5.52
- procedural choice of the applicable law 5.50–5.52
- Proceedings concerning the execution of a European arrest warrant issued against *Kozłowski* (C-66/08) (ECJ) 8.18
- proof, foreign law 5.41, 5.52
 - see also* procedural laws
- proximity requirements *see* applicable law in absence of choice by parties (Article 8)
- public policy (Article 12) 0.08, 4.12, 12.01–12.04
 - Article 10, relationship with 10.02, 10.18, 10.26, 12.01–12.03, 12.14
 - see also* *lex fori*, default application (Article 10)
 - Article 13, relationship with 12.01–12.02, 12.14
 - see also* differences in national law (Article 13)
- contents of public policy
 - EU guidelines 12.08–12.11
 - fundamental rights law 0.23, 12.11, 12.13
 - national laws 12.06
 - proximity to forum state as significant factor 12.12–12.13
- control of results approach 12.05, 12.19–12.20
- international public policy exception 6.12, 13.19
- private divorce, non-application of Article 12 12.28
- violations of public policy
 - case-based assessment needed 12.21–12.22
 - divorce requirements 12.15–12.18
 - inter-personal conflicts rules 15.20
 - marriage recognition rules 13.26
 - preliminary references to ECJ 12.26–12.27
 - rejection of foreign law *ex officio* in consequence 12.23–12.25
 - purposes of Rome III 0.03–0.05, 5.03, 17.01
 - refugees 5.39, 8.38
 - registered partnerships dissolution 1.06, 1.15, 3.24–3.25
 - see also* same-sex couples
 - Registered Partnerships Regulation (2016/1104/EU) 0.06, 5.38, 6.04, 13.41
 - states with multiple legal systems
 - inter-personal conflicts 15.04
 - non-application to internal conflicts 16.04
 - territorial conflicts 14.05, 14.14, 14.25, 14.32
 - religious law divorces 1.10, 3.12–3.13
 - Islamic law *see* Islamic law divorce
 - Jewish law 10.17
 - religious law part of state law *see* inter-personal conflicts (Article 15)
 - void choices of religious laws 5.19–5.20
 - discriminatory laws 5.23, 10.15–10.17, 10.22, 10.24, 10.27, 10.29, 12.17
 - inter-faith marriages 10.13, 15.20
 - laws not part of state law 5.21–5.22, 10.04
 - see also* private divorce
- renvoi*
 - diverging national approaches 11.01–11.05
 - EU and treaty-based rules 11.06–11.08, 11.18
 - exclusion from Rome III (Article 11) 4.13, 11.09–11.12
 - absent a choice of law 11.15–11.18
 - mandatory nature of Article 11 11.22–11.24
 - and party autonomy principle 11.13–11.14, 11.22–11.24
 - ‘remission’ to *lex fori*, whether excluded 11.19–11.21
 - substantive foreign laws in force, Article 11 restricted to 11.25–11.26
 - review clause 20.01

- right to divorce
 under international human rights law
 12.11
 under Rome III (*favor divortii* principle)
 0.35–0.36, 3.18, 9.09, 10.05
- Romania, private divorce regime 1.09, 3.10, 3.15
- Rome I Regulation (593/2008/EC) 0.20, 4.04, 14.05
 consent and material validity of choice of law agreements 6.04, 6.14, 6.18
 disconnection clause 19.09
renvoi exclusion 11.07
 states with multiple legal systems
 non-application to internal conflicts 16.04
 territorial conflicts 14.05, 14.14
- Rome II Regulation (864/2007/EC) 0.20, 4.04
 disconnection clause 19.09
renvoi exclusion 11.07
 states with multiple legal systems
 non-application to internal conflicts 16.04
 territorial conflicts 14.05, 14.14
- Rome III Regulation (1259/2010/EU)
 Article 1 *see* scope of application (Article 1)
 Article 2 *see* Brussels II *bis* Regulation (2201/2003/EC), Rome III relationship with (Article 2)
 Article 3 *see* definitions (Article 3)
 Article 4 *see* universal application (Article 4)
 Article 5 *see* choice of applicable law by parties (Article 5)
 Article 6 *see* consent and material validity of choice of law agreements (Article 6)
 Article 7 *see* formal validity of choice of law agreements (Article 7)
 Article 8 *see* applicable law in absence of choice by parties (Article 8)
 Article 9 *see* conversion of legal separation into divorce (Article 9)
 Article 10 *see* *lex fori*, default application (Article 10)
- Article 11 *see* *renvoi*, exclusion from Rome III (Article 11)
 Article 12 *see* public policy (Article 12)
 Article 13 *see* differences in national law (Article 13)
 Article 14 *see* territorial conflicts (Article 14)
 Article 15 *see* inter-personal conflicts (Article 15)
 Article 16 *see* states with multiple legal systems, non-application of Rome III to internal conflicts (Article 16)
 Article 17 *see* information provision by participating Member States (Article 17)
 Article 18 *see* transitional provisions (Article 18)
 Article 19 *see* international conventions, Rome III relationship with (Article 19)
 Article 20: review clause 20.01
 Article 21 *see* entry into force and application date (Article 21)
 future development 1.06, 9.49
 legal basis 0.06, 0.21, 4.04
 legislative history 0.06–0.10, 2.02, 3.03–3.04, 3.07, 19.03
- principles
 consistent interpretation 0.20, 0.22, 1.13, 1.25, 2.06–2.08, 3.24, 8.09
see also Brussels II *bis* Regulation (2201/2003/EC), Rome III relationship with (Article 2)
favor divortii (right to divorce) 0.35–0.36, 3.18, 9.09, 10.05
 informed choice *see* informed choice principle
 non-discrimination *see* non-discrimination principle
 non-retroactivity 18.03–18.05
 party autonomy *see* party autonomy principle
 purposes 0.03–0.05, 17.01
 subject matter *see* subject matter

- Sabyouni v Mamisch* (C-281/15 and C-372/16) (ECJ) 1.12–1.14, 3.09, 3.10, 3.14, 3.16
- Salvador Roldan v Commission of the European Communities* (F-129/06) (CST) 8.16
- same-sex couples
- marriage and divorce 0.30
 - Article 10 application 10.13
 - see also *lex fori*, default application (Article 10)
 - Article 13 escape clause applied to 0.25, 3.21–3.22, 13.15–13.16, 13.19–13.20, 13.22–13.23, 13.38
 - see also differences in national law (Article 13), invalid marriage escape clause
 - participating Member States not recognizing same-sex marriage 13.23
 - scope of Rome III extended to 0.15, 1.07–1.08, 3.21–3.23
 - registered partnerships
 - dissolution 1.06, 1.15, 3.24–3.25
 - Registered Partnerships Regulation see Registered Partnerships Regulation (2016/1104/EU)
 - sexual orientation discrimination 1.23, 13.38
 - see also non-discrimination principle
 - scope of application (Article 1) 0.09, 1.01
 - excluded matters
 - excluded subject matter see subject matter, excluded matters
 - legal capacity of parties 1.20–1.21, 6.11
 - material scope 1.02
 - conflict of laws situations 0.16, 1.16–1.17
 - subject matter see subject matter
 - personal scope 0.13
 - temporal scope 0.11–0.12
 - territorial scope see participating Member States
 - separation see legal separation
 - sex discrimination see non-discrimination principle, sex discrimination
 - sexual orientation discrimination 1.23, 13.38
 - see also same-sex couples
 - sharia* law divorce see Islamic law divorce
 - Spain
 - choice of law agreements, formal requirements 7.04, 17.02
 - multiple legal systems 14.10, 16.08, 16.14
 - see also states with multiple legal systems
 - notarial divorce system 3.10, 3.15, 5.42
 - public policy exception 12.03
 - stateless persons 5.39, 8.37
 - states with multiple legal systems
 - definition 14.06, 15.05
 - 'state' 14.07, 15.06
 - 'systems of law or sets of rules' 14.08, 15.07, 16.07
 - 'territorial unit' 14.09, 14.15
 - examples 14.10–14.11, 15.09–15.10
 - inter-personal conflicts see inter-personal conflicts (Article 15)
 - non-application of Rome III to internal conflicts (Article 16) 14.01, 16.01–16.03
 - parallels in other EU private international law instruments 16.04
 - practical application 16.14
 - provision in detail 16.09–16.13
 - scope of application 16.05–16.08
 - territorial conflicts see territorial conflicts (Article 14)
 - subject matter 0.01–0.02, 0.14–0.15, 1.03–1.05
 - excluded matters 1.18–1.19
 - annulment of marriage 0.14, 1.24–1.25, 2.04
 - existence, validity or recognition of marriage 1.22–1.23, 3.22, 13.11–13.12, 13.21, 13.28
 - inheritance law matters 1.29
 - maintenance obligations 0.18, 1.28
 - matrimonial property matters 1.27
 - parental responsibility 0.18, 1.27
 - registered partnership dissolution 1.06, 1.15, 3.24–3.25
 - trust law matters 1.29
 - private divorce see private divorce

- religious law divorces *see* religious law divorces
- same-sex marriages 0.15, 1.07–1.08, 3.21–3.23
- see also* divorce; legal separation; scope of application (Article 1)
- Succession Regulation (650/2012/EU) 1.29
- habitual residence concept 5.30
- multiple nationality situations 3.32, 5.38
- renvoi* accepted 11.07, 11.18
- states with multiple legal systems
- inter-personal conflicts 15.04
- non-application to internal conflicts 16.04
- territorial conflicts 14.05, 14.14, 14.25, 14.32
- succession agreements, validity of 6.04, 18.11
- Swaddling v Adjudication Officer* (C-90/97) (ECJ) 8.18
- Sweden 0.07, 10.05
- talaq* 10.15–10.16, 10.22, 10.24, 10.27, 10.29
- see also* Islamic law divorce
- temporal scope 0.11–0.12
- territorial conflicts (Article 14) 11.12, 14.01–14.04
- Article 15, relationship with 14.12, 15.11–15.12
- see also* inter-personal conflicts (Article 15)
- direct and indirect referral approaches 14.13–14.14
- general rule ('law of such state' interpretation) 14.15–14.17, 16.10
- 'habitual residence' interpretation 8.11, 14.18
- see also* habitual residence, concept
- choice of law complications 14.21–14.22
- objective conflicts rule 14.19–14.20
- 'nationality' interpretation 14.23–14.24
- see also* nationality as connecting factor
- territorial unit designated by law of that state 14.25–14.26
- territorial unit chosen by parties 14.27–14.31
- territorial unit with which spouse(s) has closest connection 14.32–14.34
- parallels in other EU private international law instruments 14.05, 14.14, 14.25, 14.32
- scope of application 14.06–14.11
- see also* states with multiple legal systems
- territorial scope *see* participating Member States
- TFEU *see* Treaty on the Functioning of the European Union (TFEU)
- transitional provisions (Article 18) 18.01–18.03
- choice of law agreements 18.08–18.13
- divorce and legal separation proceedings 18.04–18.07
- see also* entry into force and application date (Article 21)
- Treaty on the Functioning of the European Union (TFEU)
- area of freedom, security and justice
- Article 81(3) as legal basis of Rome III 0.21, 4.04
- mutual trust principle 0.24, 12.09
- Article 18: non-discrimination 8.36
- enhanced cooperation provisions 0.06, 0.11
- Rome III relationship with 19.01
- tribal law part of state law *see* inter-personal conflicts (Article 15)
- trust law matters 1.29
- United Kingdom 0.09, 8.11, 14.10, 16.08
- see also* states with multiple legal systems
- universal application (Article 4) 4.01–4.03, 5.02, 19.17
- assessment 4.09–4.13
- content 4.05–4.08
- controversy over 4.04
- Verhellen, Jinske 8.33
- weaker spouse, safeguards for 0.29
- informed choice principle *see* informed choice principle

- non-discrimination principle *see* *ZH & RH v Switzerland* (60119/12)
non-discrimination principle (ECtHR) 13.26
- public policy exceptions *see* public policy
(Article 12)