

## **Working Title: Religious Matrimonial Proceedings under Brussels I***bis*****

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This paper will focus on the treatment of religious divorce and nullity under Regulation (EC) No. 2201/2003 (Brussels I***bis***). Brussels I (Regulation (EC) No. 1347/2000), the predecessor to Brussels I***bis***, provided for the exclusion from its scope of ‘purely’ religious procedures (Recital 9). It also provided that “[o]ther proceedings officially recognised in a Member State” should be regarded as equivalent to judicial proceedings (Article 1(2)). Both Regulations provided for the further recognition in other Member States of ecclesiastical annulments made under certain treaties between the Vatican and Italy, Portugal and Spain. Brussels I***bis*** was subsequently amended by Regulation (EC) No. 2116/2004 so that Vatican annulments effective in Malta would also be recognised in other Member States.

This paper will consider the extent to which religious proceedings and decrees may affect, and may be affected by, the jurisdiction, *lis pendens* and recognition rules of Brussels I***bis***. While Brussels I***bis*** makes particular provision for the recognition of Vatican decrees, a question arises as to whether decrees obtained in other third-country religious proceedings may be indirectly recognisable under Brussels I***bis***. Certainly, such decrees are frequently recognised by Member States as a matter of national law, and some commentators have argued that status declarations fall within the material scope of the Regulation (e.g. Schack (2002) 4 *European Journal of Law Reform* 37, 42). If this is true, a third-country religious divorce may become recognisable in all Member States, following a declaration of recognition in one Member State. Aside from the context of decree recognition, there are other situations in which religious divorce procedure is directly accommodated within the Member States. For example, *talaqs* have been pronounced in German courts as part of the *lex causae* (see Rutten (2004) 11 *Maastricht Journal of European and Comparative Law* 263, 277). Greek courts (in Thrace) have approved divorces recorded by the *mufti* religious leaders, thereby giving civil effect to a religious proceeding (see Boele-Woelki/Gonzalez-Beilfuss (eds), *Brussels Ibis: Its Impact and Application in the Member States* (Intersentia, 2007), p. 137). Thus, Member-State divorce systems are not exclusively secular, and the question arises as to the scope of application of Brussels I***bis*** in such cases.

The European Court of Justice (ECJ) is currently being asked to consider (in the Brussels I context) whether the prior institution of third-country court proceedings should justify a stay of European proceedings in the same matter (see *Goshawk v. Life Receivables* [2009] IESC 7). If the Court answers in the affirmative, the question will arise in the Brussels I***bis*** context as to whether religious matrimonial proceedings in a third-country should have the same effect. Further, under Article 22(d) Brussels I***bis***, a question may arise as to the kind of third-country ‘judgment’ that justifies non-recognition of a Member State decree. Can a religious divorce be classified as a ‘judgment’?

This paper seeks to anticipate the likely approach of the ECJ in dealing with these questions. In so doing, the paper will consider the likely impact of human rights doctrine, and the approaches adopted by individual Member States in regulating the effects of religious matrimonial proceedings.