

## Streamlining Divorce Law in the EU - “Will it ever happen?”

One of the central ideas of EU Membership is for countries across Europe to provide a degree of consistency in their approach to some of the more fundamental aspects of their citizens' rights and obligations.

The first steps along the path so far as Family Law is concerned were agreements on jurisdiction (which country's Courts should deal with the dispute) and enforcement (will the Courts of one country enforce the decisions made by the Courts of another country).

By the time “Brussels II - Bis” as it is known in the trade came into force on 1 March 2005, there had been substantial progress made in cross border recognition and enforcement of Orders.

Also, all countries agreed on the qualifying grounds of residence; citizenship or domicile, that were necessary to commence divorce proceedings. Unfortunately, that agreement still allows in many cases more than one EU State to have jurisdiction over a divorce (and, therefore, the financial disputes that go with it).

There are fewer problems in disputes over children since there is a relatively sophisticated regime for the return of abducted children which allows cases to be dealt with by the Courts of the child's country of habitual residence. Some countries do, however, discriminate between children of married and un-married parents and also where the proceedings involve step-children.

When more than one Court has jurisdiction over the financial aspects of a divorce there have often been unseemly scrambles to issue the divorce proceedings in the country perceived to favour one party over another. Very substantial sums have been spent on satellite litigation simply arguing over who issued first and whether they were really entitled to do so.

An opportunity to change matters on the back of the latest EU Directive has been lost. Following substantial lobbying the Government has declined to opt into “Rome 3” which was aimed at consistency in dealing with financial disputes. Amongst other things, it would have introduced “applicable law”. This means that a Court has to use the law of the country to which the parties are most closely connected (or, in some cases, have agreed to) even if they are bringing their case in a different country.

This could potentially have changed the face of divorce disputes in the UK beyond recognition, by introducing such alien concepts as legally binding pre-nuptial agreements and the idea of community of property based on relatively rigid rules, rather than an over-arching concept of fairness.

The Master of The Rolls recently said that London was perceived in the Press as being the divorce capital of the world, and financial provision law was in need of reform. He deplored two cases this year where £330,000 and £1.6 million had been spent trying to get/avoid a UK divorce, and supported the idea of binding pre-nuptial agreements.

However, given the innate inertia in the legal system, and the lack of sympathy for the disgruntled millionaire lobby, my answer to the headline question, at least on financial matters, is "Don't hold your breath!"

If you require any further information, please do not hesitate to contact Mike Spencer on 0115 9 100 200 or email [enquiries@actons.co.uk](mailto:enquiries@actons.co.uk)



**Mike Spencer**  
**Actons Solicitors**  
**20 Regent Street**  
**Nottingham**  
**NG1 5BQ**

**Tel: 0115 9 100 200**  
**Email: [enquiries@actons.co.uk](mailto:enquiries@actons.co.uk)**