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**Annex to the Green Paper on applicable law and jurisdiction
in divorce matters**

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1. INTRODUCTION

This working paper forms an annex to the Commission's Green Paper on applicable law and jurisdiction in divorce matters. The Green Paper describes the interplay between the conflict-of-law rules and the rules on jurisdiction and illustrates through practical examples how the current situation may give rise to a number of problems in the context of "international" divorces. Third parties are invited to comment upon the questions raised in the Green Paper which are summarised in this working paper (table 1).

The working paper provides information on the current rules in divorce matters. This includes the substantive and procedural divorce laws of the Member States as well as the national conflict-of-law rules. The attached tables provide a schematic overview of the national laws on the grounds of divorce (table 2), on legal separation and marriage annulment (table 3) and on the national choice-of-law rules in divorce matters (table 4).

Since the question of applicable law is closely linked to the question of jurisdiction, the working paper describes also the jurisdiction rules of Council Regulation (EC) No 2201/2003 ("the new Brussels II Regulation").

The Green Paper is confined to applicable law in divorce proceedings, without invoking any of the ancillary matters that often arise on such occasions, in particular maintenance and the division of matrimonial property. The Commission has launched a public consultation on the question of maintenance obligations and a Green Paper was published on this subject in April 2004.¹ As regards matrimonial property rights, the Commission launched a study² and intends to publish a Green Paper on this subject in 2006 covering jurisdiction, recognition and enforcement as well as applicable law. The Commission is aware that the question of applicable law in divorce matters cannot be examined in isolation from these ancillary matters and will therefore carefully consider the interrelationship between the different issues when preparing future projects.

2. PREVIOUS STUDIES AND MEETINGS

The Council conducted a comparative study in 2000 on the laws in matrimonial matters of the then 15 Member States, which revealed significant differences between the Member States' substantive, procedural and choice-of-law rules. It

¹ See Green Paper on maintenance obligations, COM (2004) 254 final, 15.04.2004.
http://europa.eu.int/eur-lex/fr/com/gpr/2004/com2004_0254fr01.pdf

² The study is available at:
http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm

also showed that Member States had, at that time, divergent views on the need for and desirability of harmonisation of conflict-of-law rules in this field.³

A second study was conducted by the Commission in 2002 in order to identify whether the lack of harmonisation of conflict-of-law rules in divorce matters resulted in any practical problems.⁴

The Commission organised an expert hearing with representatives from the Member States in March 2003. The discussions, which confirmed that Member States' views on the need for harmonised conflict-of-law rules remained mixed, have been taken into account in the present Green Paper.

The information on the Member States' legislation is primarily based on the information provided by the Member States.⁵

3. EXISTING RULES IN DIVORCE MATTERS

3.1. National substantive laws on divorce

All Member States with the exception of Malta allow divorce.⁶ It is possible to observe a certain convergence in the field of divorce legislation, in particular an increasing role of divorce by consent and reduced emphasis on fault. One example of this trend is the recently adopted reform of the French law on divorce.⁷ Significant differences remain nevertheless between the Member States' divorce laws, concerning the grounds for divorce as well as the procedures. This divergence can be explained by different factors, such as the different family policies and cultural values.

The divergence can be illustrated by the Swedish and the Irish laws on divorce. Swedish law does not require any ground for divorce, but a unilateral divorce application is granted immediately provided it is not contested and the spouses do not have custody of children under the age of 16. As a comparison, Irish law requires that the spouses have lived apart for at least four years. In addition, the

³ The study "Questionnaire concerning the law applicable to divorce (Rome III) – compilation of the replies of the delegations" (JUSTCIV 67) is available at: <http://register.consilium.eu.int/pdf/en/00/st08/08839en0.pdf>.

⁴ The study "Practical problems resulting from the non-harmonization of choice of law rules in divorce matters" by the T.M.C Asser Instituut, November 2002 is available at: http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm

⁵ The information on the legislation of the 15 "old" Member States is based on the information provided in the study "Questionnaire concerning the law applicable to divorce (Rome III) – compilation of the replies of the delegations" (JUSTCIV 67) is available at: <http://register.consilium.eu.int/pdf/en/00/st08/08839en0.pdf>. The information on the legislation of the 10 "new" Member States that joined the European Union on 1 May 2004 is based on the information provided by these States in the framework of the European Judicial Network in civil and commercial matters http://europa.eu.int/comm/justice_home/ejn/divorce/divorce_gen_en.htm.

⁶ Maltese law does not allow for divorce, but recognises divorce judgments given by competent foreign courts.

⁷ Law No. 2004-439 of 26 May 2004, Journal officiel de la République française, 2004, no. 122, 27.05.2004, p. 9319.

Irish court must be satisfied that there is no reasonable prospect of reconciliation and that proper provisions are made for the other spouse and the children. These requirements apply also in divorces by consent.

3.1.1. *Different grounds for divorce (table 2)*

3.1.1.1. Divorce by consent

Divorce by consent is an autonomous ground for divorce in certain Member States. Other Member States do not consider it as an autonomous ground, but only as a means to establish an irreparable breakdown of the marriage. A previous period of factual separation is required in certain Member States. This time varies from six months (Austria, Denmark) to four years (Ireland). Certain jurisdictions impose additional requirements if the spouses have children, e.g. to present an agreement on the exercise of parental responsibility.

3.1.1.2. Irreparable breakdown of the marriage

Most Member States permit divorce in case of failure of the marriage, also in the absence of fault (often referred to as “irretrievable or irreparable breakdown of the marriage”). Irreparable breakdown of the marriage is the only ground for divorce in Germany, Greece, Slovakia, Ireland, Netherlands and the United Kingdom⁸. In Belgium, irretrievable breakdown underlies all types of divorce, but is not in itself a ground for divorce. It is usually required to establish the irreparable breakdown by certain facts. These facts may include a period of factual separation (France, Spain, Italy, Germany, United Kingdom, Austria, Latvia), minimal age of the spouses (Belgium, Luxembourg), a minimal duration of the marriage (Greece, Belgium), statement of the reasons (Austria, Netherlands) or a written agreement between the spouses on the exercise of parental responsibility and property relations between the spouses (Belgium, Greece, Italy, France, Austria, Luxembourg, Portugal, Netherlands). Polish law requires the court to verify that the breakdown of the marriage is not only irreparable but also complete. In some States, mutual consent makes it unnecessary to investigate the reasons for the breakdown (Czech Republic, Hungary).

3.1.1.3. Divorce based on fault

Certain Member States (Belgium, France, Luxembourg, Austria, Portugal, Denmark, Cyprus and Lithuania) provide for fault-based divorce. This typically requires serious or renewed violations of marital duties and obligations, rendering it intolerable for the spouses to continue living together. This covers for example domestic violence, failure to fulfil financial obligations and adultery. Certain jurisdictions that do not provide for fault-based divorce nevertheless take into account grounds such as adultery, unreasonable behaviour and desertion as presumptions to establish the irreparable breakdown of the marriage (e.g. United Kingdom).

⁸ United Kingdom consists of three jurisdictions: England/Wales, Scotland and Northern Ireland. To simplify the text, the term “United Kingdom” is used as a collective term for the three jurisdictions where their legislations are similar in substance.

3.1.1.4. Divorce based on factual separation

Factual separation constitutes an autonomous ground for divorce in certain Member States (Belgium, France, Denmark, Ireland, Luxembourg, Portugal, Spain, Cyprus, Latvia and Lithuania). The duration of the factual separation varies (from 6 months in Denmark to 5 years in Cyprus). In Ireland, it is only one of several cumulative conditions.

3.1.1.5. No ground required

Sweden and Finland do not require any ground for divorce, but merely a consideration period of six months. The consideration period is always required under Finnish law, whereas Swedish law only requires it if one of the spouses does not consent or if the spouses have custody of a child less than sixteen years of age. Conversely, no consideration period is required if the divorce application is based on consent and the spouses do not have custody of children below the age of 16.

3.2. National substantive laws on legal separation and marriage annulment (table 3)

3.1.2. *Legal separation*

Legal separation, unlike divorce, does not dissolve the marriage. The duty of support and the obligation of fidelity remain in most cases, but the duty of cohabitation is suspended. Legal separation exists in France, Ireland, Luxembourg, Netherlands, Portugal, United Kingdom, Italy, Belgium, Denmark, Spain, Lithuania, Poland and Malta. Conversely, the concept of legal separation does not exist in Germany, Austria, Greece, Finland, Sweden, Czech Republic, Estonia, Latvia, Slovakia, Slovenia, Cyprus and Hungary. It is possible to convert legal separation into divorce in certain Member States.

3.1.3. *Marriage annulment*

All Member States, with the exception of Sweden and Finland, provide for marriage annulment for errors of consent, errors of form or violations of conditions relating to public policy (incest, kinship, under legal age, bigamy, cohesion, threat, sham marriages etc.). Marriage annulment entails in many Member States the retroactive annulment from the date of the marriage (“ex tunc”). In certain Member States, the annulment does not have retroactive effect, but only from the date of the annulment (“ex nunc”). Certain Member States (Spain, Portugal, Italy, Malta and Poland) have concluded agreements with the Holy See (so-called “Concordats”) whereby a Catholic marriage can be annulled by canonical courts whose decisions produce civil effects.

3.3. National procedural laws

Courts are competent to pronounce divorces in all Member States. In addition, it is possible to apply for divorce by consent before an administrative authority in Portugal, Estonia and Denmark. Certain Member States require the parties to appear in court one or several times and be assisted by a lawyer whereas other

Member States allow spouses to obtain a divorce on the basis of written documents and without legal counselling. The procedural law is often tailored according to the substantive divorce law. As an example, divorce by consent is governed by a simplified and accelerated procedure in certain Member States. On the other hand, procedures for divorces based on an alleged fault of a spouse typically require the submission of some kind of evidence. The procedural laws are also different as regards the link between the divorce and parental responsibility. Whereas certain Member States require that the question of parental responsibility is dealt with in the context of the divorce proceeding, other Member States allow that parental responsibility is treated in a separate proceeding.

3.4. National conflict-of-law rules (table 4)

3.1.4. Conflict-of-law rules concerning divorce

There are significant differences between the Member States' conflict-of-law rules concerning divorce. The rules can broadly be divided in two categories.

In the first category, the States determine the applicable law on the basis of a scale of connecting factors that seek to ensure that the divorce is governed by the legal order with which it has the closest connection. The connecting factors vary, but include in most cases criteria based on the nationality or habitual residence of the spouses. The majority of Member States belong to this category.

In the second category, the States apply systematically their domestic laws ("lex fori") to divorce proceedings.

France does not belong to any of the above categories, but applies unilateral conflict-of-law rules⁹ which specify in which conditions French law applies.

Certain Member States allow the spouses to choose applicable law in certain circumstances.

3.1.4.1. Application of a scale of connecting factors

The first group of Member States (Austria, Belgium, Estonia, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Spain, Czech Republic, Poland, Portugal, Slovakia, Slovenia) applies a system of a scale of connecting factors to establish the "closest connection" between the spouses and the applicable law.

Priority is in most cases many countries given to the spouses' common nationality or the last common nationality if one spouse still retains it. In the absence of common nationality, divorce is subject to the law of the common habitual residence of the spouses (Austria, Germany, Greece, Netherlands,

⁹ "Unilateral" conflict-of-law rules determines only the circumstances in which the domestic law applies. "Bilateral" conflict-of-law rules, on the other hand, designate either a foreign law or the domestic law. Bilateral rules are nowadays the general rule.

Spain, Portugal) or, failing this, the law of the spouses' last common habitual residence if one of them still lives there (Austria, Germany, Greece, Spain) or the common domicile of the spouses (Poland) or "lex fori" (Czech Republic, Hungary). Estonia and Lithuania have the common habitual residence of the spouses as the first connecting factor.

3.1.4.2. Application of "lex fori"

The second group of Member States (United Kingdom, Ireland, Sweden, Finland, Denmark, Cyprus and Latvia) applies systematically the law of the forum in divorce proceedings ("lex fori"). Scottish and Swedish law provide nevertheless for a possibility to take account of foreign law in certain circumstances.

3.1.4.3. Unilateral choice-of-law rules

France is the only Member State that applies a unilateral conflict-of-law rule which determines in which circumstances French law applies. Hence, French law applies where both spouses have French nationality or are domiciled in France or if no foreign law claims jurisdiction while the French courts have jurisdiction.

3.1.4.4. Possibility to choose applicable law

Germany, the Netherlands, Spain and Belgium provide for a limited possibility for the parties to choose the applicable law in divorce proceedings.

German law limits this choice to cases where (a) the spouses do not have a common nationality and (b) neither spouse is a national of the State of habitual residence of the parties or the spouses are resident in different States.

Dutch law allows spouses to choose between the law of their common nationality or Dutch law. Hence, the spouses may opt for (a) Dutch law irrespective of their nationality or habitual place of residence or for (b) the law of their common foreign nationality, even if they have no real social link with that country. One particular feature of the Dutch system is that the party autonomy can be exercised unilaterally and that also an uncontested choice by one of the spouses is binding on the court.

The Spanish law has recently been amended and allow foreign spouses to opt for the application of Spanish law ("lex fori") if one of the spouses is of Spanish nationality or is habitually resident in Spain by petitioning for divorce before a Spanish court.¹⁰

The recently adopted Belgian law provides for a limited party autonomy allowing the parties to choose between the law of the nationality of either spouse or Belgian law ("lex fori"). In the absence of choice, the divorce would

¹⁰ Article 3 of Law 11/2003 of 29 September 2003, concerning concrete measures in the field of social security, domestic violence and social integration of foreigners (Boletín Oficial del Estado, no. 234, 30.09.2003, p. 35398-35404).

in the first place be governed by the law of the habitual residence of the spouses.¹¹

3.1.5. *Conflict-of-law rules concerning legal separation and marriage annulment*

The Member States that recognise legal separation apply the same conflict-of-law rules to divorce and legal separation.

Marriage annulment is in general governed by the law of the place where the marriage was contracted (“lex loci celebrationis”) to faults of form (e.g. cohesion) and the national law of the spouses (“lex patriae”) to faults relating to their personal capacity (e.g. under age, kinship).

3.5. **International conventions**

There is currently no multilateral convention in force between the Member States on the question of applicable law to divorces.¹² The question is dealt with in a number of bilateral agreements concluded between the Member States and between Member States and third States.

3.6. **The jurisdiction rules of Regulation No. 2201/2003**

3.1.6. *The grounds of jurisdiction listed in Article 3*

Article 3 of the new Brussels II Regulation enumerates seven grounds of jurisdiction in matters of divorce, legal separation and marriage annulment. This provision has been reproduced unchanged from Article 2 of the Brussels II Regulation. The grounds of jurisdiction are alternative and do not take precedence over each other.

Spouses may apply for divorce with the courts of the Member State of their habitual residence or their last habitual residence if one of them still resides there. A joint application may be filed in the Member State of the habitual residence of either spouse. A unilateral application for divorce may be filed in the Member State of the habitual residence of the respondent. The applicant may also apply for divorce in the Member State of his or her habitual residence provided that he or she has resided there for a certain period of time prior to the application (six months respectively one year depending on whether the applicant is a national of that Member State or has his/her “domicile” in the United Kingdom and Ireland). Finally, spouses may apply for divorce in the Member State of their common nationality or, in the case of the United Kingdom and Ireland, their common “domicile”.

¹¹ Article 55 paragraphe 2 of « Loi portant le Code de droit international privé » of 16 July 2004.

¹² The 1902 Convention of the Hague Conference of Private International Law concerning jurisdiction and applicable law concerning divorce and separation is no longer in force between the few States that initially ratified it.

3.1.7. *The rule on residual jurisdiction*

Where no court of a Member State has jurisdiction pursuant to the Regulation, Article 7 allows the courts of the Member States to avail themselves of jurisdiction on the basis of national law (“residual jurisdiction”). The national rules are not harmonised but are based on different criteria, such as the nationality or the domicile of one or both spouses, the last habitual residence of the spouses, etc. Some States, like the Netherlands, do not have any internal jurisdiction rules in their internal legal system which can be defined as “residual” for the purpose of Article 3.¹³

Article 6 specifies that a spouse who is habitually resident in a Member State or is a national of a Member State or has his or her “domicile” in the United Kingdom or Ireland may only be sued in another Member State on the basis of the jurisdiction rules of the Regulation and not on the basis of national jurisdiction rules.

3.1.8. *The rule on “lis pendens”*

Where two spouses bring divorce proceedings before courts of different Member States, the competent court first seized is bound to take the case pursuant to the “lis pendens” rule in Article 19(1) of the new Brussels II Regulation. As a result, once a court has been seised on the basis of the jurisdiction rules in Article 3 of that Regulation and declared itself competent, courts of other Member States are not competent and must dismiss any subsequent application. The aim of the “lis pendens” mechanism is to ensure legal certainty, deal with the problem of parallel actions, to avoid wasteful duplication of litigation and the possibility of irreconcilable judgments.

¹³ Point 47 of the Explanatory report on the Convention of 28 May 1998 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (on which the Brussels II Regulation is based), OJ C 221, 16.07.1998, p. 27.

Summary of questions

Question 1: Are you aware of other problems than those identified above that may arise in the context of “international” divorces?

Question 2: Are you in favour of harmonising conflict-of-law rules? What are the arguments for and against such solution?

Question 3: What would be the most appropriate connecting factors?

Question 4: Should the harmonised rules be confined to divorce or apply also to legal separation and marriage annulment?

Question 5: Should the harmonised rules include a public policy clause enabling courts to refuse to apply a foreign law in certain circumstances?

Question 6: Should the parties be allowed to choose applicable law? What are the arguments for and against such a solution?

Question 7: Should the choice be limited to certain laws? If yes, what would be the appropriate connecting factors? Should it be limited to the laws of the Member States? Should it be limited to “lex fori”?

Question 8: Should the possibility to choose applicable law be confined to divorce or should it apply also to legal separation and marriage annulment?

Question 9: What should be the appropriate formal requirements for the parties’ agreement on the choice of law?

Question 10: In your experience, does the existence of several grounds of jurisdiction result in “rush to court”?

Question 11: Do you believe that the grounds of jurisdiction should be revised? If so, what would be the best solution?

Question 12: Do you consider that the harmonisation of the jurisdiction rules should be reinforced and that Article 7 of Regulation No. 2201/2003 should be deleted, or at least limited to cases where no EU citizens are involved? If so, what should these rules look like?

Question 13: What are the arguments for and against introducing a possibility of prorogation in divorce cases?

Question 14: Should prorogation be limited to certain jurisdictions?

Question 15: What should be the appropriate formal requirements for the parties’ agreement on the competent court?

Question 16: Should it be possible to request a transfer of a divorce case to a court of another Member State? What are the arguments for and against such

solution?

Question 17: What should be the connecting factors to establish whether a case can be transferred to another Member States?

Question 18: What safeguards would be necessary to ensure legal certainty and avoid undue delays?

Question 19: Which combination of solutions do you believe would provide the most appropriate remedy to the problems described?

Question 20: Would you suggest any other solution to solve the problems described in chapter 2?

Table 2

Member States' laws on the grounds for divorce

	AUTONOMOUS GROUNDS FOR DIVORCE				
	No ground required	Mutual consent (ground 1)	Irretrievable breakdown of the marriage (ground 2)	Fault (ground 3)	Factual separation (ground 4)
AUSTRIA		YES	YES	YES	NO (but a separation of 6 months with consent establishes ground 2. A separation of 5 years is required in the absence of agreement)
BELGIUM		YES		YES	YES (2 years)
CZECH REPUBLIC			YES (sole ground)	NO (but e.g. adultery is a presumption of ground 2)	NO (but a separation of 6 months with consent establishes ground 2. A separation of 3 years is required in the absence of agreement)
CYPRUS				YES	YES (5 years)
DENMARK		YES		YES	YES (a separation of 6 months is required if the spouses agree. A separation of 2 years is required in the absence of agreement)
ESTONIA		YES	YES		
FINLAND	No ground is required, but a 6 months consideration period is required in all cases				
FRANCE		YES		YES	YES (2 years)
GERMANY		NO (but consent and a separation of 1 year establish ground 2)	YES (sole ground)		NO (but a separation of 1 year with consent establishes ground 2. A separation of 3 years is required in the absence of agreement)
GREECE		YES	YES	NO (but e.g. cruelty establishes ground 2)	NO (but a separation of 4 years establishes ground 2)
HUNGARY		NO (but consent establishes ground 2)	YES (sole ground)		NO (but a separation of 3 years establishes ground 2)
IRELAND					YES (sole ground) 4 years separation is required + no reconciliation prospect + adequate arrangements for the children and the other spouse

	No ground required	Mutual consent (ground 1)	Irreparable breakdown of the marriage (ground 2)	Fault (ground 3)	De facto separation (ground 4)
ITALY			YES (sole ground)		NO (but a separation of 3 years establishes ground 2)
LATVIA		YES	YES		YES (3 years)
LITHUANIA		YES		YES	YES (1 year)
LUXEMBOURG		YES		YES	YES (a separation of 3 years is required if the spouses agree. A separation of 5 years is required in the absence of agreement)
NETHERLANDS		NO (but consent establishes ground 2)	YES (sole ground)		NO (but relevant under ground 2)
POLAND			YES (sole ground)	NO (but divorce is not possible under ground 2 if the guilty spouse applies for divorce and the non-guilty spouse does not consent)	
PORTUGAL		YES		YES	YES (a separation of 1 year is required if the spouses agree. A separation of 3 years is required in the absence of agreement)
SLOVAKIA			YES (sole ground)		
SLOVENIA			YES (sole ground)		
SPAIN					YES A separation period of 1, 2 or 5 years is required depending on the circumstances.
SWEDEN	No ground is required, but a 6 months consideration period is required if one spouse opposes the divorce and/or if the spouses have custody of children under 16 years				
UNITED KINGDOM*			YES (sole ground)	NO (but adultery, unreasonable behaviour and desertion establish ground 2)	NO (but a separation of 2 years with consent establishes ground 2. A separation of 5 years is required in the absence of agreement)
MALTA	DIVORCE NOT ALLOWED				

* Including the separate jurisdictions of England/Wales, Scotland and Northern Ireland.

Table 3

Member States' laws on legal separation and marriage annulment

	LEGAL SEPARATION		MARRIAGE ANNULMENT
	Existence of legal separation	Possibility of conversion into divorce	Existence of marriage annulment
AUSTRIA	NO	-	YES
BELGIUM	YES	YES (after 3 years)	YES
CZECH REPUBLIC	NO	-	YES
CYPRUS	NO	-	YES
DENMARK	YES	YES (after 1 year)	YES
ESTONIA	NO	-	YES
FINLAND	NO	-	NO
FRANCE	YES	YES (after 3 years)	YES
GERMANY	NO	-	YES
GREECE	NO	-	YES
HUNGARY	NO	-	YES
IRELAND	YES	NO	YES
ITALY	YES	YES (after 3 years)	YES
LATVIA	NO	-	YES
LITHUANIA	YES	YES (after 1 year)	YES
LUXEMBOURG	YES	YES (after 3 years)	YES
MALTA	YES	NO (divorce not allowed)	YES
NETHERLANDS	YES	NO	YES
POLAND	YES	NO	YES
PORTUGAL	YES	YES (after 2 years)	YES
SLOVAKIA	NO	-	YES
SLOVENIA	NO	-	YES
SPAIN	YES	YES (after 1-5 years)	YES

SWEDEN	No	-	No
UNITED KINGDOM ¹⁴	YES	No	YES

¹⁴ Including the separate jurisdictions of England/Wales, Scotland and Northern Ireland.

Table 4

Member States' choice-of-law rules in divorce and legal separation proceedings

MEMBER STATE	CONNECTING FACTOR 1	CONNECTING FACTOR 2	CONNECTING FACTOR 3	CONNECTING FACTOR 4
AUSTRIA	Common nationality or last common nationality if one spouse still retains it	Common habitual residence	Last common habitual residence if one spouse still resides there	
BELGIUM	Possibility to choose the law of the nationality of one of the spouses or Belgian law	Common habitual residence	Last common habitual residence if one spouse still resides there	Nationality of either spouse
CZECH REPUBLIC	Common nationality	“lex fori”		
CYPRUS	“lex fori”			
DENMARK	“lex fori”			
ESTONIA	Common residence	Common nationality	Last common residence if one spouse still resides there	Closest connection
FINLAND	“lex fori”			
FRANCE	French law if (a) both spouses are French nationals or (b) both spouses are domiciled in France or (c) no foreign law claims jurisdiction while French courts have jurisdiction			
GERMANY	Common nationality or last common nationality if one spouse still retains it	Common habitual residence or Last common habitual residence if one spouse still resides there	Closest connection	Possibility to choose applicable law if the spouses do not have common nationality or a last common nationality and neither spouse is a national of the State in which both spouses are habitually resident, or that the spouses are habitually resident in different States
GREECE	Last common nationality if one spouse still retains it	Last common habitual residence during the marriage	Closest connection	
ITALY	Common nationality	The law of the State where the marriage has been principally based	Italian law applies where divorce and legal separation are not provided for under the applicable foreign law	
HUNGARY	Common nationality	“lex fori” if one spouse has Hungarian nationality	Common domicile	“lex fori”
IRELAND	“lex fori”			

LATVIA	“lex fori”			
LITHUANIA	Common “domicile”	Last common domicile	“lex fori”	
LUXEMBOURG	Common nationality	Common effective residence	“lex fori”	
MALTA	DIVORCE NOT ALLOWED			
NETHERLANDS	Possibility to choose Dutch divorce law (irrespective of nationality or habitual residence of the spouses) or the law of the spouses’ common foreign nationality	Common nationality	Common habitual residence	“lex fori”
POLAND	Common nationality	Common domicile	“lex fori”	
PORTUGAL	Common nationality	Common habitual residence	Closest connection	
SLOVAKIA	Common nationality	“lex fori”		
SLOVENIA	Common nationality	Cumulative application of the national laws of both spouses (i.e. conditions for divorce must be met under both laws)	“lex fori” (if divorce is not possible by cumulative application of both laws and one spouse resides in Slovenia)	“lex fori” (if divorce is not possible by cumulative application of both laws, the spouses do not reside in Slovenia, and one spouse is of Slovenian nationality)
SPAIN	Common nationality	Common habitual residence	Last common habitual residence if one of the spouses still resides there	“lex fori” if one spouse has Spanish nationality or habitual residence in Spain and: (a) no law is applicable under connecting factors 1-3 or, (b) the divorce petition is filed before a Spanish court jointly or by one spouse with the consent of the other spouse, or (c) if the laws designated under connecting factors 1-3 do not recognise divorce or only in a discriminatory manner or contrary to public order
SWEDEN	“lex fori” (with a possibility to take account of foreign law in certain cases)			
UNITED KINGDOM¹⁵	“lex fori” (in Scotland with a possibility to take account of foreign law in certain cases)			

¹⁵ Including the separate jurisdictions of England/Wales, Scotland and Northern Ireland.

