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ITALIAN ASSISTED NEGOTIATION: AN ADDITIONAL TOOL TO SETTLE MATRIMONIAL PROPERTY REGIME CASES

NEGOCIACIÓN ASISTIDA ITALIANA: UNA HERRAMIENTA ADICIONAL PARA RESOLVER CASOS DE RÉGIMEN ECONÓMICO-MATRIMONIAL

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ABSTRACT: The assisted negotiation procedure highlighted the need to distinguish the various forms of justice in view to obtaining decisions that can effectively satisfy the interests of the family. In fact the agreements who discipline the family conflicts attributes a central role to the will of the couple in the collaborative search for suitable solutions for the management of the crisis of the emotional bond.

KEY WORDS: Assisted negotiation; prenuptial agreements; family conflicts; alternative dispute resolution.

RESUMEN: *El procedimiento de negociación asistida remarcó la necesidad de distinguir las distintas formas de justicia para obtener decisiones que efectivamente satisfagan los intereses de la familia. De hecho, los acuerdos que disciplinan los conflictos familiares atribuyen un papel central a la voluntad de la pareja en la búsqueda colaborativa de soluciones adecuadas para el manejo de la crisis del vínculo emocional.*

PALABRAS CLAVE: *Negociación asistida; acuerdos prematrimoniales; conflictos familiares; métodos alternativos de solución de conflictos.*

TABLE OF CONTENTS: I. INTRODUCTION.- II. ASSISTED NEGOTIATION.- III. JUDICIAL AND OTHER AUTHORITIES, AND LEGAL PROFESSIONALS IN REGULATIONS 2016/1103 AND 2016/1104.- IV. "PRENUPTIAL AGREEMENTS" FOR MANAGING FAMILY CONFLICTS.- V. ALTERNATIVE MANAGEMENT OF FAMILY DISPUTES. CONCLUSIONS.

I. INTRODUCTION.

The difficulties encountered by cross-border couples in managing their property and choosing the applicable law brought about the need to harmonise the discipline on conflict of laws under a single instrument to guarantee legal certainty.

With the adoption of Regulations (EU) 2016/1103 and 2016/1104[1], the European Union introduced a regulatory framework containing provisions shared by the Member States, by virtue of enhanced cooperation, which concern the competence, the criteria of identification of the applicable law, the execution of decisions, and the recognition of public acts or court settlements.

Each Member State was therefore called upon to send the Commission a summary of internal procedures and competent authorities, as well as of the legislation in force on matrimonial property regimes, as required by Article 63 of Regulations 2016/1103 and 2016/1104. Based on the information provided by the Member States and as required by Article 65(1), the Commission drew up a list of "other authorities and legal professionals" referred to in Article 3(2), who were entrusted with the exercise of judicial functions[2]. In the communication sent by Italy to the Commission, lawyers were identified as "judicial authorities" when exercising their functions in the assisted negotiation regime (Article 6, Decree Law No. 132/2014), as were the civil state officers who exercise their functions in the

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 of 8 July 2016, OJ L 183/1 and 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 of 8th July 2013, OJ L 183/30.

2 For the list of other authorities and legal professionals referred to in Article 3(2) relative to matrimonial property regimes, see *https://e-justice.europa.eu/content_matters_of_matrimonial_property_regimes-559-it.do and the property effects of registered partnerships,* see *https://e-justice.europa.eu/content_matters_of_the_property_consequences_of_registered_partnerships-560-it.do.*

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context of a simplified procedure provided for by Article 12, Decree Law No. 132 of 2014[3].

Introduced in the family context by the internal legal system with Decree Law No.132/2014, assisted negotiation leaves the possibility of reaching an agreement to the autonomy of the parties so that more complex aspects of the crisis of the emotional bond can be regulated[4]. More generally, it represents an alternative method of handling disputes to the judicial system, in which procedures are usually slower and more expensive. Using the assisted negotiation procedure, the parties have the opportunity to reach an agreement and cooperate in good faith, which tends to mitigate the conflict and produce the effects of the judicial measure[5]. The possibility of reaching a consensual agreement in cases of personal separation, cessation of civil effects, dissolution of marriage[6] and modification of the conditions of separation or divorce is therefore entrusted to the private autonomy of the parties. This regulatory choice strives essentially to fully involve the couple in the decision-making dynamics, which aims at regulating the relationship after separation[7]. In this way, partners' self-determination is given priority in the regulation of property relationships connected to the crisis in marriage or registered partnership.

II. ASSISTED NEGOTIATION.

The assisted negotiation procedure foresees an invitation to enter into a "negotiation agreement" for the settlement of the dispute and the assistance of at least two lawyers[8]. A negotiation procedure with the presence of a single lawyer is not admissible, considering the overriding interest of the family.

3 Decree Law of 12th September 2014, no. 132, Urgent measures of de-jurisdictionalisation and other interventions for the definition of the backlog in civil proceedings, converted into law 10th November 2014, no. 162, *Official Gazette* 10 November 2014, no. 261, *Ordinary Supplement* no. 84.

4 On assisted negotiation, see Luiso, F.P.: "La negoziazione assistita (Article 6 and 12 of Decree Law 132/14)", *Nuove leggi civ. comm.*, 2015, pp. 649-654; Deplano, S.: "Sul rapporto tra convenzione di negoziazione assistita dagli avvocati e «accordo che compone la controversia»", *Giusto processo civile*, 2017, p. 1123; Giaimo, G: "Status coniugale e volontà delle parti nella crisi della famiglia. Brevi note comparatistiche in tema di negoziazione assistita", *Dir. fam. pers.*, 2016, pp. 1515-1530; Marino, S.: "Strengthening the European civil judicial cooperation: the patrimonial effects of family relationship", *Quadernos de Derecho Transnacional*, 2017, pp. 265-284.

5 This is a procedure that derives from so-called collaborative law, widespread in the United States, and from the French experience of the so-called *convention de procedure participative par advocat*. Collaborative law is a method of conflict resolution based on a collaborative attitude of the parties, aimed at seeking an agreement. In the event of failure to reach an agreement, the American procedure provides that the lawyers who participated in the agreement must undertake not to assist the parties in a subsequent legal action.

6 Article 3, paragraph 1, no. 2, lett. *b*, Law 898/1970, GU 3 December 1970, no. 306.

7 The *ratio* for this choice must be looked for in the need to ensure that the couple can reach a functional decision that will regulate the interests of the spouses or partners and children, thus avoiding decision-making by third parties.

8 On this subject see, Dalfino, D.: "La negoziazione assistita da uno o più avvocati", in Id. (ed.): *Misure urgenti per l'efficienza e la funzionalità della giustizia civile* , Torino, 2015.

The discipline differs depending on the presence of children in conditions of economic vulnerability, such as children with incapacity or severe disability who are under age or are of age. In this case, based on the provisions of Article 6(2) of Decree Law No. 132/2014, the agreement reached as a result of assisted negotiation must be sent to the Public Prosecutor at the competent court who will then grant approval if he or she finds it to be fully corresponding to the interests of the children and in general to the personal and property aspects of the family. If, on the other hand, the Public Prosecutor believes that the agreement reached by the spouses does not fully correspond to the interests of the family, he or she must refer it within five days to the President of the Court who will set the appearance of the parties within the next thirty days. In the absence of children, the agreement is in any case referred to the Public Prosecutor who, if there are no irregularities, grants approval. In the presence of minors in vulnerable conditions, therefore, the control is not merely a simple formality, but it also necessarily delves into the substance of the case itself. Following the granting of approval, the lawyer is obliged to transmit the agreement[9] to the civil registrar of the municipality in which the marriage was registered or transcribed.

The wide expansion of the assisted negotiation procedure has highlighted the need to distinguish between various forms of "justice" in view of obtaining decisions that can effectively satisfy the interests of the family in the phase following the breakdown of the emotional bond. The aim of the agreement does not usually concern inalienable rights, and an example is the maintenance of a spouse, which can be the subject of negotiations regarding the amount and methods of disbursement, but not regarding the right to alimony[10]. As already argued in theory, the inalienability of rights should be overcome regardless of any reference to formal qualification, and the interests and values involved should be more deeply considered instead[11]. However, any violation of internal mandatory rules or the opposition to public order would result in the nullity of the agreement[12]. More generally, the introduction of negotiation within the family realm responds to the need to strike a balance between the desire to reach consensual solutions and the interest in protecting individuals[13]. Still, the impact of negotiation agreements on the inalienable rights of spouses and children has created the need to subject the enforceability of the agreement to the control of authority. The procedure that takes place before the Public Prosecutor for granting approval in any case

9 Lawyers must include in the agreement information to the parties concerning the possibility of carrying out family mediation and of having tried to reconcile the parties.

10 On this subject, see Gorgoni, A.: "Accordi definitivi in funzione del divorzio: una nullità da ripensare", in Landini, S. and Palazzo, M. (ed.): *Accordi in vista della crisi dei rapporti familiari*, Varese, 2018, pp. 292-314.

11 See Perlingieri, P: "La sfera di operatività della giustizia arbitrale, *Rass. dir. civ*, 2015, pp. 584-610.

12 Rovelli, L.; "Rilievi introduttivi", in AA.VV.: *Altri strumenti di soluzione delle controversie e istituti affini*, XIV, *Trattato di diritto dell'arbitrato* Mantucci, Napoli, 2020, p. 58.

13 Indraccolo, E.: "La negoziazione assistita", in AA.VV.: *Altri strumenti di soluzione delle controversie e istituti affini,* cit., p. 551 ff.

allows the opportunity to propose a preliminary investigation and request further documentation.

III. JUDICIAL AND OTHER AUTHORITIES, AND LEGAL PROFESSIONALS IN REGULATIONS 2016/1103 AND 2016/1104.

Assisted negotiation assigns a primary role to lawyers and gives the agreement enforceable effectiveness[14]. In fact, the agreement makes it possible to regulate those aspects of the crisis that would otherwise have to be subjected to judicial proceedings. Although the agreement is a decision by nature, formally it does not constitute a judicial ruling subject to possible appeals at various levels of justice provided for by the Italian legal system. Such agreements produce effects only if the spouses or partners do not bring legal action. A prerequisite for the functioning of the agreement, as an act of autonomy, is that it ought to be appropriate, suitable and legally capable of satisfying the interests of the family[15], which must be seen as superior to those of the individuals.

Lawyers participating in the negotiation process do not assume the status of judicial authority, even though they are required to fulfil formal obligations and the agreement is subject to formal control by the Public Prosecutor or even by the President of the Court and this, in any case, constitutes a legitimacy control rather than an examination based purely on the merits[16].

Article 3(2) provides that for the purposes of the Regulations 2016/1103 and 2016/1104, judicial authority means any judicial authority and all other authorities and legal professionals with competence in matters of matrimonial property regimes who exercise judicial functions or act under its control. Furthermore, other authorities and legal professionals must offer guarantees regarding the impartiality and the right of all parties to be heard. Decisions taken by these authorities or professionals, pursuant to the law of the Member State in which they operate, must be subject to an appeal or review by a judicial authority, as well as be of equivalent force and effect as a decision of a judicial authority on the same matter.

The Twin Regulations give the definition of "judicial authority" a fairly broad meaning[17], which takes into account the regulatory diversity of property regimes

14 See Article 5, Decree Law 12 September 2014, no. 132, conv. in Law 10 November 2014, no. 162, in GU 10 November 2014, O.S. no. 84.

15 See Ruggeri, L.: "La transazione", in *Tratt. dir. civ. del Consiglio Nazionale del Notariato* directed by P. Perlingieri, Napoli, 2016, p. 14-25.

16 Montinaro, R.: "Accordi stragiudiziali sulla crisi coniugale e giustizia contrattuale", in Landini, S. and Palazzo, M. (ed.): *Accordi in vista della crisi dei rapporti familiari*, cit., p. 213.

17 In this regard, see Bruno, P.: *I regolamenti europei sui regimi patrimoniali dei coniugi e delle unioni registrate*, Milano, 2019, p. 141, where there is a greater interpretative limitation of the notion of judicial authority in judicial proceedings concerning a dispute between the parties and, in any case, where there is a *lis pendens*.

in various Member States, and which distinguishes it from other "authorities and legal professionals" who exercise judicial functions relating to property regimes. Furthermore, Recital 29 clarifies that the term "court" does not include non-judicial authorities of a Member State empowered to deal with matters of matrimonial property regime when they are not exercising judicial functions.

Recital 39 of Regulation 2016/1103, like Recital 38 of Regulation 2016/1104, however, seems to offer a less restrictive interpretation of the definition of judicial authority, highlighting that the parties should not be prevented from settling the matrimonial property regime case in out-of-court proceedings, such as before a notary, if this is permitted by the law of the Member State.

It is therefore important to underline that jurisdiction can also be exercised by professionals or by authorities other than the judge. It follows that the notion of judicial authority should include all the authorities and professionals who have competence in the matters of marriage and registered partnerships and who perform judicial functions by virtue of delegation or under the direct control of competent authorities[18].

Jurisdiction in this sense no longer constitutes only an activity reserved for judges but it can also be exercised by professionals or other bodies, provided that impartiality and "dialogue" between the parties are respected. The resulting agreement is nonetheless a "decision" which the parties choose to abide by.

Lawyers do not exercise judicial functions, but they intervene in the assisted negotiation process by virtue of the "de-jurisdictionalisation" activity provided for by Decree Law No. 132/2014, and the resulting decisions are intended to govern the couple's future relationships, but also affect joint property. Consequently, the choice made by the Italian legal system does not seem to deviate much from the provisions of Article 3 of both of the Twin Regulations.

IV. "PRENUPTIAL AGREEMENTS" FOR MANAGING FAMILY CONFLICTS.

The promotion of agreements in the discipline of family conflicts attributes a central role to the will of the couple in the collaborative search for suitable solutions for the management of problems that may arise at the time of dissolution of marriage or registered partnership.

This leads to a reflection on the opportunity to enter into prenuptial agreements, before or during the marriage or registered partnership, in order to

18 See Ruggeri, L.: "Registered partnership and property consequences, III. Jurisdiction", in Cazorla González, M.J., Giobbi, M., Kramberger Škerl, J., Ruggeri, L. and Winkler, S. (ed.): *Property Relation of Cross-Border Couples in the European Union*, Napoli, 2020, p. 70 ff.

mitigate critical issues that may arise at the time of family relationship crisis[19]. These are known as preventive agreements[20] in which, however, legal professionals are called upon to play a fundamental role in the preparation of the contents relating to property and possibly non-property aspects.

The Italian legal system does not provide for the possibility of stipulating prenuptial agreements aimed at regulating personal and property relationships of the couple in anticipation of a possible crisis in the relationship which, on the other hand, are widely diffused in other regulatory systems and in particular in common-law ones.

Prenuptial agreements aimed at defining in advance the economic consequences of a possible end of a marital relationship are for example recognised in the USA, even if the degree of its binding effect is differently assessed by each individual State[21].

In England, prenuptial agreements were accepted following the leading case *Radmacher v. Granatino*[22]. In this case, the spouses rooted their married life in England, but before marriage they had entered into a prenuptial agreement in Germany with which Mr. Granatino, of French nationality, undertook to renounce, in the event of dissolution of the marital relationship, any economic claim on the assets of his wife, a rich German heiress. Following the decision of the English Supreme Court to take into account the agreement, also regarding the elements of internationality it presented, pre- or post-nuptial agreements became admissible and were aimed at regulating the economic aspects of the relationship resulting from the dissolution of marriage, without prejudice to the cases in which these might end up unfair[23]. In this way, couples were granted contractual autonomy necessary to settle the conflict both before and during marriage or partnership. The importance assumed by prenuptial agreements has also launched a reform

19 In this regard Oberto, G.: "Per un intervento normativo in tema di accordi preventivi sulla crisi della famiglia", Landini, S. and Palazzo, M. (ed.): *Accordi in vista della crisi dei rapporti familiari*, cit., p. 37 ff., notes that it would be preferable to abandon the term "prenuptial agreements" which appears to be limiting, as they can be stipulated both before and during marriage, or rather at a time preceding the crisis of the union and, therefore, it is preferable to opt for the "preventive agreements" formula.

20 In this regard, see Oberto, G.: "Per un intervento normativo in tema di accordi preventivi sulla crisi della famiglia", cit., 2018, p. 33-36.

21 Fusaro, A.: "La circolazione dei modelli giuridici nell'ambito dei patti in vista della crisi del matrimonio", in Landini, S. and Palazzo, M. (ed.): *Accordi in vista della crisi dei rapporti familiari*, cit., 2018, p. 8 ff.

22 Scherpe, J.M.: "Fairness, freedom and foreign elements, marital agreements in England and Wales after *Radmacher v Granatino*", *23 Child & Fam. L. Q. 513* (2011), p. 513; Scherpe, J.M.: "Pre-Nups, private autonomy and paternalism", *The Cambridge Law Journal*, vol. 69, no. 1, 2010, p. 35 ff.

23 Fusaro, A.: "La circolazione dei modelli giuridici nell'ambito dei patti in vista della crisi del matrimonio", cit., p. 17; Scherpe, J.M: "Rapporti patrimoniali tra coniugi e convenzioni prematrimoniali nel *common law*. Alcuni suggerimenti pratici", *Riv. dir. civ.*, 4, 2017, pp. 920-938.

process[24]. A favourable attitude to preventive agreements has also been found in Germany and other European legal systems.

According to the Italian legislation, prenuptial agreements must be considered null. However, less consolidated case law shows a greater acceptance of these agreements. In this regard, the Italian Supreme Court[25] considered valid the agreement by which the future spouse undertook to transfer to the other a property owned by him, as compensation for the expenses incurred for the renovation of their marital home. Furthermore, in another decision, it innovated previous case law[26] and assigned to the alimony a compensatory and equalising function, based on the assessment of joint choices made by partners during their marriage[27].

In a recent ruling[28], the Italian Supreme Court, however, showed renewed rigidity towards prenuptial agreements. The Supreme Court argued that in solving marital crises, even when the spouses had defined property relations during their separation, the judge had to necessarily qualify the nature of the agreement between the parties. In particular, the judge must assess whether the alimony determined by the partners in the agreement is unacceptable when examined against the mandatory discipline of relationships between spouses in family matters.

With reference to a previous decision[29], the Supreme Court reiterated that the agreements concluded by spouses during their separation, in view of future divorce, were subject to nullity on the grounds of inadmissibility of the case if these were stipulated contrary to the principle of inalienable rights in matrimonial matters. Furthermore, it specified that the agreements concluded during separation should not be taken into account even if they fully satisfied the needs of the couple, precisely because they were aimed at regulating future economic relationships between the parties in the phase following the termination of the civil effects of marriage.

The restrictive position of the Italian legislation on the nullity of prenuptial agreements presupposes a significant differentiation compared to other legal systems. This now compels it to adapt to the social reality, which is increasingly

24 See The Law Commission. Consultation Paper No 198. Marital Property Agreement, available at *www.lawcom.gov.uk*.

25 Cass., 21st December 2012, no. 23713. In this regard, see Oberto, G.: "Gli accordi prematrimoniali in Cassazione, ovvero quando il *distinguishing* finisce nella Haarspaltemachine", *Fam. dir.*, 2013, p. 321 ff.; Nazzaro, A.C.: "Il contenuto degli accordi pre-crisi. I limiti di negoziabilità", in Landini, S. and Palazzo, M. (ed.): *Accordi in vista della crisi dei rapporti familiari*, cit., pp. 87-95.

26 See Cass., 4th June 1992, no. 6857, where the validity of the prenuptial agreement with which the spouses fixed the amount of alimony was denied, as the welfare nature determined its inalienability.

27 Cass., Sez. Un., 11 July 2018, no. 18287, in *Foro it.*, 9, I, 2018, c. 2671.

28 Cass., 26th April 2021, no. 11012, *DeJure*.

29 Cass., 30th January 2017, no. 2224, in *Riv. not.*, 3, p. 503.

oriented towards the recognition of greater autonomy of partners in decisions concerning the economic aspects consequent to a possible family breakdown.

A recent Italian legislative proposal on the revision of the civil code[30] provided for a possibility for future and present spouses or partners in a civil partnership to enter into agreements, in compliance with mandatory internal rules, fundamental rights of persons, public order and morality, to regulate personal and property relationships, all in anticipation of a possible crisis in the relationship, as well as to establish the criteria for organising family life and the education of children. This is a legislative provision that allows, at least in general terms, the opportunity to overcome the nullity of prenuptial agreements provided for by the legal system and to introduce the possibility for partners to model the structure of relationships and possible problems resulting from the breakdown of the partnership or marriage. In this way, the validity of prenuptial agreements would be admitted as tools that allow different existential and property needs of the family community to be reconciled[31] and for a more private dimension of the family to be accepted.

V. ALTERNATIVE MANAGEMENT OF FAMILY DISPUTES. CONCLUSIONS.

The extension of private autonomy to the family sphere consolidates the use of consensual solutions, which are reached through Alternative Dispute Resolution procedures, and which ensure greater effectiveness of justice. The value of justice can be promoted by insisting on a more flexible system so that judicial power can also be exercised by bodies other than those provided for by the legal system[32], as already foreseen in the case of assisted negotiation or, for example, by mediation bodies, etc... Even if different European systems agree on the fact that the dissolution of marriage must be pursued through compliance with the formalities that must be ensured by judicial authorities, at the same time there is a growing number of legal systems that implement forms of "de-jurisdictionalisation" of separation and divorce procedures. The assisted negotiation agreement introduced by the Italian legal system, which allows couples to define family crisis without recourse to courts, fits well into this context, as does for example the French "*divorce par consentment mutuel*", which is carried out on the basis of an agreement between the parties, and is also signed by lawyers and implemented by a notarial deed[33]. Similar procedures are also present in numerous other legal systems and can be

30 Draft law, 19th March 2019, no. 1151, "Delega al Governo per la revision del codice civile", Senate of the Republic XVIII, available at *www.senato.it*.

31 Ruggeri, L.: "La transazione", cit., p. 24.

32 Perlingieri, P.: *Tutela e giurisdizione*, in Id.: *Il diritto civile nella legalità costituzionale secondo il sistema italo-europeo delle fonti*, V, Napoli, 2020, p. 46 ff.

33 Oberto, G.: "Divorce in Europe", *Fam. dir.*, 1, 2021, p. 129 ff.; Hammje, P.: "Le divorce par consentment mutuel extrajudiciaire et le droit international privé", *Revue critique de droit international privé*, 2, 2017, pp. 143-158; Devers, A.: "Le divorce sans juge en droit international privé", *Droit de la Famille*, 1, 2017, p. 21 ff.

identified in the so-called "notarial divorce" or in the "administrative divorce"[34]. Anyhow, this is a matter of diversified forms of access to justice that are increasingly finding consensus in many legal systems in consideration of the need to make judicial activity more efficient.

The implementation of alternative dispute resolution systems in family law, through the assistance of organisations that operate at low cost and with simplified procedures, could favour agreements between couples and specifically those partnerships or marriages with transnational implications. More specifically, the alternative dispute management tools, in addition to being quick and cheap, overcome the diversity of regulations, precisely because they are implemented through a lens of relationship that is above all based on the collaboration of partners who seek to reach an agreement. These models tend to diverge from the prescribed legislation to leave more room for the will of the parties and for the respect of the individual[35].

The Twin Regulations leave the possibility of choosing the law applicable to the property regime to the autonomy of the parties, but despite the criteria introduced with the aim of standardising the discipline within the Member States, it often remains impossible to give couples of different citizenships an adequate response to their actual needs in resolving disputes.

In the dissolution of the emotional union of cross-border families, the greatest role is played by diversity of cultures, traditions, religions, economic disparities, and educational methods of children and this implies an emotional conflict and considerable difficulty in the management of crisis. In consideration of various factors that converge in the management of the crisis of couples with transnational implications, it is therefore of fundamental importance to favour a European system of alternative dispute resolution which, through coordinated and homogeneous rules, can contribute to the understanding of the opposing demands of the parties and, therefore, allow for adequate solutions to be achieved.

Working through qualified bodies, it is possible to reach an agreement that tends to guarantee the effective realisation of the interests of both parties and the minors, even where recourse to subsequent legal formalisation is necessary: an agreement that by all means ensures the protection of rights and takes into account the weaker part in the relationship.

34 The so-called *notarial divorce* procedures refer to the countries of the Baltic area, France and Spain, while the so-called *administrative divorce* refers to the Scandinavian countries and those of Eastern Europe; more specifically on this topic, see Oberto, G.: "Il divorzio in Europa", *Fam. dir.*, 1, 2021, p. 130; Aras Kramar, S.: "The transformation of divorce procedure in Europe", *Familia*, 3, 2018, p. 277.

35 Lipari, N.: "I rapporti familiari tra autonomia e autorità", *Riv. trim.*, 3, 2018, p. 928 ff.

In Recital 39 of Regulation 2016/1103, as well as in Recital 38, it is highlighted that there should be no impediments for the partners as to collaborative, or rather amicable, management of conflicts regarding the property regime. Furthermore, this trend seems to have been at least partially implemented in Regulation 2019/1111[36], also known as Brussels II *ter*, which in Article 65 expressly provides for the recognition of public acts and agreements on personal separation and divorce.

The growing importance given to the autonomy of the parties in the constitution of collaborative agreements in family law responds in fact to the need for standardisation of European legislation, albeit in a non-binding way[37]. In particular, it allows couples with elements of internationality to adopt cooperative behaviour when managing problems despite the differences in regulations. In balancing a multiplicity of interests, both international aspects and collaboration between different bodies and experiences must therefore be taken into consideration[38].

The valuation of the agreement thus becomes the function of reconciliation of interests of family community and a negotiating tool for a more careful evaluation of couples' interests[39]. In this sense, we are witnessing an evolution of family law which, deriving from the experience of a concrete case, allows us to elaborate the rules shared by the parties[40] and increases the effectiveness of the decision[41], as well as the fulfilment of obligations.

36 Council Regulation (EU) 2019/1111 of 25th June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, 2nd July 2019, OJ L 178/1.

37 In this sense, see Oberto, G.: "Il divorzio in Europa", cit., p. 138.

38 On this point, see Perlingieri, P.: "Diritto internazionale dei rapporti civili: una nuova rubrica, *Rass. dir. civ.*, 1, 2021, p. 3.

39 Ruggeri, L.: "La transazione", cit., p. 24.

40 On this subject, see Lipari, N.: "I rapporti familiari tra autonomia e autorità", cit., p. 927.

41 See Libertini, M.: "Le nuove declinazioni del principio di effettività", *Eur. dir. priv.*, 2018, p. 1071 ff., where it maintains that the principle of effectiveness, if correctly framed on a systematic level, cannot be limited to the exercise of rights, but must extend to the fulfilment of obligations.

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