

The first request for a preliminary ruling concerning the Rome III Regulation

The *Oberlandesgericht* of Munich has recently lodged a request for a preliminary ruling concerning the interpretation of Regulation No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, *ie* the Rome III Regulation (Case C-281/15, *Soha Sahyouni v Raja Mamisch*).

The request provides the ECJ with the opportunity of delivering, in due course, its first judgment relating specifically to the Rome III Regulation.

To begin with, the referring court asks the ECJ to provide a clarification as to the scope of the uniform conflict-of-laws regime set forth by the Regulation. In particular, the German court wonders whether the Regulation also applies to ‘private divorces’, namely divorces pronounced before a religious court in Syria on the basis of Sharia.

If the answer is in the affirmative, the referring court asks whether, in the case of an examination as to whether such a divorce is eligible for recognition in the forum, Article 10 of the Regulation must also be applied. According to the latter provision, where the law specified by the Regulation to govern the divorce or the legal separation “does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex”, the *lex fori* applies instead.

Should the latter question, too, be answered in the affirmative, the referring court wishes to know which of the following interpretive options should be followed in respect of Article 10: (1) is account to be taken in the abstract of a comparison showing that, while the law of the forum grants access to divorce to the other spouse too, that divorce is, on account of the other spouse’s sex, subject to different procedural and substantive conditions than access for the first spouse? (2) or, does the applicability of Article 10 depend on whether the application of the foreign law, which is discriminatory in the abstract, also discriminates in the particular case in question?

Finally, were the ECJ to assert that the second of these options is the correct one, the *Oberlandesgericht* of Munich seeks to know whether the fact that the spouse discriminated against has consented to the divorce — including by duly accepting compensation — constitutes itself a ground for not applying Article 10.