

**Jurisdiction on property regimes  
of international couples:  
Regulations  
No 2016/1103 and No 2016/1104**

# Contents

- Timeline
- Key terms
- Aim pursued
- Territorial scope of application
- Temporal scope of application
- Material scope of application
- Notion of ‘matrimonial property’
- Notion of court - Recital 29
- General features of jurisdiction rules
- ‘Basic’ grounds (Arts 4-8)
- Main basic grounds Art 5.1 and Art 5.2
- Other basic grounds (Art 6)
- Derogations from the general rules of jurisdiction
- Possibility of choice of court (Art. 7)
- Common rules
- Summarising conclusions

# Timeline:

- Nov. 2004: the Hague Programme
- July 2006: Green Book launched (public consultation)
- Dec. 2009: Stockholm Programme: Council invites the Commission to submit a proposal
- March 2011: Proposal of two regulations
- 3 Dec. 2015: it is clear that no unanimity can be found

- Dec. 2015 - Feb. 2016: **Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden** manifest their intention to make recourse to enhanced cooperation
- March 2015: **Ciprus** joins the group
- 9 June 2016: Council adopts **decision (UE) 2016/954** authorising the enhanced cooperation

The Council approved two **twin acts on 24 June 2016**:

- **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**
- **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**
- Same structure, almost same wording and numbering of the provisions

# Key terms

- **Matrimonial property regime:** rules concerning the property relationships between spouses and in their relations with third parties, as a result of marriage or its break-up.
- **Registered partnership:** the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.
- **Property consequences of a registered partnership:** rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its break-up.

# Aim pursued

- **Recital 15:** **certainty** and **foreseeability** of solutions
- **Recital 18:** harmonized connecting factors to determine the **law applicable** to matrimonial property regimes (MPR) and property consequence of registered partnerships (PCRP) + the **jurisdiction** to rule on all civil law aspects thereof, concerning both the ***everyday management of the couple's property*** and the ***liquidation*** of the property regimes of international couples due to natural termination - death of one spouse- or to divorce, legal separation, annulment of the marriage or dissolution of the partnership
- **Recital 16:** to simplify the **recognition and enforcement** of judgments and the acceptance and enforcement of authentic instruments linked to MPR and PCRP

# Territorial scope of application

- **18 Member States** participating
- Any EU Member can join enhanced cooperation (both Regulations) at any time

**BUT** till that moment, each non-participating Member States will be considered as a third State

- the Regulations shall prevail on existing conventions concluded between participating Member States
- Exception: specific conventions between Denmark, Finland, Iceland, Norway and Sweden continue to be applicable

# Temporal scope of application

- Regulations shall **apply** only to legal *proceedings* instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded **on/after 29 January 2019**, regardless of the date of the marriage
- If the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be **recognised** and enforced in accordance with the rules of the Regulations as long as the *rules of jurisdiction applied comply with those set out in the Regulations*

# Material scope of application

## Art. 1 Regs. No 2016/1103 and 1104

The following are **excluded** from the scope:

- ✓ Revenue, customs or administrative matters
- ✓ The legal capacity of spouses (except *specific powers* and rights of either or both spouses with regard to property, either as between themselves or as regards third parties, **recital 20**)
- ✓ The existence, validity or recognition of a marriage (no common definition BUT subject to the law designated by the private international law of the forum, **recitals 17, 21 and 64**) ⇒ **problems of coordination with MS; ≠ reg. 1104 which defines registered partnership at Art. 3(1)(a)**
- ✓ Maintenance obligations (refer to Reg. 4/2009 and to the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations) ⇒ **coordination needed**

- ✓ Social security
- ✓ The entitlement to transfer or adjustment between spouses, in the case of divorce, legal separation or marriage annulment, of rights to retirement or disability pension accrued during marriage and which have *not* generated pension income *during* the marriage (Should be strictly interpreted, **recital 23**: amount that have been already paid during marriage/compensation in case of pension with common assets are included)
- ✓ The nature of *rights in rem*, the recording in a register of rights in immovable or moveable property and the effects of recording or failing to record such rights (**recital 24**) but ‘adaptation’ is possible (**recital 25**)

# Notion of ‘matrimonial property’ – Reg. 1104

- An **autonomous** concept is required;
- the CJEU case-law is indicative, even when the Court decided:

## on civil and commercial matters

- *De Cavel II* (27-3-1979, C-143/79) confirmed in *Realchemie* (18-10-2011, C-406/09)
- *van Den Boogaard* (27-2-1997, C-220/95)

## on succession matters

- *Iliev* (14-6-2017, C-67/17,)
- *Mahnkopf* (1-3-2018, C-558/16)

# Notion of ‘matrimonial property’ – Reg. 1104 - Art 3(a)

= property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution; thus it should encompass as specified in **recital 18**:

## As to the nature

- rules from which the spouses may **not derogate**
- any **optional** rules to which the spouses may agree in accordance with the applicable law
- any **default** rules of the applicable law

## As to the substance

- **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.

## Notion of court - Recital 29

The term 'court' should be given a **broad meaning** so as to cover (**recital 29**):

- **courts** exercising judicial functions
- **notaries** in some Member States who, in certain matters of matrimonial property regime, exercise judicial functions (in France under Art. 255 c.c.?)
- **notaries and legal professionals** who, in some Member States, exercise judicial functions in a given matrimonial property regime by delegation of power by a court

- All courts should be bound by the rules of jurisdiction set out in the Regulation
- The **term ‘court’** should **not cover** non-judicial authorities of a Member State empowered under national law to deal with matters of matrimonial property regime (such as the *notaries in most Member States* where, as is usually the case, they are not exercising judicial functions, thus the authentic instruments they issue should circulate in accordance with the provisions of this Regulation on *authentic instruments* – not as judgments)

## Notion of court - Art. 3.2

Any **judicial authority** and **all other authorities** and **legal professionals** with competence in matters of matrimonial property regimes

- which **exercise judicial functions** or **act by delegation of power by a judicial authority** or **under its control**,
- provided that such other authorities and legal professionals offer guarantees with regard to:
  - **impartiality** and
  - the **right of all parties to be heard**,
  - and provided that their ***decisions*** under the law of the Member State in which they operate (a) may be made the subject of an *appeal* to or *review* by a *judicial authority*; and (b) have a *similar force and effect as a decision* of a judicial authority on the same matter

- **Italy** has notified pursuant to Art. 64 that are to be considered as court under the regulation: both **lawyers** for the ‘*negoziazione assistita*’ procedures provided for Art. 6 law decree no. 132/2014; and **civil servants** (*ufficiali di stato civile*) in the ‘de-jurisdictionalised regimes’ under art. 12 same l.d.

# General features of jurisdiction rules

- Overall layout of the regime:
  - **‘basic’ grounds (Arts 4-8)**: distinguished differently depending on the existing connection with – weak or strong – between the forum State and the parties/claim;
  - **alternative/exceptional fora (Art. 9)**: allows for an exception to the basic rules by enabling the court designated to decline jurisdiction in certain circumstances, identifying the other courts having jurisdiction *in case of dismissal* by the former;

- **subsidiary/extra-grounds (Arts. 10-11):** jurisdiction may be asserted where no court is having jurisdiction under the previous rules and there's still a *connection* with a participating State,
- **counterclaim (Art. 12):** an already seized court of a MS having jurisdiction on any of the previous grounds, shall have jurisdiction over the counterclaim.

- The system is “**self-contained**” regime, namely because is:
  - **Uniform** (without interference from domestic rules and with **no** possibility to decline for reasons other than those indicated, eg. because another court is considered ‘better placed’- no!)
  - **Exhaustive** (no gaps; no residual grounds left to other sources: if there is no court having jurisdiction on ‘basic’ grounds ⇒ jurisdiction can only be asserted on the basis of Arts 10-11 )

## ‘Basic’ grounds (Arts 4-8)

Aim: to concentrate jurisdiction on matrimonial property before the same court seized for the matrimonial matters and successions (**one-stop shop**):

- The competent court *already seized* for the succession (pursuant to reg. 650/2012) has jurisdiction also for matters of the matrimonial property regime in the event of the death of one of the spouses (**Art. 4**)

- When the forum is objectively connected to the forum State (**Art. 5.1**), jurisdiction in matters of **matrimonial property regimes** in cases of divorce, legal separation or marriage annulment falls under the jurisdiction of the court *already seized* to rule on the matrimonial dispute in compliance with Reg. 2201/2003
  
- 👉 BUT when the connection is weak, the **spouses' agreement** is required – see **Art. 5.2**

## Main basic grounds (Art. 5.1)

- When the forum is **objectively connected** to the *forum State*?
- The same court, already seized, having jurisdiction under Art. 3(1)(a) (first four indents) reg. 2201/2003 shall decide over **both** the matrimonial matters **and** the matrimonial property regimes whenever the forum State is the:
  - ✓ Last common habitual residence;
  - ✓ Last habitual residence in case one still resides there
  - ✓ Habitual residence of the defendant
  - ✓ In case of joint request, habitual residence of one of the spouses
- No further requirement; no agreement between the spouses

## Main basic grounds (Art. 5.2)

When the connection is weak, the spouses' *agreement* is required where the court that is seized to rule on the application for divorce, legal separation or marriage annulment:

- a) is the court of a Member State in which the **applicant** is habitually resident and the applicant had resided there for at least a year immediately before the application was made, in accordance with the fifth indent of Art. 3(1)(a) of Reg. 2201/2003;
- b) is the court of a Member State of which the **applicant** is a **national** and the applicant is habitually resident there and had resided there for at least six months immediately before the application was made (sixth indent of Art. 3(1)(a) of Reg. 2201/2003);

- c) is seized pursuant to Art. 5 Reg. 2201/2003 in cases of conversion of legal separation into divorce (not always possible); or
- d) is seized pursuant to Art. 7 of Reg. 2201/2003 in cases of residual jurisdiction (ex.: in Italy, celebration of the marriage or domicile of the defendant).

The **agreement** must be written, signed and dated (**Art. 7**)

- It seems the legislator instituted a hierarchy (forbidden by Hadadi case 16.7.2009)
- The agreement being required, procedural tactics could be pursued (the defendant refusing the agreement under Art. 5.2 could in the meanwhile start an action first under Art. 5.1)

## Other basic grounds (Art. 6)

**In other cases**\*, jurisdiction to rule on the spouses' matrimonial property regime shall lie with the courts of the Member State having an objective/strong connection:

\* ***when?*** The court on succession or matrimonial matters has been not seized yet or has already concluded the procedure; the court is potentially competent under Art. 5.2 but no agreement is found or valid; a non-participating Member State is seized.

- of the **spouses' common habitual residence** at the time the court is seised; **or failing that**
- of the **spouses' last habitual residence**, insofar as one of them still resides there at the time the court is seised; **or failing that**
- of the **habitual residence of the respondent** at the time the court is seised; **or failing that**
- of the **spouses' common nationality** at the time the court is seised.

# Derogations from the general rules of jurisdiction

- **Jurisdiction based on the appearance of the defendant** before the court of the Member State whose law is applicable (**Art. 8**)
- **Alternative jurisdiction:** where a court having jurisdiction pursuant to the abovementioned rules does not recognize the marriage in question, it may *decline* jurisdiction. In this case, the spouses may *agree* to confer jurisdiction to *any other* Member State. In the absence of an agreement, the *Member State of the conclusion of the marriage* shall have jurisdiction (**Art. 9**)

- **Subsidiary jurisdiction:** Where no court has jurisdiction, the court of the territory in which one of the spouses has immovable property shall have jurisdiction to rule in respect of the immovable property in question (**Art. 10**)
- Finally, the case of **forum necessitatis** is provided (**Art. 11**) where no court has jurisdiction, the courts of a Member State may, on an exceptional basis, rule on the matrimonial property regime if proceedings cannot reasonably be brought or conducted or would be impossible in a third state with which the case is closely connected
  - The case must have a **sufficient connection** with the Member State of the court seized

## Possibility of choice of court (Art. 7)

The spouses may agree that the Member State

- **whose law is applicable** or
- **where the marriage was concluded**

shall have jurisdiction to rule on matters of their matrimonial property regime

(***except*** for cases of death of one of the spouses or matrimonial dispute: no derogation of a forum already seized for succession or matrimonial matters under arts 4-5)

- Such an **agreement** shall be expressed in writing and dated and signed by the parties (**Art. 7(2)**), and any communication by electronic means which provides a *durable record* of the agreement shall be deemed equivalent to writing.
- This provision was included to ensure the coincidence among *forum* and *ius* in order to facilitate the ascertainment and application of law.

- The spouses may agree that the Member State **whose law is applicable\*** or **where the marriage was concluded**
- \* the choice can be made only among some fora:
  - indicated in **Arts. 22** *in case there is agreement,*
    - (a) *the State where the spouses or future spouses, or one of them, is habitually resident at the time the agreement is concluded; or*
    - (b) *State of nationality of either spouse or future spouse at the time the agreement is concluded*

- indicated in **Art. 26 (1)**, *lacking the agreement*:
  - (a) *State of the spouses' first common habitual residence after the conclusion of the marriage; or, failing that*
  - (b) *spouses' common nationality at the time of the conclusion of the marriage*

(⇒ both referred to the past; what if they loose contacts as time goes by?)

*Example* - A bi-national homosexual couple (Belgian/French) concluded their marriage in Paris. Having lived in Vienna since their marriage, they preferred to submit any matters relating to their matrimonial property regime to the French courts (place marriage concluded). The same couple will also have the possibility to submit any matter relating to its matrimonial property regime to French law and the French courts /or to Austrian law and the Austrian courts.

# Common rules

- Art. 12 Counterclaims
- Art. 14 Seising a court (except *ex officio* under lett. c)
- Art. 15 (*mutual trust*)
- Art. 16 Examination as to jurisdiction
- Art. 19 Examination as to admissibility

# Common rules

- *Lis pendens* (Art. 17)

1. Where proceedings involving the **same cause of action** and between the same parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

# Common rules

- ***Lis pendens (Art. 17)***

- 2. In the cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised.*
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

# Common rules

- **Related actions (Art. 18)**

= so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised **may stay** its proceedings

2. Where the actions are pending at first instance, any court other than the court first seised **may** also, *on the application of one of the parties*, **decline** jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

# Summarising conclusions

- Enhanced cooperation on matrimonial and registered partnership property issues
- Complete instrument: all PIL aspects
- Coordination with other PIL Regulations

## **Jurisdiction on property regimes of international couples: Regulations No 2016/1103 and No 2016/1104**

### **Case study**

#### **FACTS**

A couple of Italian nationals, Giovanna and Marco, married in Milan (Italy) in February 2010 choosing the regime of community of property («comunione dei beni») set under the Italian law, and shortly after (in mid-2012) moved to Lisbon (Portugal) due to professional grounds of both spouses. Notably, Giovanna is the executive director of an important fashion brand and Marco works in the restaurant business. They have been habitually resident in Portugal for several years, in a nice rented apartment in the center of Lisbon, paid entirely by the Giovanna.

In January 2015 they had a child, Tommaso, who was born and grown up in Portugal. Few years later, the husband had some financial problems due to the loss of a business opportunity. As a consequence of the difficult and stressing situation, difficulties arose in the marriage too.

In December 2017 they went back to Italy to spend Christmas holidays with their relatives. During their stay, the spouses decided to relocate in Italy by Spring 2019, hoping that the change would have helped their relationship.

Marco stayed in Italy in order to take care of the renovation of the home in Milan, which was owned by both spouses at 50% each and where they would have wanted to reside. He also started a new commercial activity in Milan, which turned out to be very successful allowing Marco to invest just after two months in a small flat he decides to locate for short periods, earning a relatively good income therefrom. The economically advantageous term continues: at the end of February 2019 he is appointed as sole heir by its dear uncle, who passed away without children and other relatives. His uncle's assets comprise both 100.000 euros deposited in a bank account and a wonderful villa in Crans-Montana, Switzerland, where he used to spend long periods because of the high quality of the air, beneficial for his bad phthisis.

The wife returned to Portugal with the child. They were supposed to move to Italy when the renovation was finished. Unfortunately, soon after their return Tommaso's started feeling seriously sick, requiring continuous assistance by Giovanna who, being alone, could not cope with her job rhythm and had to stop working to assist her child.

However, due to continuous arguments mainly related to financial issues, Marco decided to seek divorce. So, on 20 March 2019 he applied before the Tribunal of Milan (Italy) asking for:

- separation of the couple,
- joint custody of the child,
- placement of the child with the father,
- maintenance for him and the child,
- the award of both homes in Milan.

With the introductory claim Marco submits a written agreement signed by both spouses and concluded in Milan in 2010, few days after the marriage, which provided, the following clauses for the case of separation or divorce:

- the choice of Portuguese law with regard to the matrimonial disputes (according to which the divorce can be declared after one year of *de facto* separation);
- the choice of Italian courts with regard to both spousal and children maintenance;
- the choice of Italian law on both spousal and children maintenance;
- the choice of Italian courts with regards to matrimonial property regime.

Meanwhile, on 19 April 2019, Giovanna initiated custody proceedings in Portugal asking for the sole custody of Tommaso on the ground that Marco had not been taking proper care of the child and was often away from home when they lived together in Portugal. She did not file a claim for maintenance as she recalled the signed agreement giving jurisdiction to the Italian court.

The first hearing before the President of the Tribunal of Milan will take place in early July 2019.

Giovanna is asking your legal assistance. She is asking to:

- contest the validity of that agreement;
- enter an appearance before the Italian court and contest the Italian jurisdiction over parental responsibility;
- have the Italian court dismiss the spousal maintenance claims, on the ground that her husband has never provided financial support to the family and she has always paid for family subsistence both in Italy and in Portugal;
- contest the Italian jurisdiction over the child maintenance claim filed by the father;
- She wants to know if she can claim damages, in case the husband does not pay the child maintenance;
- She informs you that she will move to Switzerland by the end of 2019 because she has discovered that the child is affected by phthisis (as the granduncle) and the doctor has advised to bring the kid to Crans-Montana, famous for the high quality of air; she wants to know which court has jurisdiction to modify the child maintenance obligation;
- She also wants to be able to sell the two homes in Milan and receive half of the price, and to receive half of the gains from the rentals obtained by Marco;
- She asks for the judicial declaration of a quota of the assets inherited by Marco for herself (as a 'compensation' for all her personal and economic efforts and commitment in the family *menage* during the marriage, including the costs incurred for the house in Lisbon, the lost profits from her previous job she had to interrupt to assist their child and the burden of the responsibility she bear alone, giving the continuous absence of the husband) and for their child (in need of medical treatments and rehabilitation care). Namely, she asks for: both 50.000 euros and the transfer to her of 50% of the bare ownership ("nuda proprietà") and transfer of the right of utilization of the house in Crans-Montana ("usufrutto") to her and the

child for the entire life-time of their kid, in order for the latter to benefit of the best air quality possible and enjoy a healthier standard of living, with the physical support of the mother.

### Related questions

- 1) Is the agreement valid for the part referring to the jurisdiction on the matrimonial property regime?
- 2) Has the Tribunal of Milan jurisdiction over matrimonial property regime? Which are the relevant provisions?
- 3) How would you consider the claim concerning the award of the larger home in Milan? Could it be qualified as the family home?

If yes, which are the relevant provisions to determine jurisdiction and applicable law? Would you consider the claim of property of the flat and the gains from the rentals differently? Which provisions would you apply to determine the jurisdiction and applicable law for the smaller apartment?

- 4) Which court should have jurisdiction to settle the award of money deposited in the bank account? Would it be the same court to settle the transfer of the use of the immovable property located in Switzerland? Would you consider such claims as pertaining to maintenance obligation or matrimonial property definition? Would the form chosen for the award – lump sum payment/transfer of rights *in rem* – be relevant in such definition?

### LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2016/1103

## Questions with guidelines

### 1) Is the agreement valid for the part referring to the jurisdiction on the matrimonial property regime?

Regulation 2016/1103 provides for the possibility for (married or even future) spouses to select the court having jurisdiction over matrimonial property regimes, even if it is limited.

Under Article 7(2), referred to in Article 5(3), the agreement must be written, dated and undersigned if the agreement is concluded before the court is seised to rule on matters of matrimonial property regimes.

- Therefore, the forum selection clause inserted in the agreement signed after the marriage in Italy and before the commencement of the matrimonial proceedings is formally valid.

#### Possible issues to be discussed:

Could an e-mail be a valid proof of the agreement?

See the second proposition of Article 7(2) of the Regulation 2016/1103.

### 2) Has the Tribunal of Milan jurisdiction over matrimonial property regime? Which are the relevant provisions?

In the agreement, the spouses have chosen Italian courts for claims on matrimonial property regime, since where they were just married.

With regard to the matrimonial property regime, the Italian court has jurisdiction, because, according to **Article 5(2)(b)** of the Regulation 2016/1103, Italy is the place where the *agreement* was concluded, where the applicant brought the *action for separation* and where he is both a *national* and *habitually resident for more than six months* immediately before the application was made, in accordance with sixth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003, referred to by the same provision.

- Therefore, the Italian court has jurisdiction for the separation, for the spousal maintenance and for the matrimonial property regime in the present case.

#### Possible issues to be discussed:

With regard to the previous session: is it possible a choice-of-court agreement over matrimonial matters?

What if no valid agreement was signed? Which court could have jurisdiction over the matrimonial property regime?

See under Articles 6 and 8 reg. 2016/1103:

(i) If the factual elements are the same at the time the court is seised:

- Portuguese under **Article 6**, since in Portugal there is: under lett. **(a)** common habitual residence; under **(b)** common last habitual residence, insofar as Giovanna still resides there; under **(c)** habitual residence of Giovanna (as respondent).

- Italian court under Article 6**(d)** given the Italian common nationality

(ii) If Giovanna agrees to enter an appearance before the Milan court (lacking a valid agreement, since Italian law is applicable pursuant to Article 26(1)(a) because the spouses' first *common habitual residence after the marriage was in Italy*)

- Italian court shall have jurisdiction under **Article 8**. This rule shall not apply where Giovanna's appearance was entered to contest the jurisdiction. Anyway, before assuming jurisdiction, the Italian court shall ensure that the Giovanna is informed of her right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

### 3) How would you consider the claim concerning the award of the larger home in Milan? Could it be qualified as the family home?

**If yes, which are the relevant provisions to determine jurisdiction and applicable law? Would you consider the claim of property of the small flat and the gains from the rentals differently? Which provisions would you apply to determine the jurisdiction and applicable law for the smaller apartment?**

In the main case, only the father has lived in the home in Milan, so it could **not** be considered as the family home. Therefore, it would fall under the matrimonial property regime, namely, the Italian court shall have jurisdiction under Article 5(2)(b). This is valid (and even more evident) for the small flat bought recently and for the profits derived by the rentals. In both regard, Giovanna's defense against the husband's claim may result well-founded.

On the contrary, if the apartment were qualified as the family home [*the trainees should imagine grounds for doing so: for instance, relying on the couple's intention to relocate the whole family there*], according to the Italian case law, such issue is deemed to be related to the protection of children, and therefore subject to the respective jurisdictional regime and the rules on the determination of the applicable law.

- In the latter case, Portuguese courts shall decide over the award of the family home and apply the Portuguese law (similar to the claim on parental responsibility – based on the habitual residence of the child).

#### Possible issues to be discussed:

When does an apartment, property of one of the spouses, qualify as family home?

Is the award of a family home part of the maintenance obligation? And which is the applicable regime?

How can you distinguish between maintenance obligation and matrimonial property? Which is their respective functions? ⇒ refer to CJEU case-law (*De Cavel II, van der Boogaard...*)

- 4) Which court should have jurisdiction to settle the award of money deposited in the bank account? Would it be the same court to settle the transfer of the use of the immovable property located in Switzerland? Would you consider such claims as pertaining to maintenance obligation or matrimonial property definition? Would the form chosen for the award – lump sum payment/transfer of rights *in rem* – be relevant in such definition?

The different further requests by Giovanna must be distinguished, as some can be referred to matrimonial property regime and others to the maintenance obligations, falling each under the corresponding rules identified earlier. The already quoted case-law by EUCJ allow us to identify the two categories:

- *Spousal maintenance obligations*: amount to be defined with the scope of economic support of the spouse that cannot provide for herself, having lost her job and lacking other sources of income; the amount could correspond both to periodic (usually monthly) allowances but also to a lump sum quantified *una tantum* or as an interim compensation order (50% of the sum; 50% of the sole property of the villa in Switzerland)
- *Child maintenance*: right to the use of the house in Switzerland?
- *Matrimonial property*: definition of the rights in property of the different assets acquired during the marriage ('arising out of the spouse matrimonial relationship') to be shared equally (50%) in favour of each spouse, considering the total value of all the accrued profits and estates.

For the peculiarity of the present case, the fact that the immovable property inherited by Marco is situated within the territory of a *third States* does not affect the definition of the jurisdiction of the authority on the transfer of the bare ownership (*nuda proprietà*). Both **Articles 10** (subsidiarity) and **11** (*forum necessitatis*) do not seem applicable, given the jurisdiction of the Italian court established under **Article 5(2)** reg. 2016/1103 for matrimonial property regimes, attracted by the matrimonial proceedings (Art. 3(1)(b) reg. 2201/2003), decided by the same judge together with the spousal alimentary obligations (Art. 4(1)(c) reg. 4/2009); see *supra* under question n. 3.

Possible issues to be discussed:

What could it happen in case – being the immovable property in a third State, such as Lybia, where bringing proceedings would be almost impossible for the political instability due to the civil war – no court of the participating Member States had jurisdiction under Articles 4, 5, 6, 7, 8 or 10, for example because the proceeding on matrimonial dispute is brought in Poland (non-participating Member State) when there is no agreement on a different court between the two Polish spouses, having resided in Lybia before 2014 for several years, no appearance of the defendant before the

court of a participating State, no jurisdiction has been declined? Could for example the *domicile of the defendant* in Italy be a sufficient connection to assert jurisdiction under **Article 11**? No guidance is offered by reg. 2016/1103 but most probably yes.