GOINEU PLUS SCIENTIFIC QUESTIONNAIRE'S

ASSESSMENT REPORT

GENERAL INFORMATION

The present Report, drafted by Dr. Francesco La Fata, Dr. Caterina Mugelli and Dr. Marco Rizzuti of UNIFI, under the supervision of the Principal Investigator, Prof. Sara Landini, shows the results of the scientific questionnaires disseminated in all EU countries involved in the GoInEU Plus Project (i.e. Italy, Hungary, Spain, France, Portugal). For each question, a synthesis of the answers and specific reports received are indicated, underlining where the most interesting differences among the concerned countries are revealed. Not all questions have been answered in each and every partner country, and therefore the Report also shows which questions have resulted as most attractive for the recipient professionals.
The questionnaires' text was agreed by all Partners during the kick-off meeting on 6th December 2018 and then through intense e-mail and Skype exchanges in the following months, under the coordination of the Principal Investigator, in order to adapt it to the specific needs of all project partners. Each University partner has translated the questionnaire into its national language (respectively Hungarian, Spanish, French, Portuguese) in order to ensure the widest visibility and dissemination. Moreover, aiming at achieving a more targeted dissemination not all national questionnaires are identical: in fact, e.g., the French one follows a different and specific structure. The project's proposal foresaw also the use of interviews, but it has turned out to be less efficient and successful. During the workshop held on 18th September 2019, and chaired by the Principal Investigator, the questionnaires' first results were presented by Dr. Marco Rizzuti of UNIFI.
Some questions, thanks to the suggestions from partner De Gasperi Foundation, deal not only with legal aspects but also with their wider social impact, while, thanks to the suggestions from partner AMI, the questionnaire is more synthetic and user-friendly than the previous project GoInEU's one. Some questions were directly suggested by practising lawyers and notaries in order to have a more professionally oriented approach. A final general question, proposed by partner CNRS, allows participant to share their professional experience in the matter of transnational family and successions law also beyond the specific issues concerned by all the other questions.
Moreover, in order to better disseminate the questionnaires, the partners availed themselves of the mailing lists of some specific national contact points, so that the involved professionals received the questionnaire from an organization that is already authorized to manage their e-mail addresses and other relevant data (as to avoid any potential privacy issue) and, at the same time, that they already know very well, thus facilitating the delivery of prompt answers.
The recipients of the scientific questionnaire were not asked to answer all the questions, but to choose those more interesting and more related with their specific expertise. They were not asked to provide statistical data, but to explain why they argue that a particular solution is prevailing in the respective legal order, referring not only to statute law, but also to judicial case-law, as well as to notaries' and lawyers' practice and legal mentality, as well as to provide practical cases: not only

published judicial decisions, but also pending cases or extrajudicial cases brought to their attention in order to receive an advice, or even imagined cases that they think will have to be soon examined by the practitioners because of on-going developments. The recipients could, of course, follow the path suggested by the questions, but also provide other relevant information.

All project partners have contributed to the dissemination activities, blending a mix of different methodologies, both quantitative and qualitative, in order to provide relevant answers from the involved legal professionals.

More specifically:

- FIN, under the coordination of Dr. Roberto Barone, has circulated the questionnaire to all Italian notaries (total number around 5.000), focusing on a specific expert group of 20 (then extended to 25) notaries asked to provide answers, so that a total amount of 20 reports has been collected (a number of answers that has been significantly higher than in the previous project GoInEU);
- AMI, under the direction of Dr. Gianni Baldini, circulated the questionnaire to its associated family lawyers (total number of contacts: around 200), through its national and regional branches, taking the occasion of its Interregional Congress held in Viareggio on 21st June 2019 in order to foster dissemination, so that a total amount 21 reports have been collected;
- CNRS, under the coordination of Prof. Isabelle Sayn, has circulated the questionnaire to French notaries and notaries advisers, with the assistance of CRIDON Lyon. They used the National Congress of Notaries (July 2019) to disseminate the questionnaire in order to gather a total amount of 44 answers.
- Iberian Partners (UVEG and CDF, respectively under the coordination of Prof. Josè Ramon De Verda and Prof. Sandra Passinhas) have circulated the questionnaire in Spain and Portugal through the mailing list of the *Instituto de Derecho Iberoamericano* (IDIBE) and the one of the Spanish Notarial Chamber (total number of potential contacts: 456), as well as CDF own mailing list of lawyers, judges, notaries and public officers (total numbers of potential contacts: 325), so that 5 comprehensive reports have been collected (one is a joint answer by two academics: Alfonso Ortega Giménez and Lerdys Saray Heredia Sánchez, *Profesores de Derecho Internacional Privado de la Universidad Miguel Hernández de Elche*);
- ELTE, under the coordination of Prof. Adam Fuglinszky, has circulated the questionnaire to all the Hungarian notaries, through the National Chamber of Notaries (total number of potential contacts around 300), as well as to the Hungarian judges and academics, thus colleting 3 comprehensive reports, that represent three different relevant points of view in accordance with the fruitful methodology already successfully implemented in the previous project GoInEU Plus. In fact, the first one has been prepared by Dr. Tibor Szőcs and Dr. Tamás Balogh, respectively Director and Vice-Director of the Notary Institute, that is the scientific research institute (brain trust) of the National Chamber of Civil Law Notaries and provides academic support to them: all problems, questions, difficulties regarding the EU Succession Regulation are necessarily channelled to them, and therefore the Institute is perfectly suited to serve as an information-hub. The second report was prepared by 4 judges (Dr. Gabriella Békési Breczkáné, Dr. Beáta Lukácsi, Dr. Tibor Tamás Molnár, Dr. Lilla Rainer), who are all members of the European Law Advisors' Network (ELAN), established by the National Office for the Judiciary in 2013, with the aim of creating a specialised unit within the court system, in charge of keeping a constant watch on, processing and acquiring a good knowledge of the ever changing EU legislation as well as of the CJEU and ECHR case-

law, in order to answer, either in writing or orally, to all the questions raised by colleagues in European law related matters, and to report on the issues raised by colleagues, helping the National Office for the Judiciary in determining the agenda of the trainings for judges, thus serving as a knowledge-hub of the issues, questions and difficulties asked and considered by all Hungarian judges. The third report, representing an academic point of view, was prepared by Dr. Mónika Csöndes, who teaches at Corvinus University of Budapest (and formerly at University of Pécs), is chief-advisor of the Hungarian Supreme Court, and has been a member of the working committee on private international law, leading the work on family conflict of laws.

- UNIFI research staff (Francesco La Fata, Caterina Mugelli and Marco Rizzuti), under the supervision of the Principal Investigator, has analysed all the materials collected by partners.

Eventually Francesco La Fata, Caterina Mugelli and Marco Rizzuti drafted the present Report.

Anyway, it is very important to underline the different degrees of quality of the collected reports: the Hungarian comprehensive reports and, above all, two of the Spanish ones provide very high quality and in-depth information and elaboration, while the most part of the French and Italian, especially lawyers', answers are merely yes/no/don't know. Thus, the level of qualitative substantial information acquired is inversely proportional to the quantitative number of answers.

ANSWERS' ANALYSIS AND KEY FINDINGS

1) *Is it possible in your country to stipulate prenuptial agreements with effects on family property regimes and/or in contemplation of a family breakup? If yes, under which rules and limits? If no, would foreign prenuptial agreements with these characteristics be recognized in your legal order? How could the prenuptial contracts impact on social issues in your country?*

The Hungarian reports, especially the judges' one, offers wide information about the domestic Civil Code provisions on prenuptial agreements, their form and registration, as well as very interesting remarks on their possible social impact regarding post-divorce maintenance.

According to the interesting Iberian reports, in Spain the freedom to draft prenuptial agreements is considered as included in the general freedom in the matter of family patrimonial autonomy, as recognized by both the national Civil Code and the local "*foral*" laws.

All Italian professionals stated that prenuptial agreements are not admissible, and can be even considered as contrasting with public policy (*ordre public*) with only a very few exceptions. Interestingly, on the other hand many of them argued that their possible introduction through legislative reforms would be beneficial, reducing litigation among former spouses.

France is not included in this analysis, because the French Partner has not included prenuptial agreements in its specific version of the questionnaire.

2) *Is there in your country any case-law on the recognition of the typically Islamic prenuptial contract of* mahr*? What does "public policy" mean in your country regarding* mahr*?*

Within the Iberian answers we find different options. According to a Spanish opinion *mahr* cannot be considered as equivalent to the domestic institutions of donation "*propter nuptias*" and is in contrast with the fundamental principle of gender equality. Moreover, recent case-law against the recognition of *mahr* is reported (*SAP SS 1091/2018; SAP CS 41/2004*). On the other hand, a notary compares *mahr* with dowry that is still recognized in the local "*foral*" laws, and another answer compares its function with that of domestic post-divorce maintenance.
In Hungary there is no case law about *mahr*, but according to the judges' report *mahr* is in contrast with public policy, since the validity of a marriage may not be subject to the payment of any value, whilst according to the notaries it is not necessarily so given that the contrast with public policy has not to be decided upon the assessment of the foreign legal norm in itself, but by the assessment of the legal effects of its application in the concrete cases.
Neither in Italy case-law is reported and the most of the notaries (on the other hand, family lawyers are less informed about such an issue) consider *mahr* as contrasting with public policy, but an answer (interestingly by a woman notary) argues that, if and when prenuptial agreements will be allowed, also *mahr* contracts should be recognized.
The French version of the questionnaire translated *mahr* as *dot* (dowry), a solution that can be considered not perfectly adequate, given that *mahr* is more like dower.

3) *If a same-sex marriage contracted in an EU Member State has to be legally converted into a civil partnership under the laws of another Member State, do you think that this family relationship will have to fall under the scope of EU Regulation 1103 of 2016 or under the scope of EU Regulation 1104 of 2016?*

All the concerned Countries, but Hungary, do participate at the enhanced cooperation, nevertheless Hungarian jurists involved in the research gave their opinion. In particular, judges seem to consider as applicable to the case in question Regulation 1104 (in case Regulations 1103 and 1104 were applicably also in Hungary). Notaries underline the fact that, so far, the abovementioned Regulations are not enforceable in Hungary, this answer is probably due to the details underlined at the academic level, namely: 'marriage' (according to Regulation 1103/2016) and 'registered partnership' (as described from a joint reading of art 3(1) of the 1104 Regulation and the recital 17) are not defined in the Regulations; reference shall be made to domestic legislation and, only by focusing on the precise national definition, it will be possible to understand which Regulation shall be applied.
The issue of domestic definition is also taken into consideration by Iberian Partners. Even if the choice of not defining 'marriage' and 'registered partnership' are respectful of each Member State legislation, such a choice can bring to some problems. For instance, where a same-sex partnership is considered as a marriage the family relationship will fall under the scope of EU Regulation 1103. Distinction must also be made by registered and unregistered partnership; the latter shall be excluded from the EU Regulations.
The issue is also relevant when dealing with the free movement of spouses (EU spouse and Non-EU spouse). To this end it is worth mentioning the CJEU case C- 673/16 and the relative press release n. 80/18 that affirms that "[*a*]*lthough the Member States have the freedom whether or not to authorise marriage between persons of the same sex*", […] the term 'spouse', used in the Directive 2004/38/ EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States,

refers to a person joining another person by the bonds of marriage and it is gender -neutral and may therefore cover the same-sex spouse of an EU citizen. In other words, not having a discipline on same-sex marriage in a Member State does not mean the possibility to infringe the Directive 2004/38/CE. One of the Iberian partners points out that, anyhow, this is not a Spanish problem because Spain have same sex marriage. According to the Spanish answer, the problem concerns only Austria, the Czech Republic and Slovenia, namely the only Countries that meet the following criteria: i) the Regulations do apply; ii) they have the registered partnership institution; iii) they prohibit the same sex marriage.
As a consequence, keeping in mind the recital 53 (Reg. 1104) and the recital 54 (Reg. 1103), public policy (*ordre public*) cannot be applied for reasons contrary to the Charter of Fundamental Rights of the European Union ('Charter'), and in particular Article 21 thereof on the principle of non-discrimination. Regulation 1104/2016 shall be applied when dealing with Austria, the Czech Republic and Slovenia.
As far as Italy, lawyers and notaries seem to agree on the application of Regulation 1104 taking into account that Italy does not have a same-sex marriage and that art 32 bis of the Italian legislation 218/1995 (as modified in 2016) states that same-sex marriage contracted abroad among Italian citizens can be converted into a same sex partnership.
According to one of the notaries the same article implies that same sex marriage contracted abroad between foreigners can be considered as marriages, therefore, for those marriage celebrated after January 29, 2019, Regulation 1103 shall be applied. Anyhow, some participants stress the fact that, so far, there is no case law to consider, some others do not give a specific answer because they believe that the answer depends on different national legislations. One participant among the Italian notaries underlines that the protection foreseen in the two Regulation is the same.
The French position on this point is missing due to the difference of some questionnaire's questions.

4) *Many countries provide for some degrees of registration and relevance of* de facto *cohabitations, even when nor a civil partnership nor a cohabitation contract is stipulated. Do you think that these kinds of cohabitation can fall under the scope of Regulation 1104 of 2016?*

Even if Regulation 1104 of 2016 does not apply to Hungary, Hungarian judges, notaries and academia agree on the fact that *de facto* cohabitations do not fall within the scope of the abovementioned Regulation, in particular, it cannot be considered a registered partnership within the scope of art 3(1) of the 1104 EU Regulation. Judges do specify that in such cases it would be applicable domestic family law. Notaries do also specify that in Hungary *de facto* cohabitation (6:514§ of the Hungarian CC), on optional basis, can be officially registered in a specific Register (Register of Declaration of Cohabitation- ENYER) by a joint declaration before the notary. The registration does merely have declarative effects.
The great majority of the other participants (Iberian and Italian Partners) do agree on the exclusion of the *de facto* cohabitation from the application of the EU Regulation 1104 of 2016. Some of them also quote the recital 16, which clearly distinguish between 'union institutionally sanctioned by the registration of their partnership with a public authority' and '*de facto* cohabitation', to strengthen their position. The Spanish partner pointed out that, anyhow, uncertainty of law shall be taken into account. In fact, not only countries such as Belgium, France, Sweden, The Netherlands, Denmark,

Finland, Germany, and Portugal do foresee civil effects to the *de facto* cohabitation, but also different rules can find application within one single country. This is the Spanish case, which lack a national legislation, while other internal legal systems do foresee a *de facto* cohabitation discipline (Cataluña, Aragon, Navarra, Baleares, Basque Country, and Galicia).
Anyhow a different approach to the question must be underlined: a relevant part of the Italian lawyers seems to foresee the possibility to apply Regulation 1104 also to the *de facto* cohabitation. The French position on this point is missing due to the difference of some questionnaire's questions.

5) *If your country has not joined to EU Regulations 1103 of 2016 and 1104 of 2016, which rules govern the private international law consequences of a prenuptial agreement between spouses and between registered partners and/or of a similar agreement between cohabitants? Could you compare the possible advantages and/or disadvantages of the result upon the domestic private international rules with the results of the possible application of EU Regulations 1103 of 2016 and 1104 of 2016?*

The Hungarian partner is probably the only one directly affected by this question, being the only GoInEU Plus partner which has not joined the 1103 and 1104 Regulations. Because of this, in addition to the personal relations of the spouses, the Hungarian legislature has also the regulatory power to determine the law applicable to the matrimonial property regimes and therefore the answer to the present question depends on the applicable law. However, in the context of matrimonial property regimes, the conflict of laws rules relating to spousal maintenance are covered by the *Maintenance Regulation*. With reference to the property of spouses the Hungarian conflict of laws rules (Act on Private international Law n. XXVIII of 2017, hereinafter PIL Act) allows a limited choice of law, reference is made to Section 28 of the PIL Act, according to which spouses may agree to designate the law applicable to their property regimes provided that is one of the following laws: i) law of any State of which either party is a national at the time the agreement was reached; ii) law of the State of the habitual residence of either party at the time the agreement was reached; iii) the law of the State where the acting court/authority is located (the Hungarian judges pointed out that the limited choice of law is also a characteristic of the EU Regulation at stake). The choice of law does apply also to the matrimonial property contracts because they fall within the scope of the statutory provisions on the matrimonial property regime. The statutory list of optional rights is a closed list. In the absence of an express prohibition order, the spouses may apply more than one law to their property (*dépeçage*). The relevant law also states that a matrimonial property contract is formally valid even if it conforms to the law of the place where it was concluded.
As far as the *de facto* partnership are concerned, Sections 35 and 36 of the PIL Act do apply and they are quite similar to the one applicable to spouses:

- in the first place, the law of the State of the partners' common nationality shall apply;
- if the nationality of the partners is different, the law of the State where the joint habitual residence of the partners is located, or
- in the absence thereof, the State where the last joint habitual residence of the partners was located shall apply;
- if the habitual residence of the partners cannot be identified, the law of the State of the acting court/authority shall be applicable (*lex fori*).

As regards the legal effects arising from registered partnerships, and regarding the property rights agreement between registered partners – in accordance with Section 37 of PIL Act - the conflict of laws rules relating to the matrimonial regime of spouses (and marriage contract of spouses) shall apply *mutatis mutandis*, subject to the exceptions set out in the law.

These exceptions are as follows:

a) Entering into a registered partnership (and validity of this partnership) shall not be prevented where the personal law of the proposed registered partner fails to recognize the concept of registered partnership among couples of the same sex, nor it shall have any bearing, provided that
   - at least one of the registered partners to be is a Hungarian citizen or has a habitual residence in Hungary and
   - the registered partner to be of citizenship other than Hungarian can verify his/her right to contract marriage under his/her personal law.
b) In the abovementioned case (when the personal law of the proposed registered partner fails to recognize the concept of registered partnership among couples of the same sex) as regards the legal effects of registered partnerships – including the property rights agreements of the registered partners – the Hungarian law shall apply.

In point of choice of law and matrimonial property contracts the Hungarian provisions do not differ from the abovementioned EU Regulations, for this reason there are no advantages and/or disadvantages to consider and compare. Nevertheless, the Hungarian answer deriving from academia pointed out that some differences can arise in the absence of choice of law. In the absence of such a choice the following rules apply:

1) law of the mutual nationality of the spouses;
2) common habitual residence;
3) last common habitual residence
4) *lex fori*.

Consequently, in case of absence of choice, the Hungarian PIL Act differs in many respects. First, the common nationality is the primary connecting factor, the joint habitual residence and the last joint habitual residence as connecting factors come only thereafter. And if the spouses had no joint habitual residence, the law of the State of the acting court shall be applicable. Secondly, as far as the time-relevance of the connecting factors are concerned, the Regulation fix the determination of the applicable law to the conclusion of the marriage, which serve as it is said legal certainty and predictability, however, the Hungarian PIL Act fix it to the time of the settlement of the dispute, which serve as it is said flexibility. Nevertheless, the Hungarian PIL Act contains a general escape clause (§ 10) which under certain circumstances, clarified in the Act, can correct the determination of the applicable law if the connecting factor would lead to such law that is not proper. Thirdly, the Regulation gives detailed rules on the effects in respect of third parties, however, the Hungarian PIL Act does not, but the latter contain a general rule on the change of applicable law (§ 14) and rules that the choice of law shall not prejudice the rights of third parties [§ 9(2)].

All the other GoInEU Plus partners specified that the EU Regulations at stake do apply to their legal systems, anyhow, the majority of the Italian lawyers underline that in any case prenuptial agreement between spouses and between registered partners, in Italy, will be considered against the public policy (*ordre public*).

The French position on this point is missing due to the difference of some questionnaire's questions.

6) *Which kind of family property regime, if any, could be recognized in your legal order to polygamous marriages or such cohabitations?*

The Iberian answers provide interesting information, also regarding practical cases. According to some Spanish reports, even if the legal family property regimes are not applicable, within a polygamous family an agreement may be stipulated with regard to the patrimonial relationships, such as e.g. a community of acquisitions.
In Italy and Hungary both marriage and cohabitations must be monogamous, and so the family property regimes of marriage and cohabitation are never applicable to polygamous relationships.
The French version of the questionnaire included a wider formulation of the question, dealing with polygamy in general terms, and in the answers many cases are reported, e.g. regarding the Algerian applicable law and to successions law issues.

7) *Is it possible, in your country, to divorce, or to terminate a legally relevant family relationship, without the intervention of a judge? If so, under which rules and limits? If not, would foreign family breakups with these characteristics be recognized in your legal order?*

As for what concerns the possibility of using Alternative dispute resolution (ADR) to divorce, or to terminate a legally relevant family relationship the legislation is different in the States where the research is concerned.
In Italy it is possible to divorce even without the intervention of a judge, with the negotiation agreement according to the law decree no 132/2014 or separation and divorce agreement before the registrar according to law decree no 162/2014. In this case, if there are minor children, the approval of the judge is necessary. However, from the replies of Italian lawyers and notaries, it emerges that there is a need to promote knowledge of alternative dispute resolution instruments as they are not adequately evaluated.
The Alternative dispute resolution can also be used in Spain to close the family relationship, but with limitations. According to the Spanish partners, as required by law no 15/2015 divorce or separation is possible by mutual agreement and without minor children or sons with the judicially modified capacity that depend on their parents.
In Hungary, however, it is not possible to divorce without the intervention of a judge. However, in case of a 'registered partnership', if so, requested by the partners based on their mutual agreement reached without undue influence reflecting their final intent, a public notary shall dissolve the 'registered partnership'. In Hungary, as it emerges from the answers, the recognition of the effectiveness of divorce or separation depends on whether this happened with judgments of a judge or not.
According to majority of the French answers, there are no ADR in the concerned matters. Nevertheless, the French participants underline the difficulty of this instruments in particular with respect to public policy (*ordre public*) such as the enforceability with regard to foreigners and the risk of polygamy; some other answer merely that the ADR for divorce/separation does exist.

8) *Is there in your country any case-law on the recognition of the typically Islamic nonjudicial family breakup determined by* talaq*? What does "public policy" mean in your country with regard to* talaq*?*

Iberian reports provide very relevant information. In Spain gender equality is a constitutional principle while unilateral divorce (in itself not different from repudiation) can be performed by both the husband and the wife: therefore, the recognition of Islamic *talaq* (that can be performed only by the husband) is deemed as possible when demanded by the wife herself or by both parties (e.g., in the case-law: *STS de 25 enero 2006, RJ 2006\4338; ATS de 27 enero 1998, RJ 1998\2924*).
In Italy the issue is outstanding while case-law is uncertain and oscillating: the first Supreme Court case, after an interlocutory order (*Cass., 1 marzo 2019, n. 6161*), is still pending now.
In Hungary there is no case law about *talaq*, but according to the judges' report *talaq* is in contrast with public policy, since it is procedurally not fair, while according to the notaries, even if *talaq* infringes both gender equality and the fundamental principles of procedural law, a profound discretion of all individual circumstances is needed, and so it may have significance whether the wife in question gave her consent to such a divorce.
Quite surprisingly for a country with an historically relevant Islamic immigration, no cases are reported by the French answers.

9) *Which is, or should be, the role of family property regimes in the protection of the weaker parties in the context of family breakups? Which are, or could be, its interplays with post-divorce maintenance?*

All the legal systems of the project partner seem to be characterized by the following:
- family property regimes (community property) are apt to protect the weaker party whilst in marriage;
- post-divorce maintenance is apt to protect the weaker party after the family breakup.

Interestingly enough, Hungarian matrimonial law – in accordance with the rules of the new Civil code – knows three types of matrimonial property regimes:
- community of property, which is the statutory matrimonial property regime (4:37-4 :62. §§ of Cc.) and two other optional matrimonial regimes that can be chosen by a marriage contract, such as:
- marital property acquisition regime (community of accrued gains), or
- separation-of-property system.

The first two of the above (community of property and property acquisition regime) can be deemed as property unifying regimes. The essence of both regimes that both spouses shall receive the same extent from the property acquired during the wedlock (marital cohabitation), even though they accomplish this purpose by different ways. In case of community of property (which is based on the principle of real acquisition) the ownership right of one spouse is established on the assets acquired by the other spouse (already at the time of the acquisition); on the contrary, in case of property acquisition regime, by the time of the termination of marriage a monetary claim comes to existence to compensate the growth in the property.
In the above mentioned two regimes the principle of solidarity between the spouses is strongly present. The purpose of the provisions of both regimes is that none of the spouses shall find

him/herself in a disadvantageous position at the time of the termination of marriage (e.g. dissolution of marriage).
A coordination between family property regimes and post-divorce maintenance, seems needed. From an Italian point of view the two disciplines appear completely unconnected. Many participants recognize the Italian case law development pointing out that recently (2017) the Italian Court of Cassation questioned the issue of preservation of the living standards when considering the amount of the post-divorce maintenance. Anyhow in 2018 the Joint Chambers of the Court of Cassation specified that the existence of the post-divorce maintenance shall be considered, among the other elements, with reference to the living standard enjoyed whilst in marriage.
An overall evaluation of the effects of the family breakup seems to be needed also in Spain where a spousal support maintenance can be permanent, for a limited period of time, or *una tantum*.
After considering the incompatibility between the spousal support maintenance and the widow's pension and after underlining that the judge must respect the agreement between the parties when issuing a spousal support maintenance (according to art 97.1 of the CC), or in absence of such an agreement, the following circumstances shall be taken into account: i) Age and health status; ii) Professional qualification and the chances of access to a job; iii) Past and future dedication to the family; iv) Collaboration with your work in the commercial, industrial or professional activities of the other spouse; v) The duration of the marriage and of the conjugal cohabitation; vi). The eventual loss of a pension right; vii) The flow and the economic means and the needs of both spouses; viii) Any other relevant circumstance (97.II CC).
Criteria that the judiciary seems to interpret in a restrictive way and that seems to coordinate the family property regime with the post-divorce maintenance by saying that in order to assess whether the post breakup imbalance exists, among the other rules, the following shall be respected: the situation in which the spouses will remain as a result of the other definitive measures adopted in the separation or divorce judgment, in particular, regarding the allocation of the use of family housing or the payment of child support: it could thus be excessive to impose the payment of a post-divorce maintenance to the spouse who must abandon the use of the family home (and, perhaps, is forced to rent or buy another home) and pay a high maintenance to common children (reference is made to the following sentences: STS January 23, 2012 (Tol 2407043); STS June 22, 2011 (Tol 2227659); STS January 10, 2011 (Tol 3436850); STS March 14, 2011 (Tol 2080803); TS April 22, 2012 (Tol 2532595); STS February 9, 2012 (Tol 2540794); TS March 28, 2012 (Tol 2513991).
As regards the children, Italian partners underline that only the post-divorce maintenance is considered to protect them as weaker parties, while the family property regime consider as weaker party just one of the spouses.
By and large, the coordination or revision of the relationship between family property regime, according to some expert opinion, will entail to consider the opportunity/amount of a post-divorce maintenance taking into account the family property regime whilst in marriage, for instance, if spouses choose the community property, the post-divorce maintenance shall be of an inferior amount. Other different proposal can be read in the answer of the Italian partners, some of them believe that the discipline of *trust* and prenuptial agreements (if they were allowed) could be useful tools, an Italian jurist believes that such effects shall be regulated, by authentic act, in front of a notary apt to give the relevant advices and explanation, while one of the notaries underlines the lack of an informed choice in those legal systems which lack formal criteria.

The French position on this point is missing due to the difference of some questionnaire's questions.

10) *In your country is there any legally relevant form of family breakup with a religious dimension? E.g.: annulation/termination of marriage by religious authorities and/or in accordance with religious laws? If yes, under which rules and limits? E.g.: only for an established religion or also for other religions? If no, would foreign family breakups with such a religious dimension be recognized in your legal order?*

In Hungary State and religion shall be distinct in accordance with Article VII (3) of the Fundamental Law of Hungary and therefore family breakups do not have any legally relevant religious dimension. However, a foreign family breakup with religious dimension might be recognized in Hungary if such breakup is considered as a valid divorce under the applicable foreign law and the divorce process was procedurally fair.
In the Iberian Countries and in Italy the situation is rather different. A marriage can be of a civil or religious nature.
In Spain, in the latter case, as it turns out from the arts 59 and 60.1 CC, spouses may marry according to the norms of Canon Law (which confirms Article VI of the Agreement on Legal Affairs with the Holy See, of December 15, 1979 and has a special position within the legal system and it is also foreseen in the Spanish Constitution, art 16.3) or in the manner provided by other religious denominations that have reached cooperation agreements with the State, which, to date, are Evangelical, Hebraic and Islamic (Laws 24, 25 and 26/1992, of November 10, respectively). Art 60.2 CC states also that '[…] civil effects are recognized for the marriage celebrated in the religious form provided by the churches, confessions, religious communities or federations, registered in the Registry of Religious Entities, and that have obtained the recognition of notorious roots in Spain'.
However, the recognition of the civil effects of these marriages, need to fulfil the following criteria: "a) the processing of a previous record or file of marital capacity in accordance with the Regulations of the Civil Registry; b) the free manifestation of consent before a duly accredited minister of worship and two witnesses of legal age (the status of minister of worship will be accredited by certification issued by the church, confession or religious community that has obtained the recognition of notorious roots in Spain, with the agreement of the federation that, if applicable, has requested such recognition).
The special position of Catholic Church is also because Canon law is not only apt in providing rules for marriage celebration, but also it establishes specific criteria for validity and consent. For instance, if the termination of the canon marriage held by a religious court is consistent with the State law, such a termination could also have civil effects.
Art 80 CC establishes, in fact, that "The resolutions issued by the ecclesiastical Courts on nullity of marriage [...] shall be effective in the civil order, at the request of either party, if they are declared in accordance with the law of the State in resolution issued in accordance with the conditions referred to in article 954 of the Civil Procedure Law ".
Therefore, the civil efficacy of the canonical nullity decisions is subjected to the concurrence of the same criteria that, in general, are required for the recognition or homologation in Spain of the sentences handed down by foreign courts (currently they are not contained in art 954 LEC of 1881, because this precept (which is still formally referred to in Article 80 CC), although it survived the

LEC of 2000, has recently been repealed by Law 25/2015, of July 13 on international judicial cooperation in civil matters, which is what currently regulates the so-called exequatur procedure in its arts 52 to 55).
Among the causes of refusal to recognize foreign judgments, art 46.1.a) of Law 25/2015 refers to the requirement that they are not "contrary to public policy" (*ordre public*), which, from the point of view of Spanish project participants, does not present problems with respect to canonical nullity decisions.
Another cause of refusal to recognize foreign judgments is stated in art 46.1. b) of Law 25/2015 that requires that the decision "had not been issued with manifest violation of the rights of defence of any of the parties", stating that, if the resolution had been issued in contumacy, it is understood that a manifest infringement of the rights of defense occurs if it was not delivered to the demanded location and with sufficient time advance notice: it is therefore an involuntary contumacy (STS October 24, 2007 (Tol 1229944).
The Italian participants recognized the role of the Sacra Rota when dealing with annulation/termination of marriage by religious authorities, some of them underline that they are not aware of other cases even if they believe it can be possible within the limits of the agreements between different religious worships and the Italian state, however, they foresee some difficulties in recognizing annulation/termination of marriage such as *Talaq* because it can be considered contrary to the public policy (*ordre public*). Respect of public policy (*ordre public*) is, in turn, a requirement for the recognition of foreign/religious decisions.
The French position on this point is missing due to the difference of some questionnaire's questions.

11) *Could you compare, from the point of view of family and succession law, the position in your country of internal minority religions with this of alien religions linked with migratory flows?*

While Hungary stressed the Constitutional separation between State and religion, which apply also to minority religions, Hungarian participants also specify the limited number of migrants. The situation is nevertheless different in Italy and in the Iberian Countries. The latter (in particular Spain) declare that Muslim migrants are now 4% of population (1.95 million people).
Italian participants, while generally stating that minority religions can negotiate specific agreements with the Italian State point out that, so far, a similar agreement with the Islamic religion is missing. The number of answers related to the absence of such an agreement suggests that the flow of Muslim migrants is, so far, probably the most important for the research at stake, especially as far as the public policy (*ordre public*) issue related to family and succession law is concerned. Nevertheless, most of the Italian questionnaire' participants stressed the importance of the Italian Constitutional freedom of religion and belief (which so far do not affect family and succession legislations), which entail respect for minority religions. Anyhow a notary underlined that both the Charter of Fundamental Rights of the European Union as well as the European Convention on Human Rights will prohibit any discrimination based on religion or belief even if some of the lawyers, participating in the research, believe that minority religions are discriminated in comparison to the Catholic Church.
The French position on this point is missing due to the difference of some questionnaire's questions.

12) *In your country are arbitration, and/or other alternative dispute resolution processes, available for family breakups and the related family property issues? And in other fields of family and successions law? If so, under which rules and limits? If not, would foreign alternative dispute resolution processes in these fields be recognized in your legal order?*

According to the Hungarian partner's answer in Hungary arbitration can be used only for the commercial disputes. In Hungary, the only procedure that can be used for family breakups, the related family and succession disputes is mediation. However, the decision of a court is necessary for the divorce. So, only the judge can decide on the validity, on the need or on the non-existence of a marriage and on the dissolution of a marriage. In the cases relating to the termination of the registered partnership, however, the notary may also occur. While family ownership disputes may be subject to mediation.
In Italy, arbitration can be used when it comes to resolving matters of a patrimonial nature. It should, in fact, be kept in mind that the system expressly prohibits the use of arbitration for matters relating to family law. From all the answers it emerges that the recognition of foreign arbitration orders, or any agreements concluded before a mediator, will be admissible to the extent that they are not contrary to international public policy (*ordre public*).
Under Spanish law the issues between spouses or partners may be subject to arbitration, but questions about the responsibility for minor children would be excluded. Arbitration is also admissible in inheritance matters.
According to majority of the French answers, there are no ADR in the concerned matters. Nevertheless, the French participants underline the difficulty of this instruments in particular with respect to public policy (*ordre public*) such as the enforceability with regard to foreigners and the risk of polygamy; some other answer merely that the ADR for divorce/separation does exist.

13) *Do the alternative dispute resolution processes mentioned in your answer above, or some of them, have any religious dimension? For example: administered by religious authorities and / or in accordance with a religious law? If so, based on what rules and limits? For example: only for a consolidated religion or even for other religions? If not, would the alternative dispute resolution processes with such a religious dimension be recognized in your legal order?*

From the analysis of the answers it emerges that in Italy there are no ADRs characterized by a religious dimension, but nothing prevents the religious elements from being taken into consideration for the resolution of family problems. The possibility to effectively recognize foreign religious arbitration sentences is allowed if they are not generally contrary to public policy (*ordre public*).
The situation is similar in Hungary too. Indeed, mediation has no legally relevant religious dimension. However, a process of alternative resolution of foreign disputes with a religious dimension could be recognized in Hungary if this process is considered valid under the applicable foreign law and was procedurally fair.
Not even in Spain does alternative dispute resolution in family law have a religious dimension. But the recognition of the religious arbitration would be admissible under the Convention on the

recognition and execution of foreign arbitral judgments, according to the New York convention of June 10, 1958, applicable in Spain.
The French position on this point is missing due to the difference of some questionnaire's questions.

14) *In your country is there any case law of successions concerning cryptocurrencies? Are cryptocurrencies regulated in your country? In your country is there any case law about cryptocurrencies in more general terms? How are cryptocurrencies qualified in your country: money, assets, goods or financial instruments? In your country can a will or a legacy regulate the succession of access credentials (i.e. username or password)?*

As for what concerns the cryptocurrency, in Italy emerges that there isn't a case law on the specific questions of succession, but in other matters, for example financial law or company law. There isn't a legislation, but only an Italian central bank's document that says it is a digital representation of value. However, it is evident that such an assessment may not be so easy: not only is there an "official" list to draw on, but, above all, because of some legal or conventional "blocks" for the collection of bitcoins (or legal tender, in others cases) scholarships can take on (and indeed have often taken in the past) fanciful values. According to the answers, the use of access keys will be available by will, attributing, even the contracts with intermediaries normally prohibit the transfer of credentials in use. So, from the practical point of view the successors of the deceased (who are aware of it) can therefore legitimize themselves and take possession of the funds held by contacting the intermediary or the depositary, the same as the depository banks of sums of money or securities.
In Hungary, cryptocurrencies are not regulated. There is no case law relating to cryptocurrencies or the successions thereof. According to the opinion of the Hungarian Ministry of Finance, cryptocurrencies may not be qualified as money or financial instrument. However, the Hungarian Tax Authority stated that cryptocurrencies shall be recorded as "other claims" in the books of Hungarian firms; therefore, cryptocurrencies shall be considered as assets.
In their opinion, a will or a legacy can regulate the succession of access credentials in Hungary.
Also, in Spain a regulation on cryptocurrency doesn't exist. Even if some questions about its use emerge in the notarial practice. Sometimes cryptocurrencies have been included in hereditary partitions and liquidations of conjugal societies. These assumptions are a very high risk regarding the prevention of money laundering.
The French position on this point is missing due to the difference of some questionnaire's questions.

15) *In your country are life insurance policies considered mortis causa contracts? In your country are unit-linked and index-linked policies considered as life insurance or financial instruments? In your country has any particularly controversial precedent occurred?*

In all the states involved in the project, life policies are considered contracts for those who live together (*inter vivos*). But on linked policies there are some differences, because in Italy, unlike other countries, they are not considered as insurance contracts, but investment instruments.

In Hungary, life insurance policies are not considered *mortis causa* contracts. Unit-linked and index-linked policies are considered life insurance. In fact, the beneficiary of life insurance is, in the first place, the person designated in the contract by the policy-holder or the bearer of the bearer-bond. In this case the amount of the insurance as a claim does not belong to the asset of the deceased (policy-holder). It is acquired by the beneficiary irrespective of the legal order of the succession. The heir (heir by the law of succession) acquires the amount of insurance only if the contracting party (deceased) has not designated any beneficiary in the contract or this designation was not valid (at the time of the occurrence of the insurance event). In Hungary no controversial precedent has occurred relating to this issue.
In Italy all these questions are controversial. In fact, it is controversial whether life policies, although stipulated with *inter vivos*, are contract *mortis causa* and therefore constitute an exception to the prohibition of succession agreements (which in Italy are prohibited). As regards to the linked policies, the nature of the policies is being discussed; in fact, while the traditionally understood life insurance pursues an insurance-pension purpose, the linked policies have a financial-speculative vocation. In fact, in linked policies the premiums are invested in financial products and the risk is anchored to their performance, not to a human factor, as required by the art 1882 c.c. which refers to a "fact pertaining to human life". The Court of Cassation has held that if social security elements do not emerge from the policy (such as a minimum return or repayment of capital), it must be considered a financial instrument.
According to the Iberian partners life insurance is not considered *mortis causa* contract and is not included, in principle, in the asset. However, the premiums paid by the deceased must be considered, where appropriate, to calculate the legitimate ones, because indirect insurance can be made through insurance. As for what concerns the linked policies, its legal nature is a matter discussed in the doctrine and jurisprudence (STS September 10, 2014; STS January 12, 2015). However, it should be noted that, in principle, unit linked insurance can be classified as investment insurance. The peculiarity as insurance is that in them the policyholder is who assumes the risk and decides the fate of the mathematical provisions that are accumulated by their contribution. This fact that the risk is assumed by the policyholder explains the discussion about its legal nature as insurance.
The French position on this point is missing due to the difference of some questionnaire's questions.

16) *In your country is blockchain technology used? How is blockchain technology used in your country? In your country is blockchain technology regulated? Is there any case-law about blockchain technology in your country? How could blockchain technology impact on testamentary issues and on family and succession contracts in your country?*

In all countries it emerges that knowledge of blockchain technology is minimal and there is still uncertainty about its possible uses, especially in family law and succession law.
In Italy the blockchain technology is used in different sectors, e.g. for tracking the production chain of coffee and wine, in the supply chain to provide information on different types of goods. Numerous experiments are also underway in the financial field.
The law decree 135/2018, converted into law 12/2019 provides a definition of Distributed Ledger Technology (or the technology behind the Blockchain) but not a specific regulation.

There is a case in which a Court (Florence) declared the bankruptcy of a company that marketed with blockchain technology.
According to all the answers it is still too early to say that the blockchain will have an impact in terms of wills or contracts relating to family and inheritance.
At present in Hungary blockchain technology is not regulated by the law, and we are not aware of any case-law in this subject matter. But the Hungarian participants demonstrate knowledge of the phenomenon and they believe that this technology can be utilized in the course of concluding and performing family and succession contracts, as well. Blockchain technology can also make testamentary issues easier, because everyone will be able to make an authentic and valid last will without the cooperation of a notary or an attorney at law.
From the answer given by the Iberian partners it does not seem that the blockchain is regulated by the law. However, in Spain there are several cases of use in the food, financial, real estate and health sectors. In the health sector, the Blockchain is allowing the creation of an ecosystem of exchanging clinical records cost efficient and trustworthy. In the case, for example, of the Real Estate sector, with the support of legislative innovation, the blockchain will allow new models of more affordable and affordable housing offers, all without violating procedures for the prevention of money laundering. Nothing emerges about a possible use of the blockchain technology in family law or inheritance law.
The French position on this point is missing due to the difference of some questionnaire's questions.

17) *In which cases the competent judge pursuant to article 4 Reg. UE 650/2012 may decline jurisdiction in favour of another judge, pursuant to article 6 letter a), considered more suitable to treat the case? In accordance with which parameters?*

The answer of participants of the different Countries involved in the GoInEU Plus project are, overall, consistent. The general understanding is the following: at the request of a party, the competent judge pursuant to Article 4 may decline jurisdiction in favor of the courts of the Member State of the law chosen by the deceased if the habitual residence of the heirs and/or the location of the assets are in this Member State and/or taking into account other practical circumstances of the succession.
Many participants stress the lack of case-law (some of them believe that a judicial interpretation by the European Court of Justice could help a uniform interpretation of art 6 letter a) on this subject and they deep art 6 letter an interpretation in light of the recital 27 (which states that: the rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national (according also to arts 10 and 22).
According to one of the Spanish opinions, declining of jurisdiction must be proven by evidence and well-motivated. To this end it has been pointed out that the circumstances of art 6 letter a) are an open list even if art 17 (*Lis pendens*) and 18 (Related actions) must be taken into duly account and they cannot be considered a circumstance for declining jurisdiction. Italian lawyers preferred not to answer.

The French position on this point is missing due to the difference of some questionnaire's questions.

18) *How could effectively be the status of heir certified for the purposes of articles 66 and 69 of Reg. 650/2012? How does the issuing authority verify the information and declarations of the applicant?*

In Spain, to certify the status of heir, as requested by articles 66 and 69 of Reg. 650/2012 you can use evidences, such as document (civil registration) or witnesses. But in the Spanish legislation it must be distinguished between the testate and intestate [with or without will] succession. In the intestate succession, the ascertainment of the status of heir is realized through a notarial act (*acta notarial de notoriedad*), based on documentary evidence (*de facto* of the civil Registry) or also on witnesses. The testate succession is based on the ascertainment that the will has not been changed or revoked from another subsequent will, by certification of the General da Actos de Última Voluntad (General acts of the last will) Registry.
In the Hungarian legal system, the succession procedure is a long known formal procedure. The status of the heir can be determined and certified within the framework of this procedure. This is actually like the court procedures, and it is conducted by the notaries who have the status and role of the court in these procedures. As a result of his/her procedure the notary renders a formal decision, so called decree on the passing of the ownership, in which the notary, in legal terms, distributes the assets of the succession to those who are entitled to inherit. The legal institution of the European Certificate of Succession (ECS) has been built into the above described long-lasting system of the Hungarian succession procedure. The issuing of the ECS can only take place after the decree on the transfer of ownership has been made in the succession procedure and it has become final (or the national certificate of succession has been issued).
From the answers of the Italian participants it emerges that in Italy the notaries can verify the quality of their required for the issuing of the European succession certificate through the recourse to registry certificates or substitutive declarations of an act issued by a notary; availing of all the means of instruction provided by art 66. Interesting are the answers given on the verification procedures of the declarations issued by the applicant of the ECS. In fact, in this case the competent authority must do everything possible to know the existence of any will, such as requesting records of all the subjects involved in the succession and summoning all the alleged heirs to verify the truthfulness of the data.

19) *How do you acquire knowledge about the contents of applicable foreign law? Which issues do you encounter when you need this information? If you are a legal professional, in which cases have you already had the occasion to inform your clients that they are taking the risk of some legal disruption in their family property agreements because of the application of a foreign law?*

Hungarian law expressly highlights that in determining the content of foreign law the court may use any means and the same applies to other bodies dealing with civil law cases, such as the notaries. In practice the courts and other authorities usually request the Ministry of Justice to provide them information, while notaries may resort to Notarial Institute of the Hungarian National Chamber of Civil Law Notaries or to the European Notarial Network, via the Hungarian

contact point. Under Hungarian law, a notary cannot guarantee that his/her notarial deed will have legal effects abroad as well and is not obliged to provide information to the parties on the content of foreign law.
Italian notaries mention: online research, foreign legal publications, informal contacts with foreign colleagues, the European Notarial Network. Relevant obstacles are represented by the language and by the difficulties in verifying if foreign sources are updated. A notary has suggested to the clients to choose Italian law as applicable in order to avoid such problems. Family lawyers also mentioned personal contacts with legal academics as a valid source of information and highlighted the duty to inform clients about the risks incurred.
French notaries mention: online research, comparative law publications, informal contact with foreign colleagues, documents provided by the clients, and above all the help of CRIDON.

20) *Beyond all the above specific questions, could you indicate any other difficulty encountered in the matter of transnational successions?*

Hungarian notaries mention: the difficulties in gathering information on the assets of the deceased abroad, already indicated within the framework of the previous project GoInEU.
Italian notaries mention: the uncertainty of law, the definition of habitual residence, the interplays among family law and successions law, practical cases concerning legacies, agreements as to future successions. A notary has highlighted that the question is too generic.
French notaries mention: real estate situated abroad, tax law profiles, bank accounts, a practical case concerning USA, long delays in the delivery of ECS.

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