

The Competent Court

Jurisdiction under the Matrimonial Property Regulation (MPR) and the Regulation on Property Consequences of Registered Partnerships (PRP)

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The competent court under the MPR

- Article 4: **Jurisdiction in the event of the death of one of the spouses**
- Article 5: **Jurisdiction in cases of divorce, legal separation or marriage annulment**
- Article 6: **Jurisdiction in other cases**
- Article 7: **Choice of court**
- Article 8: **Jurisdiction based on the appearance of the defendant**

Concentration of proceedings

Court dealing with succession deals also with matrimonial property issues arising upon death

Article 4

Jurisdiction in the event of the death of one of the spouses

Where a court of a Member State is seised in matters of the succession of a spouse pursuant to Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matrimonial property regime arising in connection with that

Court dealing with divorce etc deals also with matrimonial property issues arising in that context

Article 5

Jurisdiction in cases of divorce, legal separation or marriage annulment

1. Without prejudice to paragraph 2, where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No 2201/2003, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application.

...

Exception from concentration

Where the court seised under Brussels IIbis is a potentially 'remote' forum concentration requires the consent of both spouses.

Article 5

Jurisdiction in cases of divorce, legal separation or marriage annulment

1.
2. Jurisdiction in matters of matrimonial property regimes under paragraph 1 shall be subject to the spouses' agreement where the court that is seised:
 - (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 Article 3(1)(a) of Regulation (EC) No 2201/2003;

Consent given in advance must be in writing, dated and signed.

3. If the agreement referred to in paragraph 2 is concluded before the court is seised to rule on matters of matrimonial property regimes, the agreement shall comply with Article 7(2).

Choice of court

Parties may choose in advance courts of the MS whose law is applicable (except under closest connection test or escape clause) or of the MS where marriage was concluded.

Note that this does not override mandatory concentration of proceedings

Article 7

Choice of court

1. In cases which are covered by Article 6, the parties may agree that the courts of the Member State whose law is applicable pursuant to Article 22, or point (a) or (b) of Article 26(1), or the courts of the Member State of the conclusion of the marriage shall have exclusive jurisdiction to rule on matters of their matrimonial property regime.
2. The agreement referred to in paragraph 1 shall be expressed in writing and dated and signed by the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

Choice of court by appearance

... same for jurisdiction based
on appearance

Article 8

Jurisdiction based on the appearance of the defendant

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable pursuant to Article 22 or point (a) or (b) of Article 26(1), and before which a defendant enters an appearance, shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Article 4 or 5(1).
2. Before assuming jurisdiction pursuant to paragraph 1, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

Other cases

Article 6

Jurisdiction in other

Where there is neither concentration of proceedings in a MS nor choice of court jurisdiction is determined under Article 6.

Where no court of a Member State has jurisdiction pursuant to Article 4 or 5 or in cases other than those provided for in those Articles, jurisdiction to rule on a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:

- (a) in whose territory the spouses are habitually resident at the time the court is seised; or failing that
- (b) in whose territory the spouses were last habitually resident, insofar as one of them still resides there at the time the court is seised; or failing that
- (c) in whose territory the respondent is habitually resident at the time the court is seised; or failing that
- (d) of the spouses' common nationality at the time the court is seised.

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Mandatory concentration of proceedings in one MS
Articles 4 and 5(1)

2

**Voluntary
concentration of
proceedings**
Article 5(2) and (3)

Choice of court
Article 7

**Appearance of
defendant**
Article 8

3

Jurisdiction in other cases
Article 6

- Article 9: **Alternative jurisdiction**
(when forum declines jurisdiction because it fails to recognise the marriage)
- Article 10: **Subsidiary jurisdiction**
(with regard to immovable property located in the territory of MS)
- Article 11: **Forum necessitatis**
(no other jurisdiction of another MS, proceedings cannot reasonably be brought in a third state, and sufficient connection with that MS)

Overview MPR III

- Article 12: **Counterclaims**
- Article 13: **Limitation of proceedings**
- Article 17: **Lis pendens**
- Article 18: **Related actions**
- Article 19: **Provisional measures**



The competent court under the PRP

- Article 4: **Jurisdiction in the event of the death of one of the partners**
- Article 5: **Jurisdiction in cases of dissolution or annulment**
Concentration of proceedings always voluntary, i.e. subject to the consent/agreement of both parties
- Article 6: **Jurisdiction in other cases**
Courts in MS under whose law RP was created as an additional forum of last resort
- Article 7: **Choice of court**
MS whose law was chosen as applicable under Art 22 or under whose law RP was created
- Article 8: **Jurisdiction based on the appearance of the defendant**

1

Mandatory concentration of
proceedings in one MS
Article 4

**Succession
cases
only!**

2

Voluntary
concentration of
proceedings
Article 5

Choice of court
Article 7

Appearance of
defendant
Article 8

3

Jurisdiction in other cases
Article 6

Some conclusions

- The rules on jurisdiction in the MPR/PRP are reasonable, and the preference given to concentration of proceedings is to be welcomed.
- In the absence of a principle of universal application with regard to jurisdiction, the relationship with non-participating Member States raises particular difficulties (e.g. divorce proceedings in Hungary, Austrian court seised with issues of matrimonial property).
- Absence of choice of court in the Brussels IIbis Regulation deprives parties of the possibility to achieve a high level of certainty and predictability by way of agreement.

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