



iGuide: Divorces within Europe



Introduction

Until 2001 proceedings between England and Wales to decide which of two competing countries was the more appropriate one to deal with the divorce and financial matters was dealt with by discretionary stay law, primarily on the basis of closest connection, and still prevails between England and the rest of the world.

On 1 March 2001, the Council Regulation (EC) No 1347/2000 came into force, known as Brussels II.

This EU Regulation introduced identical divorce jurisdiction across Europe. It introduced the principle that the first in time to issue proceedings secured jurisdiction, regardless of the country to which the parties have the closest connection. This aspect has transformed international family law and made it very necessary for fast, experienced and knowledgeable practitioners with immediate access to similarly specialist lawyers in other jurisdictions.

Lawyers now need great care and great speed to deal with cases when there is the possibility of separate proceedings within Europe.

To which countries does Brussels II apply?

There are currently 26 signatory countries, as follows:

Austria, Belgium, Bulgaria, Cyprus (Southern), Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and The United Kingdom (including Gibraltar but not the Isle of Man or Channel Islands). Croatia joins in July 2013.

Whilst generally Brussels II is referred to as applying to Europe, it does not apply to Denmark. Jurisdiction issues with Denmark are treated in the same way as non European countries, and please see the relevant information sheet about non European divorces.

Jurisdiction for divorce

The first change of Brussels II was to introduce across the EU identical jurisdiction for divorce and family matters.

If the parties satisfy one of the following criteria then a divorce petition can be issued in any EU country:

- The spouses are habitually resident, or
- The spouses were last habitually resident, insofar as one of them still resides there, or
- The respondent is habitually resident, or
- The applicant is habitually resident and he or she resided there for at least a year immediately before the application was made, or
- The applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the UK and Ireland, has his or her "domicile" there;
- The nationality of both spouses or, in the case of the UK and Ireland, of the "domicile" of both spouses.

What if more than one European country has jurisdiction?

Brussels II introduced a simple "*first past the post*" provision. As a consequence the first party to issue proceedings in a country secures priority whatever the strength, or weakness, of the connection with that country - provided of course jurisdiction existed at the time that divorce petition was issued.



If any proceedings are issued elsewhere in Europe, the country that is second in time has to stay its proceedings of its own accord, even though the families' connection to that country may be much stronger.

The “*first to issue secures jurisdiction*” rule is certainly easy and simple to apply and immediately ends the substantial costs of litigation about the country in which the divorce should proceed. However, it has had major consequences in practice.

As a consequence Brussels II directly encouraged the practice of racing to issue into international family law practice.

Why does it matter which country the divorce takes place in?

Europe still has very different financial outcomes between countries, and as a consequence there is a huge importance in securing the jurisdiction in which your client will obtain the most favourable financial outcome.

The sorts of ways in which financial outcomes vary across countries are as follows:

- The treatment of pre-nuptial agreements
- The treatment of pre-marital and post separation acquired assets, inheritances and gifts
- Whether they take marital conduct, such as adultery or financial conduct, into account
- The courts powers of disclosure
- Whether the courts will order ongoing maintenance

For this reason it is important that you take immediate and specialist family law advice.

What should you do if there is potentially jurisdiction for a divorce in another European country?

On the basis that whoever issues proceedings first seizes jurisdiction, it is essential that on your relationship breakdown you take specialist family law advice as quickly as possible. It may be necessary for you to take advice in more than one country and we will be able to refer you to specialist family lawyers in other countries.

Your spouse may be doing the same, and they may be looking to issue a divorce in the country most favourable to them.

For these reasons there are some other practical issues that you should consider:

- You should not tell your husband or wife that you are taking legal advice. If they are aware that you are doing so they may then issue proceedings in another European country first, ceasing jurisdiction.
- You should not agree to mediate or propose any other sort of dispute resolution until you have first issued to secure jurisdiction.

For more information about divorces within Europe, or other questions you may have, please contact a member of our specialist family law team. You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.

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