European Journal of Law and Technology, Vol. 16 No. 2 (2025)

EJLT European Journal of Law and Technology

Recognition of Cross-Border Remote Marriages and Divorces in the Digital Age

Naivi Chikoc Barreda*

Abstract

This paper discusses the impact of digitalisation on the recognition of international marriages and divorces concluded online before a remote authority. The widespread solution for the formal validity of marriages based on the application of the *lex loci celebrationis* is now facing the division of the place of celebration between the state where the authority is located and the state(s) from which the parties appear remotely. With regard to divorces in the era of dejudicialisation and digitisation, new problems arise when it comes to assessing their authentic nature and the notary's international competence. This paper explores different legal approaches to these challenges from a comparative perspective and proposes avenues to enhance the cross-border circulation of family status resulting from e-solemnisation of marriages and e-notarisation of divorces.

Keywords: digitisation, remote marriage, divorce, *lex loci celebrationis*, recognition, notary.

* The author is Associate Professor at the Faculty of Law, civil law section, of the University of Ottawa, Canada. She thanks the Fund for Notarial Studies of the Quebec Chamber of Notaries for its support with this research.

1. Introduction

In recent years, it has become commonplace to say that digitalisation has reshaped the landscape of family law, influencing everything from how legal services are delivered to how disputes are resolved. The widespread deployment of digital means in family proceedings has extended beyond the unique context of the Covid-19 pandemic and constitutes a leading trend in today's legal orders worldwide, enabling the use of platforms for filing applications, gathering evidence and conducting hearings. If we move away from the judicial sphere to the out-of-court practice of family law, the influence of digitisation is no less significant. It has already penetrated the two fundamental acts that mark the beginning and the end of conjugal life: marriage and divorce.

The traditional solemnity of these acts can now be replaced by a videoconferencing session, where both parties interact with the officiant in real time, giving the couple the opportunity to express their consent online and the authority to solemnise it. In the sense that will be examined here, digitisation goes beyond merely integrating digital elements into traditional proceedings. It involves establishing family situations entirely online. The two critical moments that define the process − expressing consent and its formal reception by the authority − occur through remote appearance, thereby creating the legal relationship through electronic means. The process is relatively straightforward and knows no borders: couples can book an online appointment with a foreign officiant, who performs the marriage ceremony or the divorce act over a digital platform under the law of its own jurisdiction (as *lex auctoris*, which is the law governing the authority's functions).

While digitisation undoubtedly improves accessibility and efficiency for the parties concerned, it poses new challenges when it comes to the recognition of the resulting family status. In the virtual world, the online conclusion of marriages and consensual divorces transcends national legal orders whenever at least one member of the couple is located outside the jurisdiction where the authority operates.

It is well known that the increasing flow of persons across borders raises the question of whether a family relationship created under the law of a given state will continue to exist in the state to which the individual decides to relocate. The chronology of events of this classic private international law puzzle reveals three key moments: the establishment of the legal situation in the home country; the cross-border movement of the persons involved; and the reception by the host state of the legal relationship. Yet this geographical and temporal pattern does not align with the online formation of family relationships, in which different legal systems come into play simultaneously, giving rise to an international situation from the outset. In this scenario, the first and third moments described above converge on the same state, since this is where the persons are located at the time of the act and to which they turn to request its recognition. However, from the moment it is concluded, the legal act is brought by the parties under the application of a foreign law. As for the second

moment, it becomes obsolete, as physical mobility is no longer necessary for those acting remotely.

This new configuration disrupts the system of recognition of cross-border marriages and divorces. The formal validity of foreign marriages is typically determined by the *lex loci celebrationis*, a form of recognition that is fairly straightforward and widely adopted across the globe. However, when a marriage is conducted via videoconference before a foreign authority, the determination of the place of celebration becomes problematic. Is it the state(s) from which the parties give their consent remotely, or the one where the officiant formalising the marriage is located? This bifurcation of the place of celebration between (at least) two different states may be the result of a strategic choice by the parties to access the institution of marriage under conditions not available in their own country or countries. Consequently, the possibility of benefiting from the legal service provided by a foreign authority for constituting the family situation while remaining physically in the home country poses the risk of an artificial delocalisation of the legal relationship.

While the same question may arise when the spouses decide to dissolve their marriage remotely, the recognition of online divorces raises other challenges resulting from the combination of digitisation and privatisation. Indeed, many countries have liberalised the legal framework to accommodate individual choices in divorce proceedings, providing digital tools and platforms to facilitate the negotiation and execution of family law agreements. Therefore, party autonomy has become decisive in shaping legal solutions in matters that have been traditionally dominated by mandatory rules. This trend has led to a gradual transfer of competences from judicial to non-judicial actors, with notaries being at the forefront when it comes to formalising divorces by mutual consent. The online notarisation of divorces in civil law jurisdictions brings substantial changes to the traditional in-person procedures by which notaries guarantee the authenticity of notarial acts. In cross-border cases, the acceptance of such documents often hinges on their consideration as 'authentic' by the host state. Since this assessment may depend on the process followed by the foreign notary to authenticate, a divergence in this respect between the states involved in the situation could jeopardise the circulation of family status acquired abroad. In addition, couples who have opted for an e-divorce without having an effective connection with the authority's location are exposed to a potential refusal of recognition by the host state.

By delving into these issues from a comparative law perspective, this paper aims to explore how digital transformation challenges the existing rules of private international law governing the recognition of international marriages and divorces. Section 2 will address the complexities associated with the formal validity of virtual marriages. Based on territorial premisses, the proximity principle that underpins the discipline struggles to properly identify the place of celebration of marriages concluded remotely under a foreign law. Section 2.3 will tackle the obstacles to the cross-border circulation of e-divorces drawn up remotely in notarial form. For the first time in the history of the Latin notarial profession, two views on authenticity emerge

among states that have nevertheless adhered to the same principles of authentication.

2. Localising the Place of Celebration in Online Marriages

Recourse to a foreign authority to solemnise marriages using video communication technology has sparked debate on their recognition in the state(s) of residence of the persons involved. Section 2.1 provides an overview of the emergence and utility of online marriages for couples residing abroad. Section 2.2 presents the various arguments supporting different views on where to localise the place of celebration, whose law determines the formal validity of marriages concluded remotely. Section 2.3 explores the need to create additional proximity-based criteria for that purpose and weighs them up against the policy objectives behind the *lex loci celebrationis* in certain legal orders.

2.1 The Advent and the Ongoing Relevance of Remote Marriages

At the onset of the pandemic, the shift from physical to digital spaces became the new normal, affecting nearly every aspect of human interaction and daily life. States quickly realised that the exceptional measures to ensure the continuity of everyday activities could not leave out the major founding act of family life: marriage. When closures and social distancing measures made in-person ceremonies difficult, if not impossible, many jurisdictions adapted by allowing marriages to be conducted via online platforms. This was a practical solution for couples who were separated by borders or quarantine measures, since it allowed them to maintain scheduled wedding dates despite the ongoing global crisis. While most states abandoned the option of remote marriages once the immediate health threat subsided, others recognised the benefits of this modern approach and chose to permanently enshrine it in their legal orders.

In some cases, the idea of granting online access to marriage emerged as part of states' broader efforts to modernise and streamline legal procedures through digitalisation. In 2019, the US state of Utah launched an initiative to implement an end-to-end digital process for marriages, which came into effect as of January 2020, prior to the declaration of Covid-19 as a pandemic by the World Health Organization. In the wake of the health crisis, the Utah online portal began receiving requests from couples around the world. That is how it became a global hub for remote marriages, offering a particularly liberal regime that allows couples from anywhere to obtain a marriage licence, attend the ceremony remotely and have the marriage registered under Utah law.[1] All they need is an internet connection and a device with video

[1] Utah Code, § 30-1-5 ff. Since the law did not explicitly require physical presence, this procedure was implemented without the need for legislative amendments. Jed Pressgrove,

capabilities. Although other US states (e.g. California) or countries (e.g. Singapore) currently allow for online solemnisation of marriages, they generally prescribe the need to be present within the officiant's territorial jurisdiction at the time of the ceremony, thereby making it clear that the remote service is not designed for international or out-of-state users.[2] In Brazil, the possibility of contracting marriages via videoconference before civil registrars was introduced in 2022.[3] This reform positions the country at the forefront of digitisation of legal acts, particularly in family law, if we consider that online divorces have been available since May 2020.[4]

Recourse to online marriages in cross-border cases has primarily been motivated by two main factors: facilitating immigration processes and circumventing legal restrictions. Online marriages may serve the purpose of accelerating the establishment of legal marital status, which is a critical step when applying for spousal visas or residency permits. It is, however, the second reason mentioned above that has been more largely reported in the media. Indeed, the phenomenon of 'Zoom weddings' has made headlines worldwide, showing how technology can offer innovative solutions in the face of legal obstacles to marriage. It has enabled couples from around the world to overcome legal barriers based on discriminatory grounds such as gender and religion. That is how hundreds of Chinese same-sex couples have taken advantage of Utah's liberal system to exercise the right to marry that they are denied in their home jurisdiction.[5] The same path has been taken by Israeli and Lebanese couples seeking to enter into civil marriages, which are not allowed

---

'Utah County's Online Marriage System Takes Off During Pandemic', 5 May 2021, <https://www.govtech.com/gov-experience/utah-countys-online-marriage-system-takes-off-during-pandemic> accessed 2 February 2025; Waverly Golden, 'Utah's online marriage licensing gets attention all over the world', 29 March 2023, <https://kslnewsradio.com/1996430/online-marriage-licensing-gets-the-attention-all-over-the-world/> accessed 2 February 2025.

[2] See California Family Code, s 554; Women's Charter 1961 (Singapore), amended by Act 3 of 2022, s 24(1).

[3] Carlos E Elias de Oliveira e Flávio Tartuce, 'Procedimento de casamento: como ficou após a Lei do SERP' (Lei nº 14.382 2022) (2022) Instituto Brasileiro de Direito de Familia <https://ibdfam.org.br/artigos/1872/%09Procedimento+de+casamento%3A+como+ficou+ap%C3%B3s+a+Lei+do+SERP+%28Lei+n%C2%BA+14.382+++2022%29> accessed 2 February 2025.

[4] Provimento nº 100, 26 May 2020 from the Corregedor Nacional de Justiça, replaced by Provimento Nº 149, 30 August 2023.

[5] Viola Zhou, 'Same-sex couples from China are getting married in Utah over Zoom', Rest of the world, 30 September 2022 <https://restofworld.org/2022/chinese-same-sex-couples-married-zoom-utah/> accessed 3 February 2025; Zhijun Hu, 'Thanks to a County in Utah, Same-Sex Couples Can Get Married—In China', ChinaFile, 3 October 2022 <https://www.chinafile.com/reporting-opinion/viewpoint/thanks-county-utah-same-sex-couples-can-get-married-china> accessed 3 February 2025; J Oliver Conroy and Helen Davidson, 'Legal quirk allows gay couples in China to get married online in conservative Utah', *The Guardian*, 7 October 2022 <https://www.theguardian.com/world/2022/oct/07/legal-quirk-allows-gay-couples-in-china-to-get-married-online-in-conservative-utah> accessed 3 February 2025.

domestically.[6] The symbolic and legal value conferred by such remote ceremonies is highly significant for the couples involved, since they are aware of entering into a valid marriage under the law of the chosen foreign jurisdiction and have confidence in its potential recognition by numerous states whose laws do not contain such limitations.

2.2 The *Lex Loci Celebrationis* Dilemma

The practice of cross-border remote marriages poses important challenges when it comes to the recognition of the marital status by the 'host' state. As mentioned earlier, this concept does not designate a foreign state where couples decide to relocate after a certain period of time. Nor does it refer to the home country to which they return after a physical journey to the foreign jurisdiction where the ceremony took place. Rather, it is the state(s) where the betrothed reside at the time they express their matrimonial consent and to which they turn for recognition of the union.

The admissibility of marriages where one of the parties is physically absent entails a question relating to the formal validity of the act. This characterisation typically leads to the application of the law of the place of celebration, which is easy to identify in traditional in-person marriages, including those in which one of the spouses is represented by a proxy. Enshrined in the 1978 Hague Convention on the validity of marriages[7] and widely accepted across the globe, whether in civil law or common law jurisdictions, the *lex loci celebrationis* rule is an effective mechanism designed to promote the formal validity of marriages.[8] According to this form of recognition, if the marriage is regularly contracted under the law of the state of celebration as to the form (and it is normally expected to be so), it will be recognised as such anywhere in the world. However, the shift towards online marriage ceremonies is now casting doubt on the place where the marriage was celebrated. The geographical separation between the officiant's location and the place(s) from which the parties appear remotely introduces uncertainty where previously a clear-cut solution prevailed, as the states involved may have differing interpretations of this connecting factor. Each

---

[6] Ruth Levush, 'Supreme Court Rejects State Appeals against Order to Register Marriages Officiated in Utah via Virtual Conferencing', Library of Congress, 22 March 2023 <https://www.loc.gov/item/global-legal-monitor/2023-03-21/israel-supreme-court-rejects-state-appeals-against-order-to-register-marriages-officiated-in-utah-via-virtual-conferencing/> accessed 3 February 2025; Anne-Marie el Hage, 'Au Liban, des mariages civils en ligne reconnus... puis annulés', L'orient-le-jour, 5 December 2022, <https://www.lorientlejour.com/article/1320439/mariages-civils-en-ligne-reconnus-puis-annules.html> accessed 3 February 2025.

[7] HCCH, Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.

[8] Symeon C Symeonides, *Private International Law: Idealism, Pragmatism, Eclecticism* (Brill Nijhoff, 2021) 195−196.

of them may assert its own legislative competence based on the same criterion for determining the formal validity of the act.

These contrasting orientations actually reveal two substantive views on what constitutes the centre of gravity of marriage. From the perspective of the state offering the remote service, what counts is where the officiant is situated, since only through their intervention will the marriage become a valid legal act. The officiant conducts the solemnisation and registration procedures, which are inevitably subject to the law of the state from which they derive their authority to celebrate marriages. According to section 81-2-302, 2(a) of the Utah Code, '[a] license issued within this state by a county clerk may only be used within this state'. For marriages celebrated remotely, the location of the officiant 'serves as the host location for a videoconference ceremony', thus complying with the provision requiring the officiant to be physically present in Utah at the time of the celebration for the licence to be considered validly used within the county.[9] Since the officiant is required to perform the ceremony within the territorial boundaries of the state to which they belong, the *lex auctoris* is aligned with the *lex loci celebrationis*, irrespective of the parties' location.

Conversely, the state(s) from which the intending spouses physically attend the virtual ceremony may consider that the primary and essential element for the formation of marriage as a juridical act is mutual consent, thus moving the cursor to the other side of the screen. This position was upheld by the German Federal Court of Justice (Bundesgerichtshof; BGH) in a decision rendered on 25 September 2024[10] which confirmed the interpretation consistently adopted in the case law of several German courts dealing with marriages in which at least one member of the couple had participated from Germany in ceremonies officiated by Utah authorities.[11] The case brought before the BGH involved two Nigerian nationals residing in Germany who entered into a Utah online marriage while physically present in Germany. The BGH stated that, under Article 13(4)(1) of the Introductory Act of the German Civil Code (EGBGB), German law was the applicable *lex loci celebrationis*. Since the remote marriage failed to meet the formal requirements of German law − specifically the need for the betrothed's physical appearance before the registrar[12] − it was declared invalid. The primary motivation for opting for the online ceremony appeared to be

[9] See 'Marriage License Must Be Used in the State & Remote Appearance Marriages'<https://www.utahcounty.gov/dept/clerk/marriage/LegalRespOfficiants.html> accessed 3 February 2025 and Utah Code, section 81-2-302, 2(b).

[10] BGH, XII ZB 244/22 – FamRZ 2025, 97.

[11] VG Karlsruhe, 28 September 2023 – 1 K 3074/23; VG Düsseldorf, 5 July 2024 – 7 K 2728/22; VGH Bavaria, 20 June 2022 – 10 CS 22.716; OLG Cologne, 8 March 2022 – 26 Wx 3/22. The same rulings have been adopted in cases involving marriages by videoconference under Sharia law, where at least one of the betrothed appeared remotely from Germany: VG Berlin, 1 June 1 2022 – 38 K 480/21 V; OVG Berlin-Brandenburg, 29 August 2024 – 6 B 1/24.

[12] § 1310 (1) and § 1311 BGB (German Civil Code).

the desire to avoid the lengthy and often cumbersome procedures at the registry office, which require the submission of documents that migrant persons tend to struggle to obtain in their countries of origin.[13] The central argument for refusing to recognise the marriage was based on the crucial role of matrimonial consent in the formation of the act. It was held that since the declarations of intent were made physically in Germany and transmitted in real-time via videoconference to the officiant abroad, the marriage should be considered as having occurred in Germany.

This position has been strongly criticised by the majority of authors that commented on the various judgments dealing with this issue. They argue that formal marriages are always celebrated in the place where the officiating authority is located.[14] Unlike purely consensual marriages, formal marriages require the involvement of an authority for their formal validity, either to solemnise the ceremony or to register the marriage afterward. Following this approach, since the public official's intervention is what constitutes the marriage under the law of the state in which they operate, it is Utah law that should govern the formalities of online marriages. This view draws on a previous judgment regarding a private marriage ceremony performed in Germany by a South Korean couple, whose declarations of consent were sent by post for registration under South Korean law. It was decided that the *lex loci* governing the form of the marriage was South Korean, as it required constitutive registration for the validity of the act.[15] It has been argued that the rationale of this case could be transposed to remote marriages, by adapting it to current technological advancements that allow the spouses' consent to be conveyed in real-time trough audio-visual connection.[16]

By contrast, some scholars have criticised the reliance on the law requiring the marriage solemnisation or registration by the officiant to designate the *lex loci celebrationis*. This latter view was endorsed by the BGH, which ruled that the determination of this connecting factor cannot depend on the content of the law it is intended to identify. From this perspective, the approach that makes the determination of the law applicable to the form conditional on the imposition by that

---

[13] See Gunnar Franck, 'Dänemark-, Handschuh- und jetzt Online-Ehe?: zu Grund, Grenzen und Perspektiven der zwingenden standesamtlichen Eheschließung in Deutschland' (2023) *Juristenzeitung* 21, 22–23, 29.

[14] Susanne Gössl and Marius Pflaum, 'Die digitale Eheschließung im deutschen Kollisionsrecht' (2022) StAZ 97; Dagmar Coester-Waltjen, 'Online surfen, kaufen, heiraten? Oder der „Elefant im Raum"?' in Florian Heindler, Katharina Huber and Judith Schacherreiter (eds), *Liber Amicorum Bea Verschraegen* (Manz, 2023) 1; Heinz-Peter Mansel, 'Zur Liberalisierung des internationalen Ehe- und Lebenspartnerschaftsrechts des EGBGB: Bemerkungen zum Ort der Eheschließung und Registerort als Anknüpfungspunkte' (2022) *IPRax* 561.

[15] LG Frankenthal, 15 August, 1975 – FamRZ 1975, 698.

[16] Isabel Beiderwieden, 'Kollisionsrechtliche Fragen zur Wirksamkeit online geschlossener Ehen' (2022) 2 juris PR-IWR, note 4.

law of a constitutive requirement amounts to a 'circular' reasoning.[17] Only after the place of celebration has been clearly defined can the question of whether a ceremony or registration is necessary for the marriage's formal validity be addressed.

The BGH also asserted that there was no justification for treating online remote marriages as proxy marriages solemnised abroad, since in the latter case both the expression of consent and the ceremony take place in the same location. Unlike proxy marriages, where consent is expressed through a representative, remote ceremonies via videoconferencing allow the engaged couple to directly manifest their will before the authority.[18] The simultaneous presence of both parties via video link distinguishes online remote marriages from traditional in absentia marriages.

The need to follow German formalities for marriages celebrated in Germany is supported by the interpretation that the unilateral conflict of laws provision in Article 13(4)(1) EGBGB, which mandates the application of German law for marriages conducted 'im Inland', is a particular crystallisation of the public policy clause.[19] This provision aims to ensure legal certainty in the establishment of personal status, the seriousness and freedom of the couple's consent and at preventing confusion over the identity of the individuals involved.[20] Validating these online marriages, performed by persons located in Germany, would make it easy to circumvent the objectives of the German legislator by simply connecting to the Utah County online platform. However, this interpretation has been objected on the basis that remote marriages remain formal marriages concluded with the constitutive participation of the licenced officiant. Accordingly, the legal policy behind this provision, namely, to

---

[17] BGH (n 10) paras 16−18. Fabian Wall, 'Wirsamkeit von Online-Eheschließung' (2022) 2 StAZ 33, 37; Claudia Mayer, 'Relevanz des Orts der Eheschließung für die Bestimmung des Formstatuts bei der doppelten Handschuhehe und Online-Ehe' (2022) *IPRax* 593, 596. See a critique of a similar 'circular' argument applied to a marriage deemed concluded in Pakistan, where one of the spouses expressed consent over the telephone from Scotland, in EB Crawford and JM Carruthers, 'Dual locality events: marriage by telephone' (2011) 29 *Scots Law Times* 227, 233.

[18] BGH (n 10) para 19.

[19] Daniel Schäuble, 'EGBGB Art 11' in Julius von Staudinger and Rainer Hausmann (eds), *J. von Staudingers Kommentar zum BGB mit EGBGB, Art 7−12, 47, 48 EGBGB* (Otto Schmidt − De Gruyter, 2024) para 159.

[20] See, in *obiter*, decisions from the Administrative Court of Augsburg, on 21 February 2022, paras 26−27, confirmed by the Bavarian Administrative Court on 20 June 2022, and from the Administrative Court of Karlsruhe, on 28 September 2023, para 11. A reasoning similar to that developed by German courts was adopted by the Zurich Gemeindeamt on 9 August 2021, in a decision which denied recognition of a remote marriage concluded before a Utah officiant in which one party appeared from Switzerland and the other from Australia. It was stated that recognising the marriage as having taken place in Utah would have undermined the policy objectives of the 2013 reform, which intended to provide consistent protection for the freedom to marry across the country and prevent forced marriages. See Lorène Anthonioz, 'Les Mariages en ligne et leur reconnaissance: une analyse de droit comparé et de droit international privé suisse' (2022) 32 *Swiss Review of International and European Law* 41.

prevent purely consensual marriages from being celebrated in Germany, would not be threatened by this form of marriage.[21]

In favour of admitting the formal validity of remote marriages, a new argument has been put forward. It is grounded in the recent reform that allows for the online formation of companies, following the transposition of the European Digitalisation Directive[22] the primary goal of which is to facilitate the creation, registration and operation of companies across the EU by leveraging digital tools and processes. Under the new regime, notaries are allowed to use videoconferencing systems to formalise the deed of incorporation of companies, regardless of where in the world the parties are located. According to this opinion, the question arises as to why the same electronic means would not be appropriate for expressing matrimonial consent.[23] It could be argued, though, that if the legislature chose not to extend the digital procedure to marriages, this is a clear indication that it did not consider this form of celebration as equivalent to the in-person ceremonies required for marriages concluded within its territorial boundaries.

On the one hand, the idea of determining the place of celebration based on where the solemniser operates might be regarded as too liberal, thereby encouraging law shopping strategies by allowing the parties to subject the form of the act to a law with insufficient connection to them. On the other hand, determining the *lex loci celebrationis* by reference to the parties' physical location risks creating limping marriages and disregards the couple's intention to choose the location of their ceremony. We will therefore examine whether an alternative can be explored to reconcile the liberal and restrictive views on the formal validity of international online marriages.

2.3 *Favor Matrimonii* versus Proximity

In response to criticisms of both approaches, one could envisage an intermediate solution relying on the officiant's place of establishment, provided there is a sufficient connection to the parties. The combination of two connecting factors aims to balance the goal of preventing evasion of law while preserving the freedom to marry in the form chosen by the parties and allowed by the state from which the officiant solemnise the marriage. This rule could be modelled on Article 7(5) of the Munich Convention on the recognition of registered partnership[24] which contemplates as a ground for refusal that neither of the two partners was connected, by nationality or

---

[21] Franck (n 13) 29–30.

[22] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law [2019] OJ L 186.

[23] Coester-Waltjen (n 14) 2–4.

[24] International Commission on Civil Status, Convention (No.32) on the recognition of registered partnership, opened for signature at Munich on 5 September 2007.

habitual residence, with the state of registration. Following this approach in the digital world, the authority's competence to intervene by videoconference when at least one of the parties appears from abroad could be limited by a special criterion linking the situation to the celebrant's location.[25]

However, the corrective effects of this proposal do not yield consistent conclusions in cases where the private international law rule on the formal validity of marriages depends only on the *lex loci celebrationis* or where additional alternative options are available to validate the marriage as to the form based on the nationality or residence of one of the parties. Indeed, it would be somewhat paradoxical to recognise as valid a marriage physically celebrated in Las Vegas without requiring an effective territorial connection to Nevada and, at the same time, to deny this benefit to a marriage only connected to Utah by a video link. Both are examples of 'matrimonial tourism' in that they lack a meaningful connection to the state of celebration and may be driven by similar motivations, whether more serious (such as entering into a civil or same-sex marriage) or more trivial (such as having an exotic wedding ceremony). One could reasonably wonder why a physical journey and a remote appearance aimed at the same ultimate goal (exercising the freedom to marry) should result in different legal outcomes.[26] The *lex loci celebrationis* grants intending spouses the right to choose the place of celebration, thereby promoting 'the private ordering of international relations'.[27] A purposeful interpretation of this classic conflict rule, aligned with this objective in the digital age, should equate a physical journey with a virtual one.[28] This conclusion does not rely on the 'constitutive' role that the officiant could eventually play under the law of their jurisdiction, but rather on the actual role their intervention plays in crystallising the parties' legitimate expectations that they are entering into a formally valid marriage.

The restrictive solution requiring proximity with the place of celebration is even less coherent when it comes to the recognition of same-sex marriages by states that have decided to subject the capacity to marry to the *lex loci celebrationis*, instead of the betrothed's personal law, whether *lex domicilii* or *lex patriae*. In such cases, derogation from the general rule on the essential validity of marriage is based on public policy considerations aimed at granting same-sex couples a safe harbour in

---

[25] See BundesNotarordnung, s 10a(3), which limits the notary's competence for performing remote authentication by means of specific connecting factors.

[26] In that sense, see also Franck (n 13) 29–30.

[27] Jürgen Basedow, 'The Law of Open Societies: Private Ordering and Public Regulation of International Relations (General Course on Private International Law)' (2015) 360 *Collected Courses of The Hague Academy of International Law* 9, 240–246; Dagmar Coester-Waltjen, 'Marriage', *Encyclopedia of Private International Law* (Elgar, 2017) 1226, 1229.

[28] Since consent can be transmitted to the officiant digitally from anywhere in the world, the formal validity of the marriage should not depend on the random location where the parties are physically present: Frederick Rieländer, 'Die Rechtsprechung zum Internationalen Familienrecht 2021 und 2022 – Teil I' (2023) *Neue Zeitschrift für Familienrecht* 1057, 1059; Franck (n 13) 29.

which they can celebrate their marriage and be recognised as married couples. Canadian legislation provides a paradigmatic illustration of this policy by mandating the application of domestic law to the capacity to marry of individuals travelling to Canada to celebrate a same-sex marriage. Unlike other countries that adopt special provisions requiring at least one of the betrothed to be a national or resident for such marriages to be validly celebrated,[29] Canada has made the radical choice of opening its borders to any same-sex couple wishing to engage in a matrimonial relationship.

If the Canadian legislature has transformed the *lex loci celebrationis* into a rule governing the essential validity of same-sex marriages conducted in the country, one might have expected it to extend this favourable treatment to those celebrated abroad. Nevertheless, Article 5(1) of the Civil Marriage Act contains a unilateral conflict of laws rule that prevents such a consistent result.[30] Had this not been the case, would it be justified to locate in Utah the connecting factor 'place of celebration' through a teleological interpretation of this pro-validation rule? Applied to any of the same-sex couples that have turned to Utah officiants from abroad, the reasoning based on the law of the state(s) from which the betrothed appear will render their marriage invalid on formal grounds, treating it as a non-existent form of marriage. Yet it could be validated on the substance, by means of the public policy exception, which would react against a discriminatory *lex domicilii* that prohibits same-sex unions.[31]

It can be argued that consistency is maintained in applying the *lex celebrationis*, as long as the place of celebration is regarded as the one where the parties are situated at the time of the act. They will receive the same treatment as opposite-sex couples who have celebrated their marriage by videoconference. It must be acknowledged, though, that same-sex couples chose the digital route to escape gender discrimination in their country of origin, just like any other couple compelled for the same reason to travel to Canada or anywhere else to celebrate their marriage. This interpretation contradicts the *in favorem* policy underpinning the role of the *lex loci celebrationis*, especially when it comes to the validity of same-sex marriages.

The real concern with this form of marriage lies in ensuring the genuineness of matrimonial consent, thereby preventing arranged marriages, undue influence and any form of coercion or fraud, particularly towards the vulnerable partner. That is why, from this viewpoint, online marriages and marriages by proxy are regarded as mere forms of *in absentia* marriages. According to the 2015 Regulatory impact analysis statement from Immigration, Refugees and Citizenship Canada, 'The nature

---

[29] See Article 46.2 Belgian Code of Private international law and Article 202-1 of the French Civil Code.

[30] See a critical opinion on this issue in Brenda Cossman, 'Exporting Same-Sex Marriage, Importing Same-Sex Divorce (Or How Canada's Marriage and Divorce Laws Unleashed a Private International Law Nightmare and What to Do About It)' (2013) 32 *Canadian Family Law Quarterly* 1, 17.

[31] *Hincks v Gallardo*, 2014 ONCA 494; *M.S.C. v C.F.J.*, 2017 ONSC 2389 [32]–[34].

of proxy, telephone, fax, Internet and other similar forms of marriage can help to facilitate forced marriages because one or both spouses are not physically present, making it more difficult to determine that they consent to the marriage.'[32] This conception aligns with the 1962 United Nations Convention on Consent to Marriage, which makes the presence of the spouses mandatory, save in exceptional circumstances (Article 1).[33] However, respect for this fundamental principle requires that 'such consent be expressed in person ... in the presence of the authority competent to solemnize the marriage', which should not be interpreted as excluding a form of marriage where both persons express their consent by means of a real-time audiovisual connection before the officiant.[34]

As previously discussed, remote marriages concluded from overseas before Utah celebrants should not be treated as proxy marriages for the purposes of determining the *lex loci celebrationis*. The reason is that the couples in question had expressed their consent themselves and not through a third party. Why should it be any different when it comes to assessing the effective exercise of their freedom to marry? While in-person ceremonies facilitate the officiant's duty to ascertain that the marriage is one of mutual consent and free from coercion, virtual presence remains a form of presence. Therefore, online marriages should not be equated with in absentia marriages in the light of the fundamental requirement of free matrimonial consent. If the overriding concern about online marriages is to safeguard this principle, which is undoubtedly a public policy consideration, then it should intervene on an exceptional basis when there are serious reasons to believe that consent has not been freely given in a concrete situation (e.g., in the case of sham marriages). To refuse recognition of a marriage on the sole grounds that it was concluded online from a state that does not permit it amounts to impose on such marriage an *ordre public* veto *in abstracto*. Such an interpretation of the *lex loci celebrationis* would transform the rule into a punitive instrument, at odds with the material policy that has historically oriented conflict rules on the formal validity of marriages. Moreover, it would be somewhat ironic to deny the validity of marriages concluded online on suspicion of lack of free and informed consent in cases where couples have turned to e-solemnisation precisely to free themselves from discriminatory legal obstacles to marriage, in search of the freedom to marry that they do not enjoy in their home countries.

[32] <https://gazette.gc.ca/rp-pr/p2/2015/2015-07-01/html/sor-dors139-eng.html> accessed 3 February 2025.
[33] UN, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 November 1962.
[34] The fact that technology in 1962 did not allow for this possibility is irrelevant.

3. Notarial Divorces Confronted with Remote Authentication

Digital notarial divorces reveal a new mode of creating authentic instruments and a new way of pronouncing the dissolution of marriages in uncontested cases. Section 3.1 discusses the implications of online platforms and videoconferencing for the notarial authentication process and how the use of these tools may influence the cross-border recognition of the resulting family status. Section 3.2 examines the challenges posed by the international competence of notaries to authenticate in a borderless virtual space and explores avenues for improving legal certainty in this area.

3.1. The Virtual Authenticity of Remote Notarial Divorces

The strong movement in comparative law towards dejudicialisation of family matters aims to offer citizens efficient and simplified out-of-court mechanisms that enable them to adopt tailor-designed solutions to meet their family law needs. This development is undeniably guided by a 'privatisation' trend, which emphasises the crucial role of party autonomy in family justice, particularly when it comes to organising the end of conjugal life and its legal consequences. The term should not, though, be understood as implying the absence of public involvement in the pronouncement of the divorce. Rather, it entails an increasing transfer of decision-making functions from judicial to non-judicial authorities.

As part of this trend, lawmakers around the world have adopted reforms that confer on public officials the power to settle divorces by mutual consent, thus reserving the courts for contentious cases. Local registrars and notaries are among the non-judicial authorities that have been granted that function, the latter being the favoured choice of legislators. While some Latin American countries adopted notarial divorce long ago,[35] most European countries have decided to move in this direction over the last decade.[36] In parallel with this trend, the more recent digital (r)evolution of notarial services, particularly in the wake of the Covid-19 pandemic, has allowed notaries to perform notarial acts remotely. Since the health crisis, the movement has spread worldwide, albeit with little consistency, both in terms of the substantive matters for which this option is available and the technological aspects of the process. Some jurisdictions follow a restrictive approach, permitting online appearance only in limited cases, which do not extend to family law relationships. Remote notarisation is mainly available for powers of attorney and legal transactions involving

[35] For example, Cuba (1994), Colombia (2005), Ecuador (2006), Brazil (2007) and Peru (2008). More recently: Bolivia (2014) and Nicaragua (2014). For a comparative study on the notarial divorce in Latin America, see Leonardo B Pérez Gallardo, 'Un "fantasma" recorre Latinoamérica en los albores de este siglo: el divorcio por mutuo acuerdo en sede notarial' (2009) 23 *Ius* 214.
[36] For example, Estonia (2009), Romania (2010), Latvia (2011), Spain (2015), France (2017), Greece (2017), Moldova (2019) and Slovenia (2019).

companies.[37] Other jurisdictions take a more liberal approach to online authentication, excluding from this process only those acts regarded as requiring the individual's physical appearance or the notary's personal intervention. While there is a general reluctance to authenticate wills via videoconferencing, the same cannot be said for family law matters.[38]

The combination of dejudicialisation and digitisation has led to the emergence of online notarial divorces in some jurisdictions. This term refers to the divorce procedure in which both spouses appear remotely before the notary, who draws up an authentic instrument containing their mutual agreement on the dissolution of the marriage. Countries such as Lithuania, Latvia, Brazil and Ecuador offer a legal framework for this form of consensual divorce. The international recognition of non-judicial divorces raises complex issues, as exemplified by the *Sahyouni* case from the CJEU concerning a religious divorce obtained in Syria whose recognition was sought before German courts.[39] Our focus will be placed on the impact of digitisation on the recognition of remotely notarial divorces.

The online component influences the rules for recognition in different ways, depending on the authority granting the divorce. In cases involving judicial or administrative procedures that allow spouses to appear online before a judge or civil registrar,[40] the virtual element does not directly affect the recognition of the divorce by a foreign state. Since the outcome of these proceedings is either a judicial decision or a divorce certificate issued by the civil registrar, the fact that part of the process occurred online is irrelevant. What matters for ensuring the cross-border effects of the divorce is that the conditions required by the host state for recognising the change in family status are satisfied. The digital manner in which the judge or registrar handled the case abroad would only come into play for assessing the public policy

[37] For example, in France, Belgium, Spain and Germany. In the EU, the incorporation of companies by means of authentic acts has been digitised following the European directive on the digitisation of companies (n 23).

[38] See, for example, the position taken by Latvia, Moldova and Ecuador. A notable exception of this approach is Estonian law, which, despite being one of the most liberal models of online notarisation, has chosen to keep both marriage and divorce out of its scope: Notarial Act of 14 November 2001, amended by the Act of 30 January 2019, effective as of 1 February 2020.

[39] Cases C-372/16 and C-281/15 *Soha Sahyouni v Raja Mamisch* [2017] ECLI:EU:C:2017:988 and [2016] ECLI:EU:C:2016:343.

[40] In Portugal, administrative divorces based on mutual consent could be formalised before civil registrars by videoconference, through the 'plataforma de atendimento à distância', for an experimental period of two years (from 4 April 2022 to 4 April 2024), under D.L. 126/2021, 30 December 2021 <https://diariodarepublica.pt/dr/detalhe/decreto-lei/126-2021-176811775> accessed 3 February 2025.

exception, if the use of electronic means compromised the spouses' right to a due process or otherwise led to a discriminatory result.[41]

In contrast to other forms of out-of-court divorces, digitisation can directly influence the recognition of online notarial divorces in states whose systems of recognition distinguish between judicial decisions and 'authentic instruments'. The major risk of non-recognition arises when the divergence between the issuing state and the host state concerns the authentic nature of the notarial act containing the divorce, since the process leading to it matters. Given that online notarisation remains − so far − a minority practice among civil law states, the chances are high that an online notarial divorce may have to be recognised in a country that does not allow notaries to authenticate remotely. Indeed, the traditional conception of authenticity endorsed by most states requires the physical presence of both the notary and the parties in the same place at the same time. The particular probative force that the civil law system attributes to notarial acts is based on the consideration that notaries are public officials mandated by the state to witness the notarial hearing in person and confer 'public faith' to the facts and acts they report as having taken place in their presence. From this point of view, the notary's direct personal involvement is required at every stage of the process for a notarial document to be considered 'authentic'.[42]

The physical distancing measures imposed by the unique circumstances of the pandemic put this principle to the test, prompting several countries to grant notaries the power to authenticate in the virtual presence of the parties. In response, the International Union of Notaries (IUN) formally declared that remote authentication does not undermine the notary's public faith and the value of notarial acts, provided that the use of digital tools enables notaries to fully meet their statutory obligations, without replacing them.[43] Authenticity has thus undergone a fundamental transformation of its conceptual premises. However, the official acceptance of virtual authenticity paves the way for its fragmentation within the civil law system, as the

---

[41] See a discussion on the implications of videoconferencing technologies in international litigation and non-contentious proceedings, with a focus on family law cases in Luciana B Scotti and Leandro Baltar, 'La utilización de la videoconferencia en procesos judiciales y extrajudiciales internacionales: Desafíos para el derecho internacional privado' (2021) 10 *Revista Tribuna Internacional* 43.

[42] For a discussion on the classic and the virtual authenticity of notarial acts in comparative law, see Naivi Chikoc Barreda, 'Notarizing beyond Borders through Online Appearance: the Rise of Remote Authentic Instruments' in *Digitalisierung und IPR. Lokale Verbindungen in grenzenlosen Räumen* (Mohr Siebeck, 2025) (forthcoming), and 'De la Covid-19 à l'acte électronique à distance: réflexions sur les enjeux de l'authenticité dématérialisée' (2021) 51 *Revue Générale de Droit* 97, 111−114.

[43] IUN, 'UINL Guidance on Notarial Authentication with Online Appearance' approved by the Assembly of Member Notariats on 3 December 2021: < https://uinl.org/wp-content/uploads/2023/11/3.-GUIDANCE-ON-NOTARIAL-AUTHENTICATION-EN.pdf>.

technical aspects of the process are specific to each national context. Its admissibility becomes conditional on a wide range of factors, relating to the security, quality and ownership/control of the digital means used by the notary, all of which are influenced by multiple social, political and economic considerations.

As a result, authenticity is no longer ensured by the intervention of a Latin notary alone, but insofar as remote notarisation is involved, it becomes contingent on the digital processes notaries follow to perform their duties. Divergences between the issuing state and the state in which recognition is sought as regards, for example, the way in which electronic identification is carried out or the level of security attached to digital signatures may impact the cross-border circulation of the act.

With that in mind, let's analyse whether these technological divergences could lead to a refusal of recognition of online notarial divorces. Under the Brussels II *bis* and II *ter* Regulations, the favourable rules on recognition of judicial divorces pronounced by the courts of EU Member States extend to divorces granted by non-judicial authorities that have conducted an examination of the substance of the act. This interpretation was confirmed by the CJEU in case C-646/20, concerning a divorce issued by a civil registrar under Italian law.[44] The ruling can be transposed to divorces pronounced by notaries, since they are public officials responsible for examining the substantive legal conditions for granting a divorce. Accordingly, the notarial authentic instrument would be assimilated to a divorce decision within the meaning of the Brussels II recognition regime.[45] This means that online divorces issued by Lithuanian notaries following a remote authentication procedure shall be recognised in any EU country under the same conditions as a Lithuanian divorce judgment, even if the receiving state does not allow online notarisation, provided that the Lithuanian authorities have jurisdiction under the Regulation. A prior declaration that the notary is a competent authority in divorce matters in that Member State is required, pursuant to Article 103 of the Brussels II *ter* Regulation.

The relevance of the digital notarisation procedure is to be found in those countries which subject the cross-border effects of notarial divorces to an 'equivalence test'. This assessment is made when, at a given point in the process, the receiving authority in the host state must ascertain whether the foreign authority that pronounced the divorce can be deemed functionally equivalent to a domestic authority competent in divorce matters. Such verification entails the examination of the 'functions' exercised by the foreign notary. It might be understood that this scrutiny includes the

---

[44] Case C–646/20, *Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v Standesamt Mitte von Berlin* [2022] ECLI:EU:C:2022:879.

[45] Sabine Corneloup, 'La circulation européenne du divorce sans juge : nouvel arrêt et toujours des incertitudes' (2023) 2 *Revue critique de droit international privé* 409; Rainer Hausmann, *Internationales und Europäisches Familienrecht* (CH Beck, 2024) 52, paras 215−216; Ma Angeles Rodriguez Vazquez, 'El divorcio notarial español a la luz de la jurisprudencia del Tribunal de Justicia de la Unión Europea' (2023) 15 *Cuadernos Derecho Transnacional* 853.

authentication process followed under the foreign *lex auctoris*, since the online procedure affects essential functions conferred on notaries, such as the identification of the parties, verification of their consent and signatures, and the quality of legal advice, especially in family law cases. As these functions form the foundation of the special probative force that notarial acts hold in the civil law system, deviations from the national conception of authenticity could significantly impact the outcome of the equivalence test and, ultimately, the reception of the notarial divorce in the host state.

This also applies to some EU countries when dealing with divorces pronounced in non-EU countries under their national PIL rules. We can find an example of this approach in the Spanish legal order. Under the Act 20/2011 concerning civil registrars, for a foreign public document to be registered in civil registry offices, the originating authority must have performed functions equivalent to those exercised by Spanish authorities in the matter, among other conditions set out in Article 97. In the case of an online divorce, the equivalence assessment could fail if the Spanish authority decides that the divorce between a Brazilian citizen and a Spanish citizen who habitually reside in Spain, pronounced remotely by a Brazilian notary is not equivalent to a domestic notarial divorce since Spanish notaries cannot authenticate divorces through videoconferencing.[46]

Another potential obstacle to the recognition of online notarial divorces arises when the host state requires compliance with the applicable law under its PIL rules. This requirement can lead to two distinct outcomes. Firstly, the conflict of laws rule may designate a law that does not allow out-of-court divorces, or permits them only in a specific administrative form, such as before a civil registrar. In this case, the notarial foreign divorce might not be recognised, as it does not meet the requirements of the applicable law.[47] The online aspect of the notarial procedure will have no bearing on the recognition, since the focus will lie on the authority granting the divorce, rather

[46] The Spanish law allows online appearance for notarial acts relating to corporate matters, powers of attorney to designate a representative before administrative and judicial authorities, special powers of attorney, wills in the event of an epidemic, requests for certification of legal facts, authentication of signatures on private documents, certain real estate interventions and conciliation: Notarial Act, 28 May 1862, amended by Act nº 11, 8 May 2023, Article 17 *ter*.

[47] We do not intend to address here the debate regarding whether the intervention of the notary in the divorce agreement should be characterised as a matter of form, which would place it outside the scope of the conflict of laws rules governing the substantive aspects of divorce. See Béatrice Bourdelois, 'Divorce sans juge et droit international privé font-ils bon ménage?' in *Mélanges en l'honneur de la Professeure Annick Batteur. Regards humanistes sur le droit* (LGDJ, 2021) 231; Sara Godechot-Patris, 'La mise à l'épreuve de la règle locus regit actum en droit international privé de la famille contemporain' (2020−2022) *Travaux du comité de droit international privé* 95, 110−112; Sara Godechot-Patris, 'Le notaire et la fraude à la loi' in Estelle Gallant (ed), *L'office du notaire en droit international privé* (Dalloz, 2022) 113, 119; Marie-Therese Ziereis and Susanne Zwirlein, 'Das Verhältnis von Art. 17 Abs. 2 EGBGB zur Rom III-Verordnung' (2016) *IPRax* 103.

than the procedure used to pronounce it. Secondly, the host state's conflict rules may point to a law which admits notarial divorces, but either requires the parties' physical presence before the notary[48] or authorises remote divorces under more stringent standards than those applied by the issuing state.[49] For example, the digital platform or video link used by the foreign notary was provided by a private company rather than the national professional body; and the members of the couple were not identified by the notary but by a third-party using biometrics or artificial intelligence tools, contrary to the host state's rules on remote authentication. As we can see, even if the two states converge on the acceptance of online notarisation, the technological disparities between their respective digital procedures could still lead to a refusal of recognition.

3.2. The Notary's International Competence in Online Divorces

One of the fundamental concerns regarding remote notarisation is the potential disruption of the geographical proximity between the legal relationship formalised in the online authentic instrument and the territory where the notary is authorised to act. Insofar as the possibility of appearing online is not technically restricted to the state where the notary is established, the practice of remote notarisation could potentially lead to an artificial relocation of the family status to a country with no meaningful connection to it. Such 'notary shopping' strategies become particularly problematic in divorce proceedings, where party autonomy to choose the competent authority is generally not available and choice of law, where permitted, is limited by criteria based on the spouses' habitual residence and nationality.

To illustrate this challenge, let's take the example of a consensual divorce between two Italian citizens who had previously resided in Brazil for professional reasons for a certain period, after which they returned to Italy to settle permanently. One year later, the couple decides to divorce by mutual agreement. Knowing that the marriage dissolution in Brazil can be pronounced online by notarial act, they agree to choose a Brazilian notary and appear from Italy to execute the divorce agreement. This choice offers substantive advantages for the couple, considering that in Italy notarial divorces are not admissible and that a separation of at least six months is required to obtain a divorce by mutual consent, whereas in Brazil there is no such requirement.

---

[48] For example, according to Article 82.1 para 2 of the Spanish Civil Code, the spouses must intervene 'in person' before the notary to express their consent to divorce. Spanish law adopts a conflictual approach to the recognition of public instruments for registration purposes (see Article 97(3) of Act 20/2011).

[49] In a completely different field − company law − a clear manifestation of conflicting conceptions of remote notarisation can be observed when assessing the equivalence between online notarial acts from German and Austrian notaries: Jan Lieder, 'Substitution der Präsenz- und Online-Beurkundung durch einen österreichischen Notar' (2022) *NZG* 1043; Benedikt Berthold, 'Online-Beurkundungen durch ausländische Notare' (2023) 10 *Rpfleger* 551.

In this example, the absence of rules limiting the international competence of Brazilian notaries to intervene remotely results in the family situation being artificially located in a country with no actual links with the couple at the time of divorce.

The recognition of international divorces in most legal orders requires compliance with the rules of indirect jurisdiction, regardless of whether the divorce emanates from judicial or non-judicial authorities. In common law countries, unfamiliar with the concept of 'authentic instruments' as understood in civil law systems, foreign divorce judgments and authentic instruments containing consensual divorces are treated under the same legal framework.[50] This is also true in countries that have ratified the 1970 Hague Convention on the Recognition of Divorces and Legal Separations,[51] or in those whose recognition rules align with this model, in the sense they apply equally to divorces granted either by a court or by non-judicial authorities.[52] Within this approach, notarial divorces are not treated as 'authentic instruments' per se but are assimilated to divorce decisions. As mentioned earlier, divorces issued in the form of authentic instruments by notaries from EU countries are also recognised as divorce judgments, which means that they are subject to the jurisdiction rules laid down in the Brussels II *bis*/II *ter* Regulations. For online divorces issued by notaries from third states, their recognition by EU Member States will be subject to the national PIL regimes.

The application of jurisdictional rules to foreign notaries could result in the non-recognition of online divorces granted notwithstanding the absence of any real link with the issuing state. In fact, many recent regulations governing online authentication do not impose restrictions on the notaries' competence in this respect. What we often observe is special provisions stating that the notarial act is considered to be concluded at the place where the notary is physically situated.[53] The *lex loci actus* would thus be aligned with the *lex auctoris* from the perspective of the issuing state. This rule pursues another crucial goal from the notarial standpoint: it confines the spatial extent of the notary's functions in a way that is compatible with the principle of territoriality. Indeed, notaries are subject to strict territorial boundaries that limit their geographical sphere of competence to a particular municipality, province or the national territory. Acting outside these prescribed boundaries can result in the instrument being deprived of authenticity, as it violates the notary's legal mandate as a public official.

---

[50] See, for example, the Canadian decision on *Wilson v Kovalev*, 2016 ONSC 163, where a notarial divorce from Peru was recognised by the Ontario Superior Court, after verification of the Peruvian notary's international competence.

[51] HCCH, Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.

[52] Máire Ní Shúilleabháin and Jayne Holliday, 'Divorce' in Paul Beaumont and Jayne Holliday (eds), *A Guide to Global Private International Law* (Hart Publishing, 2022) 451, 456–457.

[53] See, for example, Article 46(6) of the Quebec Notarial Act; § 2(3) of the Estonian Notarial Law and Article 28 of the Lithuanian Notarial Law.

Under notarial law, the notary acts solely at the request of the parties, in accordance with the principle of free choice. For most notarial acts, no additional proximity requirements are imposed. Parties are thereby free to select their notary, as long as the latter remains within the territorial borders of its own jurisdiction. As we can see, the principle of territoriality is a principle of domestic law, which is of little help when assessing the notary's competence to intervene remotely in cross-border legal matters. Unlike territorial competence, which is centred on the location of the notary, the notion of international competence focuses on the connection between the parties or the subject matter, and the state issuing the authentic instrument. On an international level, the principle of territoriality needs to be replaced by the principle of proximity, at least in online authentication procedures.

The articulation between the internal and international competence of notaries presents significant challenges when the rules limiting the territorial scope of notarial activities do not explicitly deal with the competence of the state to which the notary belongs, but instead focus on the district, province or other national subdivisions. These rules, designed to address domestic competence, fail to provide clear guidance on the international reach of notarial activities. That is how Brazilian law on remote authentication addresses the issue in Articles 20 and 21 of Provimento 100/2020. According to the dominant view, these are rules of domestic competence and should not be used in international cases.[54] Moreover, these provisions only cover specific matters: acts relating to immovable property; certification of facts; and powers of attorney. Thus, a scenario could arise in which a Brazilian notary authenticates via video link a divorce between two foreign citizens with no real connection to Brazil at the time of the act, as in the example mentioned at the beginning of this section.

In our view, the most effective way to ensure legal certainty and facilitate the recognition of online notarial divorces across borders is to establish a clear and comprehensive legal framework for the international competence of notaries, outlining specific connecting factors between the notarial act and the state where the notary is established. Aware of the difficulties the notary may encounter when authenticating remotely in the digital world, the IUN has advocated this approach.[55] As long as territorial competence is the only competence addressed by national

[54] Gustavo Bandeira, 'A Competência Para Lavratura do Ato Notarial Eletrônico Envolvendo Brasileiros Expatriados e Estrangeiros' (2021) Migalhas Notariais e Registrais <https://www.migalhas.com.br/coluna/migalhas-notariais-e-registrais/340714/a-competencia-para-lavratura-do-ato-notarial-eletronico> accessed 3 February 2025; Luiz Carlos Weizenmann, 'O provimento nº 100 e as restrições de competência' (2022) Migalhas Notariais e Registrais <https://www.migalhas.com.br/coluna/migalhas-notariais-e-registrais/365196/o-provimento-n-100-e-as-restricoes-de-competencia> accessed 3 February 2025.

[55] IUN (n 43); 'Recomendaciones de la UINL' (2024) 130 *Revista Internacional del Notariado* 62, 64 <https://www.onpi.org.ar/RIN_repository/RIN_130.pdf> accessed 3 February 2025.

regulations on remote notarisation, the predictability and stability of online divorces will be threatened in cross-border cases.

4. Conclusion

The continuity of personal status across borders is a long-standing problem in private international law that has become increasingly compelling with globalisation. As family law enters the digital age, recognition of the cross-border effects of family relationships acquires new dimensions, since physical mobility is no longer necessary to face this challenge. The global reach of online legal services in the field has made it possible for couples from anywhere in the world to tie and untie their knots digitally. By connecting to the online platform hosted by the foreign authority formalising the act, at least two legal orders are brought together, thus internationalising the legal situation. In the digital age, traditional mechanisms provided by international conventions and national systems struggle to ensure the recognition of marriages and divorces between couples located outside the national borders of the state offering e-solemnisation or e-notarisation services.

Online marriages before officiants in Utah demonstrate how technology has been used to overcome discrimination and legal barriers to marriage. Determining the *lex loci celebrationis* in online marriages is not a neutral decision, but conceals a material policy, since it involves deciding from the outset whether the marriage is valid or not. Indeed, the conflictual reasoning entails a choice between the authority's location (where the marriage is valid) and the parties' location(s) (where the marriage is unlikely to be valid). The interpretation favouring the second solution or requiring additional proximity to the place of celebration would undermine the *in favorem* policy that has historically guided the rules on the formal validity of marriages. For same-sex couples who have turned to this alternative to escape the marriage ban in their home countries, upholding this interpretation would lead to inconsistency with the substantial role that some legal orders have assigned to the *lex loci celebrationis* when it comes to recognising the essential validity of same-sex marriages. The place of celebration shall be teleologically understood as the state to which the parties have submitted their matrimonial consent, the one chosen by virtually appearing before the foreign officiant. Remote technology enables the parties to exercise their right to marry in a context where the physical journey permitted by the *lex loci celebrationis* can be replaced by a virtual one. The protection of consent in the specific cases where it could be successfully challenged must be ensured by the law applicable to the essential validity of the marriage and, ultimately, through the public policy exception.

The trend towards online notarisation in civil law countries joins that of privatisation in family law, giving rise to online notarial divorces that challenge recognition regimes based on the document's authenticity and the authority's international jurisdiction. Solutions must address the diverging approaches to authenticity resulting from the particular position of the host state with regard to online authentication and the technicalities of the process. Regarding the issue of notaries' unrestricted competence in the digital world, it is time for legislators to realise the need to go

beyond regulating internal territorial competence and focus instead on limiting access to e-divorces to couples having a meaningful connection with the state whose authorities pronounce the dissolution of marriage.