



Rome III

The Law applicable to Divorce
And to what else?



Context

- Proposal Regulation in 2006 abandoned after two years of negotiations « *lack of unanimity on the proposal and that there were insurmountable difficulties that made unanimity impossible both then and in the near future* »
- Only 15 Member States have implemented it for the moment: Germany, Austria, Belgium, Bulgaria, Spain, France, Hungary, Italy, Latvia Luxembourg, Malta, Portugal, Romania, Slovenia and since July 2015, Lithuania and Greece.
- Adopted by the Commission upon the initiative of these States



Scope

- Universal Application
- Article 1 – Does not include:
 - the legal capacity of natural persons
 - the existence, validity or recognition of a marriage
 - the annulment of a marriage
 - The name of the spouses
 - the property consequences of the marriage
 - parental responsibility
 - maintenance obligations
 - trusts or successions
- Preambule 10 – ultimately leaves the scope of the law applicable to the divorce to the international private law rules of the law designated.



In the Absence of an Applicable Law Clause

Article 8:

- where the spouses are habitually resident at the time the court is seized; or, **failing that**
- where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, **failing that**
- of which both spouses are nationals at the time the court is seized; or, **failing that**
- where the court is seized (*lexi fori*)



Choice of Law Clause

Article 5:

- the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or
- the law of the State of nationality of either spouse at the time the agreement is concluded; or
- the law of the *forum*.



How/When to Choose

- In pre-nuptial or post-nuptial agreement: best for a late or second marriage
- Determine exactly what is encompassed by the law applicable to the divorce
- Possibility of conflict between applicable law and the court seized