AGREEMENT ON THE CHOICE OF NON-APPLICABLE LAW OR LAW NOT IN ACCORDANCE WITH ARTICLE 22(1) OF THE TWIN REGULATIONS: WHAT CONSEQUENCES FOR THE COUPLE'S PROPERTY REGIME?

ACUERDO SOBRE LA ELECCIÓN DE UNA LEY NO APLICABLE O NO CONFORME CON EL ARTÍCULO 22.1 DE LOS "REGLAMENTOS GEMELOS": ¿QUÉ CONSECUENCIAS TIENE PARA EL RÉGIMEN PATRIMONIAL DE LA PAREJA?

Actualidad Jurídica Iberoamericana Nº 15, agosto 2021, ISSN: 2386-4567, pp. 292-307

Francesco
GIACOMO
VITERBO

ARTÍCULO RECIBIDO: 9 de mayo de 2021
ARTÍCULO APROBADO: 1 de julio de 2021

ABSTRACT: Council Regulations (EU) 2016/1103 and 2016/1104 authorize cross-border couples to choose the law applicable to their property relationships based on one of the criteria listed in Article 22(1). However, the choice-of-law agreement may have a different content than that outlined in the wording of Article 22 of the Twin Regulations. The purpose of the analysis is to illustrate that it would be incorrect to argue that such agreements are a priori invalid or not permitted to party autonomy. This issue requires an assessment of the concrete purpose of the parties' agreement and should at least be open to scrutiny by the competent court.

KEY WORDS: Party autonomy; choice-of-law agreement; applicable law; positive/negative choice; implicit/indirect choice; informed choice; legal advice; formal and material validity; interpretation.

RESUMEN: *Los Reglamentos (UE) 2016/1103 y 2016/1104 del Consejo autorizan a las parejas transfronterizas a elegir la ley aplicable a sus relaciones patrimoniales sobre la base de uno de los criterios enumerados en el artículo 22.1. Sin embargo, el acuerdo de elección de la ley puede tener un contenido diferente al señalado en la redacción del artículo 22 de los "Reglamentos Gemelos". El objetivo del análisis es ilustrar que sería incorrecto sostener que tales acuerdos son, a priori, inválidos o no permiten la autonomía de la voluntad. Esta cuestión requiere una evaluación de la finalidad concreta del acuerdo de las partes y debería, al menos, estar abierta al examen del tribunal competente.*

PALABRAS CLAVE: *Autonomía de las partes; acuerdo de elección de ley; ley aplicable; elección positiva/negativa; elección implícita/indirecta; elección informada; asesoramiento jurídico; validez formal y material; interpretación.*

I. INTRODUCTION.

The adoption of the Matrimonial Property Regulation[1] and the Regulation on Property Consequences of Registered Partnerships[2] (hereinafter represented as – the Twin Regulations) has strengthened the value of private autonomy and freedom of contract as connecting factors for the determination of the applicable law within the EU cross-border families[3]. Such regulations enable the spouses or partners to conclude an agreement in order to choose the law applicable to the matrimonial property regime or the property consequences of the registered partnership[4]. Furthermore, "this choice may be made at any moment": the spouses, "before the marriage, at the time of conclusion of the marriage or during the course of the marriage"; the partners, "before the registration of the partnership, at the time of the registration of the partnership or during the course of the registered partnership"[5].

1 Council Regulation (EU) 2016/1103 of 24th June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. OJ L 183/1 [2016].

2 Council Regulation (EU) 2016/1104 of 24th June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships. OJ L 183/30 [2016].

3 On the role of private autonomy in national family laws, see the national reports in Scherpe, J.M (ed.): *Marital Agreements and Private Autonomy in Comparative Perspective,* Oxford, 2012. On the evolution of the role of private autonomy in private international family law in the Union, see Gray, J.: *Party Autonomy in EU Private International Law. Choice of Court and Choice of Law in Family Matters and Succession*, Cambridge, 2021, p. 15 ff.; Kinsch, P.: "Les fondements de l'autonomie de la volonté en droit national et en droit européen", in Panet, A., Fulchiron, H. and Wautelet, P. (ed.).: *L'autonomie de la volonté dans les relations familiales internationals*, Bruxelles, 2017, pp. 17–22; Henrich, D.: "Zur Parteiautonomie im europäisierten internationalen Familienrecht", in Verbeke, A., Scherpe, J.M., Declerck, C., Helms, T. and Senaeve, P. (ed.): *Confronting the frontiers of family and succession law: liber amicorum Walter Pintens*, I, Antwerp, 2012, pp. 701–714; Gannagé, P.: "La Pénétration de l'autonomie de la volonté dans le droit international privé de la famille", *Revue critique de droit international privé*, 1992, pp. 425–439.

4 See Recital 45 of the Matrimonial Property Regulation and Recital 44 of the Regulation on Property Consequences of Registered Partnerships.

5 *Ibidem*.

• Francesco Giacomo Viterbo
Associate Professor of Private Law, School of Law, University of Salento. E-mail: francesco.viterbo@unisalento.it

When drafting the Twin Regulations, the European legislator primarily had couples in mind who at some point in their marriage or partnership changed their personal circumstances in an aspect which was relevant to the Regulations, *i.e.* by changing their citizenship or, more commonly, relocating their habitual residence to another state. The main advantage of the choice of applicable law as provided for under Article 22 is to secure a stability and foreseeability with respect to the applicable law. If the parties have concluded upon such an agreement, the chosen law remains applicable despite any changes in their personal situations, and regardless of the authority seized in the event of a dispute. In particular, the change of the couple's habitual residence does not cause a change of the applicable law, unlike in the case of an absence of choice under Article 26 of the Twin Regulations.

The Twin Regulations do not define the notion of 'choice-of-law agreement'. However, they do set out both the requirements for the "formal validity of the agreement" under Article 23 and the law - or, where appropriate, laws - to be applied in assessing its "material validity" under Article 24[6].

The Twin Regulations also identify the minimum content of the agreement. The parties may choose the law applicable to their property relationships on the basis of one of the criteria listed in Article 22(1). In particular, the spouses or future spouses may choose between the law of the State of their habitual residence and the law of a State of which one of them has the nationality or is habitually resident; registered partners or future partners may choose between the law of the state of their habitual residence, the law of a state of which one of them has the nationality or is habitually resident and the law of the State in which the registered partnership was created. In all these cases, reference must be made to the time at which the agreement is concluded.

The parties are in a position to make an optimal choice that is best suited to their concrete situation; to adjust their conduct and foresee the associated legal consequences. Nevertheless, the content of the agreement may deviate from what is provided for in the Twin Regulations.

Two issues will be analysed in this article. The first one concerns the case where the parties, instead of choosing the law applicable to their relationship, simply exclude the application of the law of one or more States. The second concerns the problem where the parties' choice has been made on the law of a State that does not correspond to any of those that can be chosen under the criteria of Article 22(1).

6 For a comment of these articles see Kohler, C.: "Choice of the Applicable Law", in Franzina, P. and Viarengo, I. (ed.): *The EU Regulations on the Property Regimes of International Couples. A Commentary*, Cheltenham, 2020, pp. 212-231.

II. AGREEMENT ON THE CHOICE OF NON-APPLICABLE LAW(S).

We begin our analysis with the question of the consequences of an agreement on the choice of non-applicable law. This is the case where the parties, instead of choosing the law applicable to their matrimonial property regime or to the property consequences of their registered partnership, simply exclude the application of the law of one or more States.

It is necessary to focus on the two following possible scenarios.

1. First scenario.

In the first scenario, the parties exclude the law of one or more of the States that are applicable on the basis of Article 26(1) of the Matrimonial Property Regulation or Article 26(1) and (2) of the Regulation on Property Consequences of Registered Partnerships. Consider a couple of Greek nationals who marry in Italy in 2020 and transfer their habitual residence there, but they conclude an agreement in which they exclude the application of Italian law to their matrimonial property relationships; after a few years they move to Spain where they will live for a long time. In this case, if the parties had not concluded any agreement, Italian law would apply since the law applicable to the matrimonial property regime under Article 26(1)(a) is the law of the State of the spouses' first common habitual residence after the conclusion of the marriage. The question arises as to whether or not the agreement on the choice of non-applicable law is valid with the result that, if it is valid, then Article 26(1)(b) or (c) of the Matrimonial Property Regulation will apply.

In this first scenario, the agreement on the choice of non-applicable law does not appear to be one of the agreements covered by Article 22(1) of the Twin Regulations.

However, where Article 22(1) and (2) of the Twin Regulations refers to the parties' freedom to "change the applicable law", it is currently interpreted as covering the change of the law applicable under Article 26. If the law applicable to the matrimonial property regime or the property consequences of a registered partnership is designated by the couple during the course of the relationship, e.g. some years after the conclusion of the marriage or registered partnership, the choice-of-law agreed upon by the parties has the purpose to "change" the law applicable to their property relations. Indeed, until the conclusion of the agreement, property relationships are governed by the law designated under Article 26 of the Twin Regulations. Nevertheless, such a "change" could also be interpreted as the possibility for the parties to opt for the exclusion of the law applicable under Article 26(1)(a), *i.e.* the law of a State to be applied according to

the first of the legal criteria listed in that article. Such a negative choice may be based on the autonomous concept of "parties' autonomy" in the Twin Regulations[7] and in national law. In this light, Articles 23 and 24 would apply to the parties' agreement to the extent of a reasonableness test[8]. In particular, the agreement on the choice of non-applicable law should at least be expressed in writing, dated and signed by both parties pursuant to Article 23(1); the existence and validity of such an agreement should be determined by the law which would govern it if the agreement or term were valid, in accordance with Article 24(1).

The proper recognition of the importance of party autonomy may therefore lead to the conclusion that agreements entered into as a corrective measure to the criteria laid down in Article 26 are also valid as they can find their legal ground in Article 22(1) and (2). Thus, in the above case, if the requirements for the validity of the agreement are met, the applicable law is that of the State of the spouses' common nationality at the time of the conclusion of the marriage, *i.e.* Greek law, in accordance with Articles 22(1)(b) and 26(1)(b) of the Matrimonial Property Regulation. The validity of the agreement should be assessed on the basis of this applicable law. On the other hand, the rule laid down in Article 23(2) should not apply[9].

2. Second scenario.

In the second scenario, the parties exclude the law of one or more of the States that are eligible for choice under Article 22(1).

Consider a Greek national and an Italian national who marry in France in 2020, where they live for a few years; then they move to Spain where they transfer their habitual residence and live for a long time. Suppose that in the latter period they enter into one of the following two agreements:

a) they conclude an agreement in which they exclude the application of the Spanish law to their matrimonial property regime;

7 See Recitals 36, 38, 45, 46 and 47 of the Matrimonial Property Regulation; and Recitals 36, 37, 44, 45 and 46 of the Regulation on Property Consequences of Registered Partnerships. In these Recitals, the autonomy of the parties is envisaged as an autonomous concept and its function and boundaries are specified.

8 "The legislation applicable to a specific case is always the result of the joint evaluation of principles and rules; reasonableness is the means for evaluating and assessing the applicability of a rule, as well as for solving systematic aporias and antinomies, which cannot otherwise be solved by means of interpretation": Perlingieri, G.: "Reasonableness and Balancing in Recent Interpretation by the Italian Constitutional Court", *The Italian Law Journal*, 2018, no. 2, p. 408 f.

9 Article 23(2) states that any additional formal requirements for matrimonial property agreements laid down by the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded shall apply to the agreement. However, since the couple have excluded the application of that law, those requirements should not apply.

b) they conclude an agreement in which they exclude the application of both Italian and Greek laws to their matrimonial property regime.

In this instance, the range of laws that may be chosen by the parties under Article 22(1) of the Matrimonial Property Regulation includes Italian, Greek and Spanish laws. The question arises as to whether or not the agreements illustrated are valid so as it is possible for the parties to agree on the applicable law by means of a negative choice, *i.e.* by excluding the laws of one or more eligible States for choice.

The agreement illustrated in hypothesis (a) does not appear to be valid. The parties do not make a choice of applicable law within the meaning of Article 22. Such a choice cannot be inferred indirectly because the parties exclude only one of the three admissible options. Moreover, the agreement is not able to influence the legal criteria for determining the applicable law under Article 26. Thus, the content of the agreement concluded by the parties is neither determined nor determinable. In the light of both the notion of "agreement" envisaged by the Twin Regulations and the applicable (national) law, the agreement will be invalid[10].

Whether the agreement illustrated in hypothesis (b) may be valid is a matter of uncertainty. The question arises as to whether or not the parties may designate the applicable law indirectly or implicitly, *i.e.* by designating as non-applicable the laws of the other States eligible for choice under Article 22(1). In the above example, the parties could agree on the choice of one of the laws of Greece, Italy or Spain. Instead, they agreed to exclude the application of the Greek and Italian laws. Can it be said that the parties have implicitly designated Spanish law as the law applicable to their matrimonial property regime? To answer this question, it is necessary to examine whether an implicit or tacit choice-of-law agreement can be admitted under the Twin Regulations. This issue will be analysed in the following section.

III. THE QUESTION OF WHETHER AN IMPLICIT OR TACIT CHOICE OF APPLICABLE LAW IS ADMITTED.

It has been pointed out that the question of whether the designation of the applicable law has to be explicit or may also be implicit has to be given a uniform answer, on the basis of an "autonomous interpretation" of the concept of "agreement" under Article 22(1) of the Twin Regulations[11]. Thus, the choice of the applicable law should be made "expressly or clearly demonstrated by the

10 In most civil codes of the EU Member States, if the content of the contractual agreement is neither determined nor determinable, the contract is invalid. See Articles 1128 of the French civil code and 1346 of the Italian civil code.

11 Kohler, C.: "Choice of the Applicable Law", cit., p. 201 f.

terms of the contract or the circumstances of the case"[12]. However, some risks are associated with this view.

Consider the case of two Italian citizens who live in Germany and arrange their marriage in Italy. After the marriage, they continue to live in Germany for a number of years and finally decide to settle in Italy. In this respect, the following two scenarios must be taken into account.

Scenario A.

At the time of the marriage, they concluded a marital agreement before an Italian notary designating the "separation of assets" according to Article 215 *et seq.* of the Italian Civil Code as their matrimonial property regime. It might be argued that the choice of Italian law as the applicable law under Article 22(1) of the Matrimonial Property Regulation should be clearly demonstrated by the terms of that agreement[13].

Scenario B.

After the marriage, the parties concluded a choice-of-law agreement before a German notary designating the Italian law as the law applicable to divorce and legal separation pursuant to Article 5(1) of the Rome III Regulation.

In scenario A, the parties have previously concluded a matrimonial property agreement or a partnership property agreement under the law of a state in which they did not have their "first common habitual residence". The question arises as to whether or not these circumstances suffice to demonstrate that Italian law is the law the parties have chosen to apply to their relationships, including the matrimonial property regime.

In scenario B, the couple has previously concluded an agreement on the law applicable to separation and divorce in accordance with the provisions of the Rome III Regulation[14], but after the entry into force of the Twin Regulations has not concluded any further agreements. The question arises whether, in such a case, the law designated by the couple in contemplation of separation and divorce can be considered applicable also to the property consequences of the marriage or registered partnership. This means clarifying whether it can be assumed that

12 *Ibid.*, p. 202. The author justifies this interpretative solution with a reference to Article 3(1) of the Rome I Regulation, where the same issue arises. In his view, "there is no plausible reason why a choice which is clearly demonstrated by the terms of an agreement between the parties or the circumstances which surround it should not be admitted under Article 22(1)".

13 *Ibid.*

14 Council Regulation (EU) No 1259/2010 of 20th December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation. OJ L 343/10 [2010].

the parties have made an implicit and nonetheless acceptable choice to this effect, even in the absence of their express request.

In both scenarios, it should be noted that the "terms of the agreement" and the "circumstances" indicated in each example do not appear sufficient to answer the question of whether they amount to an implicit agreement on the choice of law applicable to the matrimonial property regime in accordance with Article 22(1) of the Matrimonial Property Regulation. The definition of what is a choice-of-law agreement under Article 22(1) is a point to be assessed on the basis of the criteria and requirements set out in Articles 22 to 24 and the relevant Recitals of the Twin Regulations, as well as those left to the national law. In the light of this approach, Recital 47 of the Matrimonial Property Regulation and Recital 46 of the Regulation on the Property Consequences of Registered Partnerships deserve special attention. These Recitals point out that the rules on the material and formal validity of a choice-of-law agreement laid down in the Twin Regulations are intended to facilitate the "informed choice"[15] of the spouses or partners and to ensure that they "are aware of the implications of their choice"[16].

Having pointed that out, can one be sure that in the two examples given above the spouses made a genuinely informed choice of the law applicable to the matrimonial property regime? No, but this requirement is very unlikely to be met in scenario B, whereas it is only possible in scenario A. In both scenarios, the information that the parties received from the notary before or at the time they concluded the agreement has to be ascertained in the light of the concrete context surrounding their choice. The spouses should be properly informed by the notary not only of the possibility of choosing between German and Italian law, but also of the implications of this choice in view of the matrimonial property regimes under those laws[17].

Thus, an implicit agreement by the couple on the law applicable to the matrimonial property regime or the property consequences of registered partnership can only be admitted if evidence is provided that the parties had the opportunity to make a genuinely informed choice about the range of options and their implications, on the basis of appropriate legal advice. Therefore, in scenario A, if this information was not provided to the parties, their marital property

15 This wording is used in both Recitals.

16 This wording is used in both Recitals.

17 In view of these arguments and the fact that Article 23 of the Twin Regulations lays down specific rules on the formal validity of the agreement, as a rule the choice or change of applicable law may not be tacit. On this point see Bruno, P.: *I regolamenti europei sui regimi patrimoniali dei coniugi e delle unioni registrate. Commento ai Regolamenti (UE) 24 giugno 2016, nn. 1103 e 1104 applicabili dal 29 gennaio 2019*, Milano, 2019, p. 183; Zabrodina, K.: "The law applicable to property regimes and agreements on the choice of court according to Regulations (EU) 1103 and 1104 of 2016", in Kramberger Škerl, J., Ruggeri, L. and Viterbo, F.G. (ed.): *Case studies and best practices analysis to enhance EU Family and Succession Law. Working Paper*, Camerino, 2019, p. 199 f.

agreement cannot be interpreted as a choice-of-law agreement. It follows that if a few years later the parties choose to apply Italian law to their matrimonial property regime without an express agreement on its retrospective effect, then German law will apply to their matrimonial property regime prior to the change of applicable law.

Let us return to the second scenario outlined in section II.2. An agreement by which the parties have excluded the application of laws eligible for choice under Article 22(1) at the time of its conclusion, except that of only one State, will be acceptable if evidence is provided that the parties made a genuinely informed choice. This means that the legal professional (e.g. notary, lawyer) on whom the parties relied must have explained to them not only the reasons for excluding the application of the laws of one or more States, but also the implications of their agreement. It is important that the parties have been informed of the law that will apply to their matrimonial property regime as well as that they have been aware of the consequences and risks of their agreement. However, this particular scenario is very unlikely.

The major role given to private autonomy makes it necessary to rigorously verify the presence of a clear and express agreement reached by the parties on the applicable law[18].

IV. CHOICE OF LAW OF A STATE NOT IN ACCORDANCE WITH ARTICLE 22(1) OF THE TWIN REGULATIONS: WHAT CONSEQUENCES FOR SUCH AN AGREEMENT?

In accordance with Article 22(1) of the Twin Regulations, the point in time at which the agreement is concluded determines the object of the choice available to the couple, *i.e.* the range of laws eligible for choice. Consider a couple of Greek nationals who marry in Italy in 2020 and transfer their habitual residence there; after a few years they move to Spain where they live for a long time and finally decide to settle in Portugal. If they were to agree on the applicable law in the "Italian period", the choice would be limited to between Greek and Italian law, and in each case it would have to be verified that the agreement met the formal requirements of validity laid down by Italian law. If, on the other hand, they were to conclude the agreement in the "Portuguese period", the range of options would no longer include Italian law (that is the applicable law until the parties make a choice), but Greek and Portuguese law, and in each case it would have to be

18 Ruggeri, L.: "Jurisdiction", in Cazorla González, M.J., Giobbi, M., Kramberger Škerl, J. and Ruggeri, L. (ed.): *Property Relations of Cross-Border Couples in the European Union*, Napoli, 2020, p. 66. This is confirmed by the case law of the CJEU: see Case C-387/98, *Coreck Maritime GmbH c. Handelsveem BV and others*, ECLI:EU:C:2000:606, point 13; Case C-543/10, *Refcomp Refcomp SpA c. Axa Corporate Solutions Assurance SA*, ECLI:EU:C:2013:62, points 27-28.

verified that the agreement met the formal requirements of validity laid down by Portuguese law.

With agreeing on the choice of applicable law, the parties envisage the way in which their property relationships are to be treated under a range of possible laws and finally opt for the one that best serves their common interests[19]. Here, proper legal advice is essential to enable the couple to make a choice that should be directed towards the most equitable law and property regime in relation to the organisation of their matrimonial life or registered partnership.

On the contrary, inadequate legal advice can bring the parties many risks. In the example above, assume that, in the "Portuguese period", the parties concluded an agreement to choose Spanish law as the law applicable to their matrimonial property regime. Spanish law does not meet any of the criteria listed in Article 22 of the Matrimonial Property Regulation and is not "the applicable law in the absence of choice by the parties" under Article 26. The question arises as to whether or not an agreement by which the parties have chosen the law of a State which is not among those laws eligible for choice under Article 22(1) is valid. A uniform answer should also be given to this question, on the basis of an "autonomous interpretation" of the concept of "agreement" under Article 22(1) of the Twin Regulations[20]. The wording of this article would lead to the conclusion that the parties cannot enter into such an agreement because it would violate its provisions. Moreover, under national law, the agreement might be invalid because its content would not be possible. However, a closer analysis of the Twin Regulations may lead to a different conclusion.

Indeed, the Twin Regulations make it possible for spouses and registered partners to choose "among the laws with which they have close links because of habitual residence or their nationality", according to Recital 45 of the Matrimonial Property Regulation and Recital 44 of the Regulation on the Property Consequences of Registered Partnerships. Let us return to the above case. The couple of Greek nationals lived for a long time in Spain during their married life, although they did not establish their first habitual residence there after marriage, nor did they have their habitual residence there at the time of the conclusion of the agreement. Nevertheless, it can be said that Spanish law is among the laws that have a close link with the couple by reason of habitual residence, albeit in a broader sense than that covered by the criteria of Article 22(1). Therefore, the agreement concluded by the Greek couple on the choice of Spanish law could be valid. This solution appears consistent with the principle of preservation of

19 This is an important purpose of the choice-of-law agreement: see Sbordone, F.: "Potere di scelta della legge applicabile al contratto e funzione delle norme di diritto internazionale privato", in AA.VV.: *Il diritto civile oggi. Compiti scientifici e didattici del civilista*, Napoli, 2006, p. 215 ff.

20 Kohler, C.: "Choice of the Applicable Law", cit., p. 201 f.

the act of private autonomy which is a constant in European legislation[21]. In this perspective, the validity of the choice-of-law agreement should at least be open to scrutiny by the competent court.

V. CONCLUDING REMARKS.

The issues that have been analysed concern the possibility that choice-of-law agreements under the Matrimonial Property Regulation or the Regulation on Property Consequences of Registered Partnerships have a content other than that outlined in the wording of Article 22.

The purpose of the analysis is to illustrate that it would be incorrect to argue that such agreements are *a priori* invalid or not permitted to parties' autonomy. A choice-of-law agreement is invalid if it is not possible to infer a precise choice of the parties from its content. However, the Twin Regulations have strengthened party autonomy as connecting factor for determining the applicable law in EU cross-border families. In this light, Article 22 does not appear to prevent the parties from agreeing that the law of the State of their first common habitual residence after the conclusion of the marriage or registered partnership is not applicable to their property relationships. The purpose of their agreement would be to change the order of application of the criteria listed in Article 26(1). This may be an agreement between the parties to change the law applicable to the matrimonial property regime or the property consequences of the registered partnership in accordance with Article 22(1) and (2).

In addition, the parties' agreement on the choice of one or more non-applicable laws may result in an indirect or implicit choice of the law of a State under Article 22(1). However, evidence should be provided that the parties have been informed of the range of laws eligible for choice and their consequences and risks, on the basis of appropriate legal advice.

It follows that it is up to the notary or the other legal professional assisting the parties in concluding the choice-of-law agreement to guide them in choosing the law that best serves their common interests in relation to the needs and expectations they have. Familiarity with the Twin Regulations is essential in this regard. However, inadequate legal advice may reflect on the content of the agreement and cause undue risk to the parties.

21 In the context of the Twin Regulations, the principle of preservation of the act of private autonomy is invoked by Ruggeri, L.: "Jurisdiction", cit., p. 67.

Beyond the possible actual scenarios, in the aforementioned doubtful cases, it is up to the national courts to request a preliminary ruling from the Court of Justice on the correct interpretation of the Regulations[22].

22 On the importance of constitutional and community judicial control in a spirit of loyal cooperation, see Perlingieri, P.: *Leale collaborazione tra Corte costituzionale e Corti europee. Per un unitario sistema ordinamentale*, Napoli, 2008, p. 18 ff.

BIBLIOGRAPHY

Bruno, P.: *I regolamenti europei sui regimi patrimoniali dei coniugi e delle unioni registrate. Commento ai Regolamenti (UE) 24 giugno 2016, nn. 1103 e 1104 applicabili dal 29 gennaio 2019*, Milano, 2019, p. 183.

Gannagé, P.: "La Pénétration de l'autonomie de la volonté dans le droit international privé de la famille", *Revue critique de droit international privé*, 1992, pp. 425-439.

Gray, J.: *Party Autonomy in EU Private International Law. Choice of Court and Choice of Law in Family Matters and Succession*, Cambridge, 2021, p. 15 ff.

Henrich, D.: "Zur Parteiautonomie im europäisierten internationalen Familienrecht", in Verbeke, A., Scherpe, J.M., Declerck, C., Helms, T. and Senaeve, P. (ed.): *Confronting the frontiers of family and succession law: liber amicorum Walter Pintens*, I, Antwerp 2012, pp. 701–714.

Kinsch, P.: "Les fondements de l'autonomie de la volonté en droit national et en droit européen", in Panet, A., Fulchiron, H. and Wautelet, P. (ed.).: *L'autonomie de la volonté dans les relations familiales internationals*, Bruxelles, 2017, pp. 17-22.

Kohler, C.: "Choice of the Applicable Law", in Franzina, P. and Viarengo, I. (ed.): *The EU Regulations on the Property Regimes of International Couples. A Commentary*, Cheltenham, 2020, pp. 212-231.

Perlingieri, G.: "Reasonableness and Balancing in Recent Interpretation by the Italian Constitutional Court", *The Italian Law Journal*, 2018, no. 2, p. 408 f.

Perlingieri, P.: *Leale collaborazione tra Corte costituzionale e Corti europee. Per un unitario sistema ordinamentale*, Napoli, 2008, p. 18 ff.

Ruggeri, L.: "Jurisdiction", in Cazorla González, M.J., Giobbi, M., Kramberger Škerl, J. and Ruggeri, L. (ed.): *Property Relations of Cross-Border Couples in the European Union*, Napoli, 2020, p. 66.

Sbordone, F.: "Potere di scelta della legge applicabile al contratto e funzione delle norme di diritto internazionale privato", in AA.VV.: *Il diritto civile oggi. Compiti scientifici e didattici del civilista*, Napoli, 2006, p. 215 ff.

Scherpe, J.M (ed.): *Marital Agreements and Private Autonomy in Comparative Perspective,* Oxford, 2012.

ZABRODINA, K.: "The law applicable to property regimes and agreements on the choice of court according to Regulations (EU) 1103 and 1104 of 2016", in KRAMBERGER ŠKERL, J., RUGGERI, L. and VITERBO, F.G. (ed.): *Case studies and best practices analysis to enhance EU Family and Succession Law. Working Paper,* Camerino, 2019, p. 199 f.