Mandatory Provisions and Property Regimes of the Family within the Civil Judicial Cooperation

Norme de aplicare imediată şi regimurile de proprietate matrimonială în cadrul cooperării judiciare civile

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Abstract

The present paper analyses the rules of overriding mandatory provisions in the recent EU regulations on patrimonial effects of marriages and of registered partnerships. These rules are traditionally included in EU regulations on civil judicial cooperation, and their formulation in the twin regulations follows the classic approach. It is submitted that it is not easy to detect national rules satisfying the conditions set therein and overriding mandatory provisions will be barely applicable.

Keywords: *matrimonial regimes; patrimonial effects of registered partnerships; overriding mandatory provisions; public policy; civil judicial cooperation.*

Rezumat

Prezenta lucrare analizează normele de aplicare imediată din regulamentele UE privind efectele patrimoniale ale căsătoriei şi ale parteneriatelor înregistrate. Aceste reguli sunt, în mod tradiţional, incluse în regulamente europene privind cooperarea judiciară civilă, şi formularea lor în cele două regulamente relevante urmează abordarea clasică. Conform concluziei propuse, nu sunt deloc uşor de detectat regulile naţionale care satisfac condiţiile stabilite în respectivele regulamente, iar normele de aplicare imediată vor fi rareori aplicabile.

Cuvinte-cheie: *regimuri matrimoniale; efecte patrimoniale ale parteneriatelor înregistrate; norme de aplicare imediată; ordine publică; cooperare judiciară civilă.*

1. Introduction: some general aspects of the twin regulations

On 24th June 2016 the European Parliament and the Council adopted two regulations enacting an enhanced cooperation on the patrimonial consequences of international family

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relationships. Regulation 2016/1103 on the matrimonial regimes[1], and Regulation 2016/1104 on the patrimonial effects of registered partnerships[2] entered into force the twentieth day following that of their publication, and are applicable as from the 29th January 2019. They represent the last achievement of the European Union in the area of the civil judicial cooperation. The two Regulations have a treble nature[3], since they deal with the three main topics of private international law, i.e. jurisdiction, applicable law, recognition and enforcement of foreign judgments, authentic instruments and court settlements. Many rules of the twin regulations are identical, because their aim is to grant a high degree of predictability (recitals 15), in the frame of the mutual recognition principle (recitals 4), in very similar fields. An important exception to this identity is the rule on the applicable law in the absence of choice by the parties. Indeed, Article 26 of Regulation 2016/1103 sets alternative connecting factors based on the habitual residence or the citizenship of the spouses, or on the closest connection principle, while Article 26 of Regulation 2016/1104 establishes only one conflict rule, the law of the State under whose law the registered partnership was created[4]. The need to enact two separate regulations stems from the different national legislations on family law and from the difficulty to accept a piece of legislation covering non-matrimonial unions and/or same sex formalised relationships in some Member States. This division has yet not prevented the refusal to approve the regulation on matrimonial property unanimously by all Member States and the following implementation of an enhanced cooperation for both regulations.

The regulations provide for some very innovative solutions in order to simplify the free movement of the couples and the continuity of their mutual patrimonial relationships while crossing the borders. Among these, Articles 9 on alternative jurisdiction are a paramount, since they apply insofar as the law of the judge seized cannot recognise effects to the legal

[1] Council Regulation (EU) 2016/1103 of 24 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, 8.07.2016, p. 1.

[2] Council Regulation (EU) 2016/1104 of 24 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, 8.07.2016, p. 30.

[3] Interestingly, this is common with Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, *OJ* L 201, 27.07.2012, pp. 107-134, and partly with Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, *OJ* L 7, 10.01.2009, pp. 1-79 (where the rules on the applicable law are not autonomous, but with reference to the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, available at: https://www.hcch.net/en/instruments/conven tions/full-text/?cid=133). Indeed, the four regulations tackle patrimonial aspects related to the family life, although this link has a different degree of intensity.

[4] On the applicable law under these regulations: C. CAMPIGLIO, *La disciplina delle unioni civili transnazionali e dei matrimoni esteri fra persone dello stesso sesso*, in *Rivista di diritto internazionale privato e processuale*, 2017, p. 59; B. HEIDERHOFF, *Die EU-Güterrechtsverordnungen*, in *IPRax*, 2018, p. 8.

status of the couple[5]. Furthermore, Articles 26(2) on the law *non conveniens* grant a margin of appreciation to the judge[6], whether the application of the law according to the objective criteria is to be considered inappropriate in the case at stake[7].

Within the regulations, some normative choices can be considered quite classic in EU Private International Law, such as the preference of the connection with the habitual residence, instead of citizenship[8], a limited party autonomy[9], self-standing and complete rules on jurisdiction, the universality and unity of the applicable law, the plain recognition and the easy enforcement of judgments, authentic instruments and courts settlements. Among these well-known rules, the limits to the application of the foreign law are the classic public policy exception (Articles 31) and the overriding mandatory provisions (Articles 30).

2. The definition of overriding mandatory provisions in the regulations

Articles 30 of both regulations state that nothing shall prevent the application of the overriding mandatory provisions of the law of the forum. These are identified by three features. Firstly, they are considered crucial by a Member State; secondly, they aim to safeguard its public interests, such as its political, social or economic organisation; finally, they are applicable to any situation falling within their material and objective scope. The definition is thus the same already provided for in Article 9(1) of the Regulation No 593/2008

[5] C. Ricci, *Giurisdizione in materia di regimi patrimoniali tra coniugi nello spazio giudiziario europeo*, CEDAM, Padova, 2020, p. 209 ff.

[6] The judicial margin of appreciation is uncommon in EU Private International Law, which prefers objective and very predictable connecting factors. After the judgment of the CJEU 1 March 2005, case C-281/02, *Owusu*, ECR I-1383, they appeared be incompatible with the whole EU Private International law system. Nevertheless, at the time, the applicable regulation did not provide for any flexibility in the application of the grounds of jurisdiction. More recent regulations leave a margin of appreciation in the acceptance of jurisdiction, although the conditions are partly different from the classic common law *forum non conveniens* theory (in this sense: Opinion of the Advocate General Szpunar, delivered on 8 July 2021, case C-422/20, *RK v. CR*, ECLI:EU:C:2021:565). The applicability of traditional common law instruments in cases strictly connected with third States is still discussed. Unfortunately, a preliminary ruling request on the availability of anti-suit injunctions as a remedy against the infringement of procedural ground of jurisdiction established by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, pp. 1-32 has been withdrawn and the case has been removed from the register of the Court (Order of the President of the First Chamber of the Court, 25 September 2020, case C-946/19).

[7] F. Vismara, *Legge applicabile in mancanza di scelta e clausola di eccezione nel regolamento (UE) n. 2016/1103 in materia di regimi patrimoniali tra i coniugi*, in *Rivista di diritto internazionale privato e processuale*, 2017, p. 356 ff.

[8] M. Bogdan, *The EC Treaty and the use of Nationality and Habitual Residence as Connecting Factors in International Family Law*, in J. Meeusen, M. Pertegàs, G. Straetsman, F. Swennen (eds.), *International Family Law for the European Union*, Intersentia, Antwerpen, Oxford, 2007, p. 303.

[9] M. Vinaixa Miquel, *La autonomía de la voluntad en los recientes reglamentos UE en materia de regímenes económicos matrimoniales (2016/1103) y efectos patrimoniales de las uniones registradas (2016/1104)*, in *InDret*, 2017(2), p. 298.

on contractual obligations (Rome I)[10], and the interpretation of Articles 30 can benefit from the experience of the application of the former rule.

The most important difference between Article 9 of the Rome I regulation and Articles 30 of the twin regulations is the treatment of the foreign overriding mandatory provisions. The former admits the application of the overriding mandatory provisions of the State of the place of the performance of the contractual obligations, provided that they render the performance of the contract illegal. The twin regulations do not mention them. Therefore, in the scope of the twin regulations, overriding mandatory provisions of States different from the forum are not relevant, although these jurisdictions could be strictly connected with the case. Nevertheless, Article 9 of the Rome I regulation is very interesting for the purposes of the application of Articles 30, although in excluding any legal value of overriding mandatory provisions of States different from the forum. Indeed, in the interpretation of Article 9(3) of the Rome I regulation, the CJEU made it clear that overriding mandatory provisions of States different from the forum and of the State of performance of the contract shall not be applicable as such. They can be taken into account as matters of fact in so far as this is provided for by the national law[11]. In the light of the continuity and of the consistence of the interpretation of literally identical rules, although included in different pieces of legislation[12], it is not possible to interpret Articles 30 of the twin regulations in the sense that overriding mandatory provisions of States strictly connected with the case shall have any legal value[13]. If at all, they can be considered such as matters of facts, for example

[10] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), *OJ* L 177, 4.07.2008, pp. 6-16.

[11] CJEU 18 October 2016, case C-135715, *Nikiforidis*, ECLI:EU:C:2016:774.

[12] Recently: CJEU 20 October 2022, case C-604/20, *ROI Land Investments Ltd*, ECLI:EU:C:2022:807, paragr. 50; CJEU 30 June 2022, case C-652/20, *HW*, ECLI:EU:C:2022:514, paragr. 21; CJEU 7 April 2022, case C 568/20, *J*, ECLI:EU:C:2022:264, paragr. 20.

[13] J. Rodríguez Rodrigo, *Relaciones económicos de los matrimonios y las uniones registradas en España, antes y despues de los reglamentos (UE) 2016/1103 y 2016/1104*, Tirant, Valencia, 2019, p. 192. This solution has been criticised, because it does not grant the predictability and the certainty of the applicable law, while jeopardising other States' interests: S. Clavel, *Article 30*, in S. Corneloup, V. Égéa, E. Gallant, F. Jault Seseke (eds.), *Le droit européen des regimes patrimoniaux des couples*, LGDJ, Paris, 2018, p. 315. The scarce coordination with other connected States has been criticised, too: B. Añoveros Terradas, *El régimen conflictual de las capitulaciones en los nuevos reglamentos de la Unión Europea en materia de regímenes económicos matrimoniales y efectos patrimoniales de las uniones registradas*, in *Anuario Español de Derecho Internacional Privado*, 2017, p. 821; S. Clavel, F. Jault-Seseke, *Public Interest Considerations – Changes in Continuity*, in *Yearbook of Private International Law*, 2017/2018, p. 233. On the other side, the rare application of foreign overriding mandatory rules, also due to the complex mechanism beyond them, makes the legislative choice to limit their impact quite reasonable (M. Buschbaum, U. Simon, *Les propositions de la Commission européenne relatives à l'harmonisation des règles de conflit de lois sur les biens patrimoniaux des couples mariés et des partenariats enregistrés*, in *Revue critique de droit international privé*, 2011, p. 801; K. Rokas, *Article 30*, in A. Bonomi, P. Wautelet (eds.), *Le droit européen des relations patrimoniales de couple*, Bruylant, Bruxelles, 2021, p. 1027).

in order to evaluate the existence of a gross breach of the law, or a psychological element of the violation, where relevant[14].

The three substantive conditions of the definition of overriding mandatory provisions are quite classic, too, and stem from both scholars' studies[15] and the CJEU's interpretation in the case *Arblade*[16]. The reference to public interests does not mean that these rules belong to public law only[17]. Rather, their classification differs among jurisdictions. The main feature of these rules is that they touch on the main values of the society and its legal order, as compared to the other national rules that can be derogated from by conflict of laws rules.

The use of the term *crucial* stresses the exceptional application and the restrictive interpretation of these provisions[18]. The establishment of a definition allows the CJEU's control on their identification and application in national Courts, as it had already happened in contractual matters[19]. According to the CJEU's case law, the application of national rules shall remain compatible with the purposes and the objectives of the regulations[20]. Furthermore, the foreign applicable law shall not already protect the same interest in the same way. Thus, if the *lex causae* and the *lex fori* share the same approach in the characterisation of the rules on protection of the family home and in the division between primary and patrimonial regime, the overriding mandatory provisions of the latter shall have no application.

The imperative character excludes from the characterisation as overriding mandatory provisions those national rules, that can be derogated from by common will of the spouses or of the partners[21]. Despite this, it is not the only requirement to be satisfied, since the national judge shall detect an international imperativeness, a legal force that prevents the application of any other foreign rule[22].

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[14] S. Clavel, *op. cit.*, p. 316; Z. Crespo Reghizzi, *La «presa in considerazione» di norme straniere di applicazione necessaria nel regolamento Roma I*, in *Rivista di diritto internazionale privato e processuale*, 2021, p. 301 ff.

[15] They echo the very well-known theory of P. Francescakis, *Quelques précisions sur les lois d'application immédiate et leur rapport avec les règles de conflit de lois*, in *Revue critique de droit international privé*, 1966, p. 1.

[16] CJUE 23 November 1999, joined cases C-369/96 and C-376/96, *Arblade*, ECR 1999 I-8453. In this sense: A.L. Calvo Caravaca, J. Carrascosa González, *Derecho Internacional Privado*, vol. II, Comares, Granada, 2018, p. 209; J. Rodríguez Rodrigo, *op. cit.*, p. 191.

[17] A. KÖHLER, *Der sachliche Anwendungsbereich der Güterrechtsverordnungen und der Umfang des Güterrechtsstatus*, in A. Dutta, J. Weber (eds.), *Die Europäischen Güterrechtsverordnungen*, Beck, München, 2017, p. 161: M. Gebauer, *Article 30. Overriding Mandatory Provisions*, in I. Viarengo, P. Franzina (eds.), *The EU Regulations on the Property Regimes of International Couples. A Commentary,* Elgar, Cheltenham, 2020, p. 299.

[18] S. Clavel, *op. cit.*, p. 309.

[19] CJEU 15 March 2001, case C-165/98, *Mazzoleni*, ECR 2001 I-2189; CJEU 17 October 2013, case C-184712, *Unamar*, ECLI:EU:C:2013:663.

[20] M. Gebauer, *op. cit.*, p. 301.

[21] S. Clavel, *op. cit.*, p. 310.

[22] S. Clavel, *op. cit.*, p. 310; M. GEBAUER, *op. cit.*, p. 301.

Finally, there is no room for EU mandatory provisions, with a meaningful difference with Article 3(4) of the Rome I regulation. This is easily understandable due to the lack of any EU substantive regulation of the patrimonial effect of legal status.

3. The identification of national overriding mandatory provisions

In this framework, recital 53 of Regulation 2016/1103 and recital 52 of Regulation 2016/1104 recall the strict interpretation of the overriding mandatory provisions, that can be relevant in exceptional cases only. The preambles offer a possible example, too, which is "rules of an imperative nature such as rules for the protection of the family home".

Scholars have been tried to identify national imperative rules on patrimonial regimes, in order to give some clues to the future practice. The very same example given by the preambles of the regulations is disputable[23]. Indeed, the rights and the duties over family home are considered part of the primary regime of the marriage in some Member States, as for example Italy[24], France[25] and Spain[26], that is the set of mutual duties stemming direct from the legal status and not from the patrimonial relationship, although having patrimonial/economic nature. It is discussed whether the primary regime is included in the scope of application of the regulations[27]. Were it not, under this characterisation, family home would not be included in the material scope of the regulations and even more so not be part of their mandatory provisions. Whether it is, the characterisation of all the rules on the primary regime and family home as mandatory provisions would exceed the limits of their strict interpretation[28].

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[23] P. Jiménez blanco, *Regímenes económicos matrimoniales transfronterizos. Un estudio del reglamento (UE) n. 2016/1103*, Tirant, Valencia, 2021, p. 211 submits that the rules on the attribution of the family home can be included in the scope of application of Regulation No. 4/2009 (for a similar reasoning: N.C. Barreda, *La protection du logement familial pendant le mariage et lors de la crise conjugale à l'épreuve de la définition des régimes matrimoniaux dans le règlement 2016/1103*, in *Revue internationale de droit comparé*, 2018, p. 899), or, in case of the death of one of the spouses or partners, under EU Succession Regulation. Other scholars agree with the example: J.P. Quizá Redondo*, Régimen económico matrimonial*, Tirant, Valencia, 2016, p. 373: A.L. Calvo Caravaca, J. Carrascosa González, *op. cit.*, p. 210; S. Clavel, *op. cit.*, p. 312.

[24] M. Tommasini, *Casa familiare e subingresso nel rapporto di locazione del coniuge assegnatario*, in A. Cagnazzo, F. Preite, V. Tagliaferri (eds.), *Il nuovo diritto di famiglia. Profili sostanziali, processuali e notarili*, Vol. IV, *Tematiche di interesse notarile. Profili internazionalprivatistici*, Giuffré, Milano, 2015, p. 41.

[25] S. Godechot-Patris, *Le nouveau règlement européen en matière de régimes matrimoniaux: quoi de neuf?*, in *Revue juridique personnes et famille*, 2016, p. 2; N. Joubert, *La dernière pierre (provisoire?) à l'édifice du droit international privé europèen en matière familiale*, in *Revue critique de droit international privé*, 2017, p. 25.

[26] A.M. Sánchez-Moraleda, *Las cuestiones del régimen matrimonial primario y la aplicación del reglamento 2016/1103*, in *Cuadernos de derecho transnacional*, 2020(1), p. 263 ff.

[27] D. Coester-Waltjen, *Connecting Factors to Determine the Law Applicable to Matrimonial Property Regimes*, in *Yearbook of Private International Law*, 2017/2018, p. 19; N.C. Barreda, *La protection*, cit., p. 883 ff.; K. Rokas, *op. cit.*, p. 1029.

[28] If it were, it would be easier to detect overriding mandatory provisions, as already stated by the French Cour de Cassation, 1ere civ., 20 October 1987, *Cressot* (S. Clavel, *op. cit.*, p. 312; P. Jiménez Blanco, *op. cit.*, p. 210; K. Rokas, *op. cit.*, p. 1028). According to J.P. Quizá Redondo*, op. cit.*, p. 374 through the overriding mandatory provisions and the public policy exception it is possible to protect the general rights and duties with economic content, as, for example, the economic independence of the spouses or the mutual duties of information, that

On a different perspective, some scholars blame the lack of protection of the family home within the regulations, which could be granted appropriately only by referring to the *lexi loci,* at least for its (foreign) overriding mandatory rules[29]. On the opposite, there can be doubts on the public interest involved in the rules on family home[30]: rather, the rules seem devoted to the protection of the economic weak party[31].

In the identification of national overriding mandatory provisions, some scholars focus on the restrictions on dispositions by one spouse of the property as a whole, as for example the need of the consent of both spouses in order to sell immovable or to create rights *in rem* in favour of third parties[32]. In this example, too, it is not clear if the rule protects a public interest, such as the economic basis of the family[33], or refers only to the validity of the contract with third parties.

In the current difficulties of the legal doctrine, that does not find a unanimous consensus, the only partial conclusion to be submitted is in the sense that overriding mandatory rules are quite rare[34]. Clearly, general examples valid for all Member States are quite impossible to detect, due to their national nature. Only the practice and the CJUE's case law can confirm their imperative role, were their nature and the public interest protected duly justified by the referring national court.

4. A new rule in the recognition and the enforcement of judgments

Articles 38 of both regulations set a new rule on the application of fundamental human rights and in particular the principle of non-discrimination in the recognition and enforcement of foreign judgments. The Succession Regulation could have been a source of inspiration for the draft of this rule, because its recital 58 prohibits the application of the

constitute the primary regime in some Member States. Due to the general impact of the examples proposed, these rules do not appear suitable to be characterised as overriding mandatory provisions. Where these principles exist, they can be considered an actualisation of other general principles, such as the equality of the spouses or partners or the solidarity within the family (H. Peroz, *Régime matrimonial – Les lois applicables au regime primaire: Incidence du réglement (UE) 2016/1103 sur le droit applicable au regime primaire en droit international privé*, in *Journal de droit international*, 2017, p. 813 submits that rules on solidarity have no practical usefulness. Without expressly stating it, the consequence could be their irrelevance as mandatory rules and their characterisation as values under the public policy exception). As such, they can be considered as part of the national public policy, if at all, but cannot be considered punctual national rules applicable regardless of the applicable law.

[29] N. C. Barreda, *Entre la* lex causae *et les lois de police de la* lex fori*: quelle alternative pour la protection du logement familial dans le réglement «régimes matrimoniaux»?*, in *European Review of Private Law*, 2019, p. 583 ff.

[30] R. Sieghörtner, *Article 30 EuGüVO*, in R. Hußtege, H.-P. Mansel (eds.), *Nomos Kommentar BGB*, Nomos, 2019, paragr. 8.

[31] According to A.L. Calvo Caravaca, J. Carrascosa González, *op. cit.*, p. 210; J. Rodríguez Rodrigo, *op. cit.*, p. 191 within the definition protective rules shall not be included.

[32] N.C. Barreda, *La protection*, cit., p. 885; A.L. Calvo Caravaca, J. Carrascosa González, *op. cit.*, p. 210.

[33] A. Dutta, *Das neue internationale Güterrecht der Europäischen Union – ein Abriss der Europäischen Güterrechtsverordnungen*, in *Zeitschrift für das gesamte Familienrecht*, 2016, p. 1983; M. Gebauer, *op. cit.*, p. 303.

[34] K. Rokas, *op. cit.*, p. 1028.

exception of public policy and the refusal of recognition and enforcement of foreign judgments, if this jeopardises one of the values just mentioned. The difference between the Succession Regulation and the twin regulations is clear. Only in the latter the limit constitutes a binding rule contained in the normative part of the regulation. Only the former refers to the public policy as a general exception to the application of foreign laws.

These rules are not able to strengthen the legal value of national rules in the recognition and the enforcement of foreign judgments. Indeed, they limit the application of all the grounds of non-recognition stated in Articles 37, so that the general interests protected by the grounds of refusal must cede with the respect of human rights and the principle of non-discrimination. In this sense, Articles 38 are a concretisation of public policy, due to the overriding relevance of the values there enshrined. As a consequence, if the requested court is inclined not to recognise the foreign judgment due to public policy reasons, it must set aside the identified national values if their application in the case at stake risks undermining other human rights and/or the principle of non-discrimination[35]. The right to defence actualised in Articles 37(b) cedes if other conflicting rights could be jeopardised. In the hypothesis of conflicting judgments, the foreign ruling must produce effects if its non-recognition infringes those rights and values enshrined in Articles 38[36].

These rules seem to strengthen some fundamental EU values, preventing the application of the grounds of non-recognition. Since the black letter of Articles 38 is very wide, fundamental rights might conflict, especially in the hypothesis of Articles 37(a) and (b). Thus, if the principle of non-discrimination appears as a super main value[37], since it is the only one expressly mentioned by Articles 38, the correct balance between other potentially conflicting rights is not clear. In these cases, the judge shall be granted a margin of appreciation in the best enhancement of the fundamental rights involved, providing, where necessary, a proper reasoning for the non-application of Article 38.

Despite these difficulties, Articles 38 must be considered a kind of special application of the public policy rule in a reverse direction, i.e. in favour of the recognition and the enforcement of a judgment issued in a Member State participating to the enhanced cooperation[38], and not a rule granting legal force to national mandatory rules.

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[35] M. Gebauer, *Article 38. Fundamental Rights*, in I. Viarengo, P. Franzina (eds.), *op. cit.*, p. 357.

[36] J. Rodríguez Rodrigo, *op. cit.*, p. 252. According to this author (p. 250) the rule requires the recognition of same sex unions in the Member States not regulating these institutions, in order to safeguard the principle of non-discrimination (accordingly: P. Jiménez Blanco, *op. cit.*, p. 364). This interpretation seems weak, because the legal status is excluded from the material scope of application of the regulations: thus, Articles 38 are not applicable to this specific issue. Rather, it is not possible to refuse the recognition of a judgment on patrimonial matters because of the sexual orientation of the parties concerned (V. Égéa, *Article 38*, in S. Corneloup, V. Égéa, E. Gallant, F. Jault Seseke (eds.), *op. cit.*, p. 362; I. Viarengo, *Effetti patrimoniali delle unioni civili transfrontaliere: la nuova disciplina europea*, in *Rivista di diritto internazionale privato e processuale*, 2018, p. 58; I. Pretelli, *Article 38*, in A. Bonomi, P. Wautelet, *op. cit.*, p. 1146).

[37] In this sense, it can be put in parallel to the best interest of the child as a key value in Article 39(1)(a) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), *OJ* L 179, 2.07.2019, pp. 1-115.

[38] V. Égéa, *op. cit.*, p. 364.

5. Some final remarks

The twin Regulations do not show any distinctive news regarding the treatment of the overriding mandatory provisions compared with the former EU regulations. In the current difficulties of the identification of those rules, it is up to the national courts to investigate into the fundamental public interest protected by the national legislation. Furthermore, the same interests shall not be already protected by the foreign applicable law. Special attention must be given to the necessary strict interpretation of these special rules, their scope and the impact of the application of a foreign *lex causae* on the interests protected by the *lex fori*. Indeed, the target of EU judicial cooperation is the circulation of judgments, opening the national jurisdictions to foreign rules and values, and simplifying the coordination of legal systems through the acceptance of foreign laws. Having these aims in mind, the application of overriding mandatory rules shall be quite limited, in the field of patrimonial regimes of the couples, too.