

## Draft rules on the law applicable to divorce and legal separation

At its Thirteenth meeting and following its discussion, the Group adopted Draft rules on the law applicable to divorce and legal separation, which reads as follows:

1. Divorce and legal separation are governed by:
  - (a) the internal law of the State in which the spouses have their habitual residence at the time of divorce, subsidiarily
  - (b) the internal law of the State in which the spouses had their last habitual residence [if one of them still is habitually resident in that State ]<sup>(1)</sup>, subsidiarily
  - (c) the internal law of the State of which the spouses are effective nationals (in the UK and Ireland, domiciliaries) at the time of divorce, subsidiarily
  - (d) the law of the divorce forum.
  
2. The spouses may, at the time of divorce, designate the following laws:
  - (a) the internal law of the State in which either spouse is habitually resident at the time of divorce,
  - (b) the internal law of the State in which the spouses had their last habitual residence,
  - (c) the internal law of a State of which either spouse is a national (in the UK and Ireland, domiciliary) at the time of divorce,
  - (d) [the internal law of the State where the marriage has been celebrated ] <sup>(2)</sup>,
  - (e) the law of the divorce forum.
  
3. The designation of the law governing divorce shall be expressed in court in the presence of the authority granting the divorce or shall be expressed in a document drawn up by a notary, registrar or attorney and signed by the spouses at the time of divorce.
  
4. This article applies to all marriages including those of same-sex spouses.
  1. This part of Article 1b was placed in brackets because a condition of duration could replace the conditions of habitual residence for one of the spouses.
  2. This part of Article 2d was placed in brackets because the Group is divided regarding the opportunity to add the choice of *lex loci celebrationis*.