

DE CONCORDIA INTER CODICES: TOWARDS A HARMONIZATION OF THE EASTERN AND LATIN CODES¹

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In his apostolic letter, *De concordia inter Codices*, Pope Francis expressed his constant solicitude for a concordance between the two Codes of the Catholic Church. By way of the letter's Preamble and eleven articles, His Holiness made changes to a number of Latin norms thereby effecting a greater harmony between the Latin and Eastern Codes. Despite the pope's concern for an appropriate degree of harmony between the Codes, he also acknowledged that the Codes have their own peculiarities which make them mutually independent. As a result, while *De concordia inter Codices* harmonizes a number of parallel norms of the Codes, others remain disharmonious as the *motu proprio* took into consideration the different traditions behind the two separate and distinct Codes of the universal Church.

1. Introduction

In his apostolic letter, *De concordia inter Codices*, given *motu proprio*, Pope Francis has expressed his constant solicitude for a concordance between the two Codes of the Catholic Church.² By way of the letter's

¹This article is the text of a conference that will be delivered during the 52nd Annual Convention of the Canadian Canon Law Society at Sydney, Nova Scotia from October 23-26, 2017.

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²An English translation of the Preamble to *De concordia inter Codices* and its eleven articles is found in the Appendix to this article. The translation of the *motu proprio*'s Preamble is the writer's while the translation of its articles and revised *CIC* norms has been prepared by Rev. Becket Soule O.P. and Msgr. John A. Renken. The official Latin and Italian texts are found at: <http://>

Preamble and eleven articles, His Holiness has made changes to a number of Latin norms thereby effecting a greater harmony, above all for pastoral reasons, between the Latin *Codex Iuris Canonici* (CIC) and the Eastern *Codex Canonum Ecclesiarum Orientalium* (CCEO).³ Despite the pope's concern for an appropriate degree of harmony between the Codes, he also acknowledges that the Codes have their own peculiarities which make them mutually independent. As a result, while *De concordia inter Codices* harmonizes a number of parallel norms of the Codes, others remain disharmonious as the *motu proprio* duly considers the different traditions behind the two separate and distinct Codes of the universal Church. In this regard, the apostolic letter even seems to set limits on the application of the Eastern Code to the Latin Church.⁴

With specific reference to the articles of *De concordia inter Codices*, part 1 of this paper endeavours to examine the harmony achieved between parallel norms of the Latin and Eastern Codes. Then, part 2 considers several unresolved questions raised as a result of the publication of the *motu proprio*. These issues remain and represent a certain disharmony between the two Codes of the Church. Of course, the arguments made in part 2 do not in any wise mean to condition the Legislator, or those to whom he has conferred the power, to interpret laws authentically (CCEO c. 1498 §1; CIC c. 16 §1).

1 - Towards a Harmonization of the Codes

1.1. - Ascription of Children to a Church *sui iuris* (CCEO c. 29 §1; CIC c. 111 §§1-2)⁵

CCEO can. 29 §1 - A son or daughter who has not completed fourteen years of age is ascribed	CIC can. 111§1 -Through the reception of baptism, the child of parents who belong to the Latin
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w2.vatican.va/content/francesco/la/motuproprio/documents/papa-francesco-motu-proprio_201605_de-concordia-inter-codices.html/, accessed in 2017.

³For a commentary on the *motu proprio*'s Preamble and articles, see J. Abbass, "De concordia inter Codices: A Commentary," *StC*, 50 (2016), 323-345.

⁴See J. Abbass, "Setting Limits on the Application of the Eastern Code to the Latin Church," *StC*, 51 (2017), 25-54.

⁵English translations in this article for the CIC canons are generally taken from *Code of Canon Law, Latin-English Edition*, Washington, D.C., Canon Law Society of America, 1999. English translations for the CCEO canons are taken from *Code of Canons of the Eastern Churches, Latin-English Edition* (Washington, D.C.: Canon Law Society of America) 2001.

<p>by virtue of baptism to the Church <i>sui iuris</i> to which his or her Catholic father is ascribed; or if only the mother is Catholic, or if both parents are of the same mind in requesting it, to the Church <i>sui iuris</i> of the mother, without prejudice to particular law enacted by the Apostolic See.</p>	<p>Church is enrolled in it, or, if one or the other does not belong to it, both parents have by mutual agreement chosen to have their offspring baptized in the Latin Church. If there is no mutual agreement, the child is enrolled in the Church <i>sui iuris</i> to which the father belongs.</p> <p>§2. But if only one of the parents is Catholic, the child is enrolled in the Church to which the Catholic parent belongs.</p>
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Regarding the ascription of children to a particular Church, article 1 of *De concordia inter Codices* has basically made two changes to Latin canon 111. The first change involves substituting the terms "rite" and "ritual Church *sui iuris*", formerly used in the canon, with "Church *sui iuris*." A rite has come to be defined as a multifaceted expression of a Church *sui iuris*. Indeed, CCEO canon 28 §1 states: "A rite is a liturgical, theological, spiritual and disciplinary heritage, differentiated by the culture and the circumstances of the history of peoples, which is expressed by each Church *sui iuris* in its own manner of living the faith." However, the Latin Code (see, for example, cc. 214, 383 §2, 1015 §2) does continue to refer to a "rite" when perhaps it should also be changed to refer to the juridically recognizable and accepted expression "Church *sui iuris*." This expression need not only refer to the Eastern Catholic Churches. According to the official Explanatory Note published (December 8, 2011) by the Pontifical Council for Legislative Texts, the Council indicated that the expression "Church *sui iuris*" could, by analogy, also include the Latin Church in the context of interecclesial relations.⁶ The Explanatory Note together with these terminological changes already achieve an increased harmony between the Codes.

When the former CIC canon 111 §1 and CCEO canon 29 §1 were compared, they seemed not to correspond exactly for two reasons. First, the Latin norm did not provide for the case in which only one of the parents is Catholic. To satisfy that lacuna, art. 1 §2 of the *motu proprio* has

⁶See *Comm*, 43 (2011), 315-316.

added a second paragraph to CIC canon 111. Regarding the second point, while Eastern canon 29 §1 foresees that a child can be ascribed to the Church *sui iuris* of his or her mother if both parents agree, some authors argued that Latin canon 111 §1 does not seem to allow for the same in the case of the Eastern Catholic mother.⁷ During the *iter* of CCEO canon 29 §1 within the *Pontificia Commissio Codicis Iuris Canonici Orientalis Recognoscendo* (PCCICOR), a member made the same observation regarding the possible ascription of a child to the Church of his or her Eastern Catholic mother. Without providing any explanation, the *Coetus de expansione observationum* simply replied that the same possibility also exists in the CIC canon 111 §1.⁸ While CIC canon 111 §1 is certainly not explicit, it could be implied that the ascription to the Latin Church is only one of the options open to the parents and that ascription to the Eastern Church of the mother is also possible as it is not excluded.⁹

⁷See: J. P. McIntyre, "Rite," in *New Commentary on the Code of Canon Law*, J. P. Beal et al., eds., (New York, N.Y./Mahwah, N.J.: Paulist Press, 2000) 151. The author states: "The first paragraph of the canon (111) presents a restrictive norm. Suppose we find a Latin father and an Eastern mother. If both parents agree, can the child be baptized in the Eastern rite? The canon does not permit this. If they both agree, it must be in the Latin Church." See also: G. Nedungatt, "Churches *sui iuris* and Rites," in *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, G. Nedungatt, ed., (Rome: Pontifical Oriental Institute, 2002) 119, note 43. The author states: "The corresponding CIC c. 111 §1 allows the parents to agree to choose the Latin Church for their children at baptism, if one of the parents does not belong to it. The Latin Church can happen to be the "ritual Church" (Church *sui iuris*) of the mother or father, but, according to the wording of the canon, they cannot agree to choose the Eastern Church *sui iuris* of the mother but only of the father."

⁸The observation, together with the expert study group's response, stated: "If the canon is compared with CIC can. 111, we note that CIC does not open the possibility of a transfer to an Eastern rite, while the Eastern Schema allows the possibility of a transfer to the Latin rite, if the mother, for example, is Latin. Indeed, in the case of a ritual difference between the two parents, the child will always be able to be baptized in an Eastern rite given that one of the two parents belongs to it. Response: In CIC 111, there is the same possibility." See *Nuntia*, 28 (1989), 20 (c. 28 §1).

⁹See also D. Salachas, "L'appartenenza giuridica dei fedeli a una Chiesa orientale *sui iuris* o alla Chiesa latina," *Periodica de re canonica* 83 (1994) 27. The author states: "The *Coetus de expansione observationum* replied that 'there is the same possibility in CIC,' which is true, since CIC c. 111 §1 does not seem to exclude that the parents of different rites (Latin and Eastern) can mutually

The Legislator seems to be of the same mind since no changes were made to *CIC* canon 111 §1 in this regard. Although specific wording allowing for a child to be ascribed to the Church *sui iuris* of an Eastern mother could have been added to the Latin norm, evidently, that was considered unnecessary to harmonize the Codes in this matter. Besides, the concordance of two Codes occurs in the context of one *Corpus Iuris Canonici* where an Eastern mother could rely on the provisions of *CCEO* canon 29 §1. Certainly, from the perspective of harmony between both the canons and the Churches, not all the answers to canonical questions affecting interecclesial issues can be answered by only one Code.

1.2. - Formalities for Transfer to Another Church (*CCEO* c. 36; *CIC* c. 112 §3)

<p><i>CCEO</i> can. 36 - Every transfer to another Church <i>sui iuris</i> takes effect at the moment a declaration is made before a local hierarch of the same Church or the proper pastor or a priest delegated by either of them and two witnesses, unless the rescript of the Apostolic See provides otherwise.</p>	<p><i>CIC</i> can. 112 §3 - Every transfer to another Church <i>sui iuris</i> takes effect at the moment a declaration is made before a local ordinary of the same Church or the proper pastor or a priest delegated by either of them and two witnesses, unless the rescript of the Apostolic See provides otherwise; this is to be noted in the baptismal register.</p>
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Until *De concordia inter Codices*, there was no prescribed canonical procedure in the Latin Code for the transfer to another Church *sui iuris* to take effect. The Legislator had outlined such a procedure in *CCEO* canon 36 for the Eastern Catholic Churches. However, *CCEO* canon 36 does not directly address or oblige the Latin Church even though, consistent with the 2011 Explanatory Note, the Latin Church is implicitly included among the Churches *sui iuris* to which the Eastern Catholic faithful might choose to transfer. Still, lacking such a procedure in individual cases, Latin ordinaries, in accord with *CIC* canon 19, could have filled that legislative gap by following Eastern canon 36. Now, by virtue of art. 2 of the *motu proprio*, the Legislator has added a §3 to *CIC* canon 112 along the lines of *CCEO* canon 36. In fact, the wording is almost identical except for the

agree to choose that the children be baptized in the Eastern Church, to which one of the two spouses belongs."

reference to “local ordinary” instead of “local hierarch”. In addition, the new Latin norm requires that the transfer be noted in the baptismal register.¹⁰

Regarding transfers to another Church *sui iuris*, then, Latin canon 112 §3, like Eastern canon 36, prescribes the formalities required for these transfers to take effect. The transfers include those made in accord with CIC canon 112 §1, either with the consent of the Holy See or the consent of the bishops concerned (1°),¹¹ or in the case of a spouse who, at the time of or during marriage, has declared that he or she is transferring to the Church *sui iuris* of the other spouse (2°). Therefore, unless the Holy See’s rescript provides otherwise, those transferring to another Church *sui iuris* (Eastern Catholic Church) in these cases are obliged to make at least an oral declaration before the local ordinary, the proper pastor or another priest delegated by either of them and two witnesses. Similarly, a Latin spouse transferring to the Eastern Catholic Church *sui iuris* of the other spouse is bound by the same formalities for the transfer to take effect. Every transfer takes effect in these cases at the moment the declaration is made .

1.3. - Enrolments/Transfers Recorded in Baptismal Register (CCEO c. 37; CIC c. 535 §2)

CCEO can. 37 - Every ascription to a Church <i>sui iuris</i> or transfer to another Church <i>sui iuris</i> is to be recorded in the baptismal register of the parish where the baptism	CIC can. 535 §2 - In the baptismal register are also to be noted enrollment in a Church <i>sui iuris</i> or transfer to another Church, confirmation, and those things
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¹⁰The addition of the clause “this is to be noted in the baptismal register” was, strictly speaking, unnecessary since the rule to note transfers in the baptismal register is contained in CCEO canon 37 (see next section), a canon which already explicitly names and obliges the Latin Church.

¹¹The Secretariat of State issued a special rescript *ex audientia Sanctissimi* dated November 26, 1992. The rescript stated: “According to canon 112 §1, 1°, of the Code of Canon Law, anyone is forbidden, after receiving baptism, from being ascribed to another ritual Church *sui iuris* unless consent for it is given by the Apostolic See. Concerning this, having accepted the opinion of the Pontifical Council for the Interpretation of Legislative Texts, the Supreme Pontiff John Paul II has established that consent of that kind can be presumed whenever the Christian faithful of the Latin Church have petitioned for the transfer to another ritual Church *sui iuris*, which has an eparchy in the same territory, provided the diocesan bishops of both dioceses consent to it in writing.” See AAS 85 (1993) 81.

<p>was celebrated; even if it is a parish of the Latin Church; if, however, this cannot be done, it is to be recorded in another document by the pastor in the parish archive of the Church <i>sui iuris</i> to which the ascription was made.</p>	<p>which pertain to the canonical status of the Christian faithful by reason of marriage, without prejudice to the prescript of canon 1133, of adoption, of reception of sacred orders, and of perpetual profession made in a religious institute. These notations are always to be noted on a baptismal certificate.</p>
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CCEO canon 37 requires that ascription (enrollment) in a Church *sui iuris* and transfer to another Church be recorded in the parish baptismal register even if the parish is of the Latin Church. Among the things to be noted in the baptismal register, the former CIC canon 535 §2 made no mention of ascription in a ritual Church *sui iuris* or transfer to another Church. In achieving a concordance between the Codes on this account, article 3 of the *motu proprio* has formulated a new CIC canon 535 §2, which requires that both ascriptions and transfers be recorded in the baptismal register and always noted on baptism certificates. Like the change made to CIC canon 111 by article 1 of the *motu proprio*, the prior mention of a "change of rite" has been replaced by ascription (enrollment) or transfer to a "Church *sui iuris*".

1.4. - Baptizing Orthodox Children (CCEO c. 681 §5; CIC c. 868 §3)

<p>CCEO can. 681 §5 - Infants of non-Catholic Christians are licitly baptized if their parents or at least one of them or the person who legitimately takes their place request it and if it is physically or morally impossible for them to approach their own minister.</p>	<p>CIC can. 868 §3 - Infants of non-Catholic Christians are licitly baptised if their parents or at least one of them or the person who legitimately takes their place request it and if it is physically or morally impossible for them to approach their own minister.</p>
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Article 5 of *De concordia inter Codices* has added a new §3 to CIC canon 868 which corresponds to §5 of CCEO canon 681. Since both Codes of the universal Church generally only concern the Catholic faithful, the norms

do not oblige the faithful of our sister Orthodox Churches. However, while these parallel norms do not bind the Orthodox faithful, they do allow for competent ministers to baptize children of Orthodox parents if they, or at least one of them, or the one who legitimately takes their place, request it and it is physically or morally impossible for them to approach their own minister.

Within *PCCICOR*, this norm was already added during the *denua recognitio* of the 1980 *Schema De Culto divino et praesertim de Sacramentis* (1980 Schema). With regard to the elaboration of the draft to CCEO canon 681, the expert study group stated: “The proposal (made by 2 consultative bodies) to add to the canon a §5 in which it is stated that it is licit (one of them prefers ‘it is proper’) in particular situations to baptize children of Orthodox faithful has been favorably accepted....”¹² In fact, except for minor redactional changes, no subsequent observations or manner of opposition were reported during the *iter* of this norm within *PCCICOR*. Now, if this rule seemed suitable in Eastern regions, the Legislator has found it even more appropriate, pastorally, in today’s highly mobile society where Eastern non-Catholics, for many reasons, often find themselves in predominantly Latin territories and the impossibility of having access to their proper minister. As a result, *CIC* canon 868 §3 is practically identical to CCEO canon 681 §5. The Latin norm only changes “*physice*” to “*corporaliter*”, uses the subjunctive *sit*, instead of the indicative *est*, and opts for “*non catholicorum*” over “*acatholicorum*”. The choice of “non-Catholics”, however, should not be interpreted also to include Protestants since, in the Preamble to the *motu proprio*, Pope Francis clearly states: “Another reason for integrating the norms of *CIC* with explicit dispositions parallel to those found in CCEO is the need of better defining relations with the faithful belonging to non-Catholic *Eastern Churches*, who are now present in increasing numbers in Latin territories.” (Emphasis added)

Because of the addition of this norm (CCEO c. 681 §5; *CIC* c. 868 §3) to the Codes, the principle that there must be a founded hope that the child presented for baptism be brought up in the Catholic religion had to be qualified. Accordingly, as in CCEO canon 681 §, 1°, article 4 of *De concordia inter Codices*, reformulated *CIC* canon 868 §1, 2° to state: “there must be a founded hope that the infant will be brought up in the Catholic religion, *without prejudice to §3*; if such hope is altogether lacking, the baptism is to

¹²*Nuntia*, 15 (1982), 16 (c. 16 §5).

be delayed according to the prescripts of particular law after the parents have been advised about the reason." (Emphasis added)

1.5. - Only a Priest Validly Assists at Marriages of Easterners (CCEO c. 828; CIC c. 1108 §3)

<p>CCEO can. 828 §1 - Only those marriage are valid that are celebrated with a sacred rite, in the presence of the local hierarch, local pastor, or a priest who has been given the faculty of blessing the marriage by either of them, and at least two witnesses according, however, to the prescripts of the following canons, without prejudice to the exceptions referred to in cann. 832 and 834, §2.</p> <p>§2 - The very intervention of a priest who assists and blesses is regarded as a sacred rite for the present purpose.</p>	<p>CIC can. 1108 §3 - Only a priest validly assists at a marriage between Eastern parties, or between a Latin party and an Eastern party, whether Catholic or non-Catholic.</p>
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By virtue of article 6 of the *motu proprio*, a §3 has been added to CIC canon 1108, effectively resolving a doubt of law that has existed for some time. The doubt concerned whether or not a Latin deacon could validly assist at and bless a marriage between Eastern Catholics subject to a Latin ordinary or between a Latin party and an Eastern party, whether Catholic or non-Catholic. The question often arose in the context of Eastern Catholics who, lacking a hierarch of their own Church *sui iuris*, were entrusted to the care of a Latin bishop (see CCEO c. 916 §5).¹³ CCEO canon 38 stipulates:

¹³CCEO c. 916 §5 states: "In places where not even an exarchy has been erected for the Christian faithful of a certain Church *sui iuris*, the local hierarch of another Church *sui iuris*, even the Latin Church, is to be considered as the proper hierarch of these faithful, with due regard for can. 101. If, however, there are several local hierarchs, that one whom the Apostolic See has designated is to be considered as their proper hierarch or, if it concerns the Christian faithful of a certain patriarchal Church, the one whom the patriarch has designated with the assent of the Apostolic See."

“Christian faithful of Eastern Churches, even if committed to the care of a hierarch or pastor of another Church *sui iuris*, nevertheless remain ascribed in their own Church *sui iuris*.”¹⁴ At the same time, CCEO canon 828 §1 requires for validity that marriages be celebrated with a sacred rite. Then, CCEO canon 828 §2 establishes: “The very intervention of a priest who assists and blesses is regarded as a sacred rite for the present purpose.” However, from a predominantly Latin perspective and in view of CIC canon 1108 §1, which allows for deacons to assist at marriages, some canonists argued that the Latin deacon was also “ontologically and legally suitable to bless marriages” even involving Easterners.¹⁵ Victor Pospishil singularly argued that a Latin bishop could validly delegate a Latin deacon to bless the marriage of Easterners subject to him on the basis of the principle “*locus regit actum*” (“the place rules the action”).¹⁶ However, commentators apart from Pospishil relied heavily upon the conciliar statement made in LG 29, which provides: “To the extent that he has been authorized by competent authority, he (the deacon) is to ... assist

¹⁴The first reference to “Church *sui iuris*” implicitly includes the Latin Church by analogy. See Pontifical Council for Legislative Texts, “Explanatory Note regarding CCEO canon 1,” *Comm*, 43 (2011), 315-316.

¹⁵The quote is from U. Navarrete, “Questioni sulla forma canonica ordinaria nei Codici latino e orientale,” *Periodica de re canonico*, 85 (1996), 506. See also: J. Prader, *La legislazione matrimoniale latina e orientale: Problemi interecclesiali, interconfessionali e interreligiosi* (Rome: Edizioni Dehoniane, 1993) 39; Prader later changed his opinion in G. Nedungatt, ed., *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches* (Rome: Pontifical Oriental Institute, 2002) 569-570 and the second edition of his *Il matrimonio in Oriente e in Occidente* (Rome: Pontifical Oriental Institute, 2003) 249; G. Gallaro, “Canon 1108 - Latin Deacon Assisting at Marriage of Two Eastern Catholics,” *RR*, (1995), 91; and V. Pospishil, *Eastern Catholic Church Law*, 2nd ed., (New York: Saint Maron publications, 1996) 574.

¹⁶V. Pospishil, *Eastern Catholic Church Law*, 2nd ed., (New York: Saint Maron publications, 1996) 574. It is clear that the principle *locus regit actum* does not apply to marriage cases involving Eastern Catholics who are bound to follow their own marriage norms wherever they are in the world. The Cicognani-Staffa commentary to the 1917 Latin Code specifically referred to this exception. It stated: “However, in this matter (regarding the principle *locus regit actum*), there are exceptions: for example, wherever Easterners go, they follow proper norms in celebrating an engagement and contracting a marriage.” See H. J. Cicognani and D. Staffa, *Commentarium ad Librum Primum Codicis Iuris Canonici*, 2 vols., (Rome: Pontificium Institutum Utriusque Iure, 1939) I:32.

at and bless marriages in the name of the Church."¹⁷ However, after Vatican II, the Pontifical Commission for the Interpretation of the Decrees of Vatican Council II responded to a *dubium* concerning a deacon's faculties to give blessings. The Commission stated: "The deacon can impart only those blessings ... which are expressly granted to him by law."¹⁸ It is precisely Eastern canon 828 §2 that excludes the deacon by explicitly stating that the sacred rite "is the intervention of a *priest* assisting and blessing." Accordingly, other canonists insisted that, in the context of interecclesial collaboration and relations today, CCEO canon 828 §2 could not be ignored in the case of marriages of Easterners entrusted to a Latin bishop.¹⁹ Indeed, both CCEO canon 828 §2 and CIC canon 1108 §1 are integral parts of one body of canon law in the Catholic Church. Moreover, within PCCICOR, the sacred rite, as an essential element of canonical form, was continually highlighted and safeguarded as a characteristic Eastern institution.²⁰ In a *motu proprio* that seeks to harmonize in many ways the two Codes of the Catholic Church, Pope Francis nevertheless recognizes

¹⁷See N. P. Tanner, ed., *Decrees of the Ecumenical Councils*, vol. 2, (London/Washington: Sheed & Ward/Georgetown University Press, 1990) 874.

¹⁸AAS 66 (1974) 667.

¹⁹See, for example, D. Salachas, *Il sacramento del matrimonio nel nuovo diritto canonico delle Chiese orientali* (Rome/Bologna: Edizioni Dehoniane, 1994) 200-201, footnote 43; C. G. Fürst, "Probleme der Form der Eheschließung von Orientalen oder mit Orientalen," *De processibus matrimonialibus* 2 (1995) 36-37 and J. Abbass, *Two Codes in Comparison* (Rome: Pontifical Oriental Institute, 2007) 100-103.

²⁰When, for example, six consultative bodies proposed that Eastern local hierarchs have the same faculties as Latin local ordinaries with respect to dispensation from canonical form, the expert study group replied: "*It is not accepted* because it is contrary to the Eastern conception of *ritus sacer* in the celebration of marriage, so beneficial also in the modern world in which it is necessary to highlight the sacredness of matrimonial consent, while in certain particular cases it is possible to provide here by way of special faculties granted to *bishops*." See *Nuntia*, 15 (1982), 85-86 (c. 169 §3). Again, three members of PCCICOR later proposed that the faculty to dispense from canonical form should be accorded to the Eastern bishops, like the Latin bishops, in the case of mixed marriages. The special study group responded: "The faculty to dispense from the *ritus sacer* must remain reserved, in the common Code, to the Holy See in order to safeguard this institution so characteristic of the East." See *Nuntia*, 28 (1989), 116-117 (c. 829).

and preserves the peculiarity of the sacred rite that has traditionally distinguished the celebration of Eastern marriages. Therefore, according to *CIC* canon 1108 §3, a Latin deacon cannot validly assist at the marriage of Easterners since the intervention of a *sacerdos* (priest or bishop) who assists and blesses with a sacred rite is required for validity (see also *CCEO* c. 828).

As a result of the new *CIC* canon 1108 §3 and to be consistent with it, the Legislator has qualified *CIC* canon 1111 §1 with specific regard to the possibility of delegating a deacon to assist at marriages in the Latin Church. In accord with article 8 of *De concordia inter Codices*, *CIC* canon 1111 §1 now states: "As long as they hold office validly, the local ordinary and the pastor can delegate to priests and deacons the faculty, even a general one, of assisting at marriages within the limits of their territory, without prejudice to the prescript of can. 1108 §3." Since only a *sacerdos* (bishop or priest) validly celebrates marriages involving Easterners, whether Catholic or non-Catholic, a deacon cannot be delegated to assist at these marriages.

As in the case of *CIC* canon 1111 §1, *CIC* canon 1112 §1 had to be modified following the Legislator's addition of *CIC* canon 1108 §3 to the Latin Code. By reason of article 9 of the *motu proprio*, *CIC* canon 1112 §1 now states: "Where there is a lack of priests and deacons, the diocesan bishop can delegate lay persons to assist at marriages, with the previous favourable vote of the conference of bishops and after he has obtained the permission of the Holy See, without prejudice to the prescript of can. 1108 §3." Because only a bishop or priest (*sacerdos*) can validly assist at and bless marriages between Easterners or between a Latin party and an Eastern party, whether Catholic or non-Catholic, the possibility of delegating a lay person to assist at these marriages is also excluded.

Also, in referring to a mixed marriage in which the non-Catholic party belongs to an Eastern rite, the former *CIC* canon 1127 §1 required, for validity, the presence of a sacred minister. In keeping with the new *CIC* canon 1108 §3 and the rule that only a priest validly assists at a marriage involving Easterners, article 11 of *De Concordia inter Codices* has revised *CIC* canon 1127 §1 to require the presence of a priest. The Latin norm now states: "The prescripts of can. 1108 are to be observed for the form to be used in a mixed marriage. Nevertheless, if a Catholic party contracts marriage with a non-Catholic party of an Eastern rite, the canonical form of the celebration must be observed for liceity only; for validity, however, the presence of a priest is required and the other requirements of the law

are to be observed." By "presence," the *motu proprio* implicitly intends a priest's intervention by assisting at and blessing the marriage (see *CIC* cc. 1108 §3 and 1116 §3). As in the revised formulations of *CIC* canons 111-112 and 535 §2, the reference to "rite" in Latin canon 1127 §1 might have yielded to "Church" since it is the sister Orthodox Churches who are intended here.

1.6. - Faculty to Bless Marriages of Subjects and Non-Subjects (CCEO c. 829 §1; CIC c. 1109)

<p>CCEO can. 829 §1 - From the day of taking canonical possession of office and as long as they legitimately hold office, everywhere within the boundaries of their territory, local hierarchs and local pastors validly bless the marriage of spouses, whether they are subjects or, provided that at least one of the parties is ascribed to his Church <i>sui iuris</i>, they are non-subjects.</p>	<p><i>CIC</i> can. 1109 - Unless the local ordinary and pastor have been excommunicated, interdicted, or suspended from office or declared such through a sentence or decree, by virtue of their office and within the confines of their territory they assist validly at the marriages not only of their subjects but also, provided that at least one of them is enrolled in the Latin Church, of those who are not their subjects.</p>
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The former *CIC* canon 1109 stated: "Unless the local ordinary and pastor have been excommunicated, interdicted, or suspended from office or declared such through a sentence or decree, by virtue of their office and within the confines of their territory they assist validly at the marriages not only of their subjects but also of those who are not their subjects provided that one of them is of the Latin rite."²¹ Because the clause "provided that one of them is of the Latin rite" came at the end of the canon, some interpreted the norm to mean that a Latin local ordinary or pastor could not assist at the marriage of Easterners, even those entrusted to their care, since they did not belong to the Latin rite. To overcome this interpretative difficulty, by way of article 7 of the *motu proprio*, the Legislator has simply adopted a formulation that more closely follows the parallel CCEO canon

²¹The Latin text of *CIC* c. 1109 had read: "*Loci ordinarius et parochus, nisi per sententiam vel per decretum fuerint excommunicati vel interdicti vel suspensi ab officio aut tales declarati, vi officii, intra fines territorii, valide matrimoniis assistunt non tantum subditorum, sed etiam non subditorum, dummodo eorum alteruter sit ritus latini.*"

829 §1. Now, both the Eastern and Latin norms agree in that the qualifying clause “provided that at least one of them is enrolled in the Latin Church” is placed in more immediate reference to non-subjects.

1.7. - Blessing Marriages of Orthodox Faithful (CCEO c. 833 §1-2; CIC c. 1116 §3)

<p>CCEO can. 833 §1 - The local hierarch can give to any Catholic priest the faculty of blessing the marriage of the Christian faithful of an Eastern non-Catholic Church if those faithful cannot approach a priest of their own Church without great difficulty and if they voluntarily ask for the blessing as long as nothing stands in the way of a valid and licit celebration.</p> <p>§2 - If possible, before blessing the marriage, the Catholic priest is to notify the competent authority of those Christian faithful about the matter.</p>	<p>CIC can. 1116 §3 - In the circumstances mentioned in §1, nn. 1 and 2, the local ordinary can confer on any Catholic priest the faculty of blessing the marriage of the Christian faithful of Eastern Churches which do not have full communion with the Catholic Church, if they spontaneously seek it, and provided that nothing prevents the valid and licit celebration of the marriage. This priest, always with the necessary prudence, is to inform the competent authority of the non-Catholic Church concerned.</p>
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With respect to the faculty that can be granted to any Catholic priest to bless the marriage of faithful of an Eastern non-Catholic (Orthodox) Church, the Eastern Code had already contained unique provisions in CCEO canon 833. Within PCCICOR, this canon was added to the draft of the Eastern Code only after the 1986 *Schema Codicis Iuris Canonici Orientalis* (SCICO) was sent to members for their observations. The *Coetus de expensione observationum*, entrusted with the review of those observations, noted that a proposal was made to insert this canon for pastoral exigencies. The experts accepted the proposal and their exact wording of the canon was subsequently promulgated.²²

While the 1983 Latin Code did not contain such a canon, the pastoral need for one gradually became evident in the same way as it did for a norm providing for the baptism of children of non-Catholic Christians (see part 1.4 above regarding the new CIC c. 868 §3). Given today’s highly mobile

²²See *Nuntia*, 28 (1989), 115 (c. 827 bis).

society, Christian faithful of an Eastern non-Catholic Church may just as often find themselves in predominantly Latin territories and the impossibility of having a priest of their own Church bless their marriage. Article 10 of *De concordia inter Codices* addresses this pastoral lacuna by adding a §3 to CIC canon 1116. A local ordinary can confer on any Catholic priest the faculty of blessing the marriage of Eastern non-Catholics if they spontaneously seek it and provided that nothing prevents the valid and licit celebration of the marriage. However, unlike CCEO canon 833, the application of CIC canon 1116 §3 is tied to the two limiting circumstances mentioned in its §1: 1) the danger of death or 2) provided it is prudently foreseen that a priest, who is competent according to law, cannot be present or be approached without grave inconvenience and that this state of affairs will continue for a month. Also, unlike CCEO canon 833 §2, the new Latin norm does not require the priest, if it is possible, to notify the competent authority of those Christian faithful before he blesses the marriage. However, if the Latin priest were to notify the competent authority beforehand, which CIC canon 1116 §3 does not exclude, it could well happen that the competent authority might supply the lack of a proper minister quickly or, at least, within a month. Hence, while CIC canon 1116 §3 achieves a certain harmony with CCEO canon 833, it does not appear to be the same in every respect.

2 - A Certain Disharmony of the Codes Remains

As described in part 1, Pope Francis' *motu proprio*, *De concordia inter Codices*, effected a certain harmony between the two Codes of the Catholic Church by incorporating a limited number of previously unique Eastern norms into the Latin Code. Nevertheless, several other Eastern norms remain distinct or differ from the parallel Latin norms covered in some respect by the *motu proprio*. In this part, three sets of parallel canons of the Codes will be examined to show that the work of harmonization and clarification needs, perhaps, to continue.

2.1. - A Bishop's Duty of Care to Other Faithful (CCEO c. 193 §1; CIC c. 383 §§1-2)

At the beginning of the Preamble to *De concordia inter Codices*, Pope Francis indicates that, although the Eastern and Latin Codes have parallel or common norms, they may also have their differences and, so as to avoid negative effects on pastoral practice, the pope explains that there needs to be an appropriate, not exact, degree of harmony between these norms. His Holiness states:

On one hand, the Codes have common norms and, on the other hand, their own peculiarities which make them mutually independent. However, it is necessary that, even in these specific norms, there be an appropriate degree of harmony. Indeed, these discrepancies, if and to the extent they are present, have a negative effect on pastoral practice, especially in cases in which relations between subjects belonging respectively to the Latin Church and an Eastern Church are governed.

Immediately thereafter, Pope Francis deals with the question of the relationship between CCEO canon 193 §1 and CIC canon 383 §§1-2 regarding a bishop's duty of care towards faithful of another Church *sui iuris* entrusted to his care. The Legislator distinguishes these parallel norms and seems to limit the application of the CCEO canon 193 §1 to Eastern bishops while defining the extent of a Latin bishop's duty of care under the CIC canon 383. Thus, having parallel norms governing parallel subject-matters does not always assure the application of perfectly harmonized rules in the Latin as well as the Eastern Catholic Churches.

Regarding a Latin bishop's duty of care towards Eastern Catholics entrusted to him, CIC canon 383 §1 states: "In exercising the function of a pastor, a diocesan bishop is to show himself concerned (*sollicitum*) for all the Christian faithful entrusted to his care, of whatever age, condition, or nationality they are, whether living in the territory or staying there temporarily...." Establishing how this solicitude is to be concretely expressed, CIC canon 383 §2 states: "If he has faithful of a different rite, he is to provide for their spiritual needs either through priests or parishes of the same rite or through an episcopal vicar." However, the parallel CCEO canon 193 §1, which has no identical Latin counterpart, sets a higher standard of care for Eastern bishops to whom the faithful of another Church *sui iuris*, including the Latin Church, have been entrusted. It states:

The eparchial bishop to whose care the Christian faithful of another Church *sui iuris* have been committed is bound by the serious obligation of providing everything (*gravi obligatione tenetur omnia providendi*) so that these Christian faithful retain the rite of their respective Church, cherish and observe it as far as possible. He is also to ensure that they foster relations with the superior authority of their Church.

For years after the promulgation of the Eastern Code, canonists debated whether or not a Latin bishop is bound by the same duty of care towards Easterners as Eastern bishops are towards other Easterners, and even Latin Catholics, entrusted to their care. In fact, the Pontifical Council for the

Interpretation of Legislative Texts, as it was then called, acknowledged in 1999 that a question had been submitted for its own study concerning "certain observations regarding the relationship between Eastern canon 193 §1 and Latin canon 383 §2."²³ Certain authors had argued that, even though the two Codes are integral parts of one *Corpus Iuris Canonici* of the universal Church, they are still separate and distinct. Hence, a relationship cannot simply be drawn between them so as to impose the more serious obligation of Eastern canon 193 §1 also upon Latin bishops, who are already governed by Latin canon 383 §§1 and 2 regarding their solicitude towards faithful of another Church.²⁴ On the other hand, other canonists had maintained that, despite the absence of an express mention of Latin bishops in the Eastern norm, the more serious obligation in CCEO canon 193 §1 implicitly applies also to Latin bishops because of the nature of the matter (*ex natura rei*) and/or the very *ratio* that inspired this Eastern norm. The Legislator need not have mentioned Latin bishops explicitly since all bishops, Eastern and Latin, have the serious obligation to provide everything so that the faithful retain and practice their own rite since it is a fundamental human right.²⁵ This position undoubtedly drew support from a line of argument advanced over the years by Ivan Žužek, the Secretary of PCCICOR and the relator of the of the *Coetus de S. Hierarchia*

²³*Comm*, 31 (1999), 50.

²⁴See: C. G. Fürst, "Zur Interdependenz von lateinischem und orientalischem Kirchenrecht: Einige Anmerkungen zum Kirchenrecht der katholischen Kirche," in *Iuri Canonico Promovendo. Festschrift für Heribert Schmitz zum 65. Geburtstag*, W. Aymans et al., eds., (Regensburg: Pustet, 1995) 553; M. Brogi, "Il nuovo codice orientale e la Chiesa latina," *Antonianum*, 66 (1991), 60, note 96; J. Abbass, "Le 'ultime modifiche' al Codice di diritto canonico orientale," in K. Bharanikulangara, ed. *Il Diritto Canonico Orientale nell'ordinamento ecclesiale* (Vatican City: Libreria Editrice Vaticana, 1995) 226-230; IDEM, "Canonical Dispositions for the Care of Eastern Catholics outside their Territory," *Periodica de re canonica*, 86 (1997), 330-346; IDEM, "Latin Bishops' Duty of Care towards Eastern Catholics," *StC*, 35 (2001), 7-32 and IDEM, *The Eastern Code (Canon 1) and Its Application to the Latin Church* (Bangalore: Dharmaram Publications, 2014) 28-36.

²⁵See M. Brogi, "Cura pastorale di fedeli di altra Chiesa *sui iuris*," *REDC*, 53 (1996), 124; L. Okulik, "Tutela giuridica dell'identità ecclesiale dei fedeli orientali in situazione di diaspora," in *Nuove terre e nuove Chiese: Le comunità di fedeli orientali in diaspora*, L. Okulik, ed., (Venice: Marcianum Press, 2008) 231-232; and O. Condorelli, "Giurisdizione universale delle Chiese *sui iuris*? Tra passato e presente," in *Cristiani orientali e pastori latini*, P. Gefaell, ed., (Milan: Giuffrè Editore, 2012) 104, note 133.

that drafted Eastern canon 193 §1.²⁶ Ivan Žužek's thought was even echoed by Pope John Paul II at the time of the Eastern Code's promulgation. In the apostolic constitution, *Sacri canones*, with which Pope John Paul II promulgated the Eastern Code, His Holiness stated: "Indeed, this Code protects the very fundamental right of the human person, namely, of professing the faith in whatever their rite, drawn to a great extent from the very womb of the mother, which is the rule of all 'ecumenism'."²⁷

In the Preamble to *De concordia inter Codices*, Pope Francis deals particularly with the relationship between CCEO canon 193 §1 and CIC canon 383 §§1-2 and it could be argued that the Legislator himself effectively settles the question posed to the Pontifical Council for the Interpretation of Legislative Texts in 1999. Regarding the issue, Pope Francis states: "It needs to be remembered that Eastern faithful are bound to observe their own rite wherever they are and, as a result, the competent ecclesiastical authority is to take care most earnestly that appropriate means are provided (*auctoritas ecclesiasticae competentis est maximopere curare ut congrua media apparentur*) them to be able to fulfill this obligation."²⁸ His Holiness does not state that the more serious obligation

²⁶I. Žužek "Observations à M. le Prof. Sobanski," in *Les Droits Fondamentaux du Chrétien dans l'Église et dans la Société: Actes du IV Congrès International de Droit Canonique*, E. Corecco et al., eds., (Fribourg, Freiburg i. Br. and Milan: Editions Universitaires, Herder and Giuffrè, 1981) 742. Žužek stated: "On one hand, in fact, it is really a question concerning ecumenism but, on the other hand, one denies or questions the right these Churches have to exist, a right, however, which has priority among fundamental rights and which, for the individuals who are united to the Catholic Church, implies other essential rights, which point to the most sacred rights of people, for they constitute their most intimate 'me', that is, the right to preserve their own Christian identity in which they have lived and grown up since their tenderest years, beginning with the first prayer learned on their own mothers' laps." At a later conference (July, 1989) given to Italian canonists in view of the forthcoming promulgation of the new Eastern code, Žužek stated: "Certainly, just as all persons belong to a specific cultural area, so all baptized, from their family background, even from their mothers' laps, belong to a specific *ritus*, that is, they are formed within the framework of a specific 'patrimonium liturgicum, theologicum, spirituale et disciplinare.' Thus, each *Ecclesia sui iuris* is entirely pregated by its *ritus*, from its earliest roots to its most modern institutions." See: I. Žužek, "Presentazione del *Codex Canonum Ecclesiarum Orientalium*," *ME*, 115 (1990), 121.

²⁷AAS, 82 (1990), 1035.

²⁸The Latin text reads: "Speciatim est memorandum christifideles orientales ad suum cuiusque ritum servandum teneri, ubicumque terrarum inveni-

established in CCEO canon 193 §1 also implicitly applies to Latin bishops entrusted with the care of Eastern faithful. It is true that the pope further clarifies and elaborates upon the "solicitude" (CIC c. 383 §1) Latin bishops are to show to Eastern faithful entrusted to their care but he does not state that they are further bound *ex natura rei* by Eastern canon 193 §1 because of the interecclesial nature of the matter or because of an underlying fundamental right of the faithful. Among the articles of the *motu proprio*, addressed to the Latin Church, the Legislator does not qualify CIC canon 383 §§1-2 with CCEO canon 193 §1 nor does he add the unique Eastern norm to the Latin Code. Certainly, the Preamble intends to strengthen and characterize more precisely the solicitude Latin bishops are to have for Easterners entrusted to them but it does not impose on Latin bishops the grave obligation of providing everything so that these faithful are able to observe their own rite in all respects. In contrast, regarding the serious duty of care placed on Eastern bishops entrusted with faithful of another Church *sui iuris*, including the Latin Church, the parallel, but unique, CCEO canon 193 §1 clearly establishes that a bishop has the grave obligation of providing everything (*gravi obligatione tenentur omnia providendi*) so that these faithful observe their own rite in all its respects. It is clear that the *motu proprio* does not go this far.

Yet, from another standpoint, it could be argued that Pope Francis did consider a bishop's duty of care under both CCEO canon 193 §1 and CIC canon 383 §§1-2 to be the same and tied to a fundamental right of the faithful to cherish and observe their own rite as far as possible. After all, for years, canonists have argued, and it would seem with some success, that the Eastern and Latin Codes are interrelated especially in the area of interecclesial relations. Why should all bishops not be obliged towards faithful entrusted to them from another Church *sui iuris* by the same duty of care? By the nature of the matter, the stated obligation of a bishop in both Codes is certainly serious. The only difference is that CCEO canon 193 §1 requires a bishop to provide everything (*omnia providendi*) so that these faithful observe their own rite. It may just be that the Legislator assessed this obligation as too onerous and, while more precisely defining a bishop's solicitude under CIC canon 383 §§1-2, His Holiness came up with a formula which all bishops could follow in this matter. In the

antur, ac proinde auctoritatis ecclesiasticae competentis est maximopere curare ut congrua media apparentur quibus ipsi hanc suam obligationem implere queant." See http://w2.vatican.va/content/francesco/la/motu_proprio/documents/papa-francesco-motu-proprio_201605_de-concordia-inter-codices.html/, accessed in 2017.

Preamble to *De concordia inter Codices*, Pope Francis may well have intended to soften a bishop's obligation under CCEO canon 193 §1 to correspond with a more realizable objective so that faithful of another Church are provided appropriate means (*ut congrua media apparentur*) to retain and cherish their rite wherever they are in the world. That is the test by which the Legislator measures a bishop's duty of care and the *motu proprio* is later legislation to both Codes. However, the pope in no way expressly abrogates or derogates from these previous norms nor does he refer to any authentic interpretation or response to the 1999 question posed to the Pontifical Council for the Interpretation of Legislative Texts. Still, given these contrasting arguments and the doubts that remain, it would seem that a definitive answer to the 1999 question would undoubtedly contribute to the Legislator's continuing solicitude to achieve a greater harmonization of the Eastern and Latin Codes.

2.2. - Marriage before Only Witnesses (CCEO c. 832 §1; CIC c. 1116 §1)

In *De concordia inter Codices*, the Legislator does achieve a uniformity of the Codes in the new CIC canon 1108 §3 by establishing, in effect, that a Latin deacon cannot validly assist at a marriage between Eastern parties or between a Latin party and an Eastern party, whether Catholic or non-Catholic. However, in the light of this new norm and in view of longstanding Eastern traditions, the parallel CCEO canon 832 and CIC canon 1116, both of which permit a valid celebration of marriage before witness only, creates a certain disharmony.

It is true that, by adding §3 to CIC canon 1108, article 6 of *De concordia inter Codices* has resolved the doubt of law that existed for some time regarding whether or not a Latin deacon could validly assist at and bless a marriage between Eastern Catholics or between a Latin party and an Eastern party. CIC canon 1108 §3 states: "Only a priest assist validly at the marriage between two Easterners or between a Latin Catholic and an Eastern Catholic or non-Catholic." This addition is harmonious with CCEO canon 828 §1, which requires for validity that marriages be celebrated with a sacred rite, and CCEO canon 828 §2, which expressly states: "The very intervention of a priest who assists and blesses is regarded as a sacred rite for the present purpose." In affirming that a deacon cannot validly assist at the marriage of Easterners, Pope Francis has effectively recognized and highlighted the peculiarity of the sacred rite that has traditionally distinguished the celebration of Eastern marriages. However, as His Holiness states in the Preamble to the *motu proprio*, these peculiarities will sometimes make the Codes mutually independent. This is made clear

again in *CCEO* canon 835 regarding dispensation from canonical form. Unlike the parallel *CIC* canon 1127 §2, which allows a Latin local ordinary to dispense from canonical form in individual cases if serious difficulties pose an obstacle to its observance, *CCEO* canon 835 stipulates: "Dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the patriarch, who will not grant it except for the most grave cause." If the sacred rite is so essential to the canonical form of Eastern marriages and the Latin Code has been amended so as to be in harmony with it, one might ask why the parallel canons of the Codes regarding marriage before only witnesses are still in agreement.

With respect to the extraordinary form of marriage, *CCEO* canon 832 §1, like *CIC* canon 1116 §1, establishes:

If a priest who is competent in accord with the norm of law cannot be present or be approached without grave inconvenience, those who intend to celebrate a true marriage can validly and licitly celebrate it in the presence of witnesses only: 1° in danger of death; 2° apart from the danger of death, provided it is prudently foreseen that this state of affairs will continue for a month.

During the elaboration of Eastern canon 832 §1 within *PCCICOR*, four consultative bodies proposed that the norm be reformulated to require for validity the presence of a priest to assist at and bless the marriage in a sacred rite. The expert study group replied: "The proposal, while to a certain degree understandable within the framework of Eastern ideas regarding the celebration of marriage, is not - nor can it be - accepted by the study group because the canon is based on the *ius naturale*..."²⁹ Notwithstanding this right in natural law, the Church's positive law has constantly sought to preserve Eastern traditions and, more particularly, to safeguard the sacred rite of Eastern marriages. The new *CIC* canon 1108 §3 is yet another measure taken to protect the sacred rite by not allowing Latin deacons to assist at marriages involving Easterners. The importance of safeguarding the sacred rite was repeatedly stressed by the expert study groups within *PCCICOR* as well as the members of *PCCICOR*, including the heads of the Eastern Catholic Churches. A review of the legislative history of *CCEO* canon 835 is illustrative of this point.

²⁹*Nuntia*, 15 (1982), 84 (c. 168 §1).

Within *PCCICOR*, the *Coetus de matrimonio* proposed a first formulation of Eastern canon 835.³⁰ It then appeared as canon 169 §3 of the 1980 Schema.³¹ During the *denua recognitio* of the 1980 Schema, six consultative bodies proposed that Eastern local hierarchs have the same faculties as Latin local ordinaries with respect to canonical form. The study group responded to the proposal as follows:

It is not accepted because it is contrary to the Eastern conception of *ritus sacer* in the celebration of marriage, so beneficial also in the modern world in which it is necessary to highlight the sacredness of matrimonial consent, while in certain particular cases it is possible to provide here by way of special faculties granted to *bishops*.³²

Before the publication of the 1986 *SCICO*, the norm was reformulated and the dispensation from form, not just *ritus sacer*, was reserved to the Holy See or the patriarch. *SCICO* canon 829 stated: "Dispensation from the form required by law is reserved to the Apostolic See or the patriarch, who will not grant it except for a most grave reason."³³ Regarding the observations made to the 1986 *SCICO*, three members of *PCCICOR* proposed that the faculty to dispense from canonical form should be accorded to the Eastern bishops, like the Latin bishops, in the case of mixed marriages. The special study group responded: "The faculty to dispense from the *ritus sacer* must remain reserved, in the common Code, to the Holy See in order to safeguard this institution so characteristic of the East."³⁴

At the second Plenary Assembly of *PCCICOR* (November 3-14, 1988), a motion was again presented by five members to extend the same faculty of dispensing from form to Eastern as well as Latin bishops. It was argued that, when *CIC* canon 1127 §2 was compared with *SCICO* canon 829, "one could not help but note a certain *deminutio capitis* of the Eastern bishops in relation to the Latin bishops."³⁵ At the same time, another motion was made to amend the canon to also allow a metropolitan presiding over a

³⁰*Nuntia*, 8 (1979), 26-27 (c. 57).

³¹*Nuntia*, 10 (1980), 52 (c. 169 §3). Canon 169 §3 stated: "Except for the right of local hierarchs to dispense, for a grave reason, from other elements of canonical form in the celebration of marriage, the dispensation from the sacred rite required in the canons is reserved to the Apostolic See or the patriarch who can grant it only for a grave reason."

³²*Nuntia*, 15 (1982), 85-86 (c. 169 §3).

³³*Nuntia*, 24-25 (1987), 150 (c. 829).

³⁴*Nuntia*, 28 (1989), 116-117 (c. 829).

³⁵*Nuntia*, 29 (1989), 62.

metropolitan Church *sui iuris* to dispense from canonical form. On a vote taken of the twenty-seven members whether or not to approve *SCICO* canon 829, as it was formulated, eighteen (2/3) were in favor and nine (1/3) against. Accordingly, both motions failed and *SCICO* canon 829, with one minor redactional change,³⁶ was subsequently promulgated as *CCEO* canon 835.

Give these things, it now seems appropriate to take up again the proposal made by the four consultative bodies during the *denua recognitio* of the draft *CCEO* canon 832 §1 regarding the extraordinary form of marriage to require for validity the presence of a priest to assist at and bless the marriage in a sacred rite. Consistent with this recognition and the protection of the sacred rite of marriage in Eastern tradition, it would seem that *CCEO* canon 832 §1 should be reformulated to distinguish itself from *CIC* canon 1116 §1 by requiring the presence of a priest for validity.

2.3. - Marriage Based upon Conditions (*CCEO* c. 826; *CIC* c. 1102)

While the former Latin legislation (1917 *CIC* c. 1092) allowed the valid celebration of marriage based on past, present or future conditions, *CIC* canon 1102 now prohibits the placing of future conditions. It states:

§1. Marriage based on a condition concerning the future cannot be contracted validly.

§2. Marriage based on a condition concerning the past or the present is valid or invalid, insofar as the subject matter of the condition exists or not.

§3. The condition mentioned in §2 cannot be placed licitly without the written permission of the local ordinary.

The previous Eastern norm [*Crebrae allatae* (*CA*) c. 83] simply stated: "Marriage cannot (*nequit*) be contracted under condition." At its 1977-1978 meetings,³⁷ the *Coetus de matrimonio* considered whether to reintroduce *CA* canon 83 into the Eastern schema. Although the canon seemed to reflect the ancient Eastern tradition forbidding the placing of conditions on a marriage, the *Coetus* was aware that Roman Rotal jurisprudence had interpreted *nequit* as prohibitive and not invalidating. If *CA* canon 83 remained the same, it might not be seen as invalidating marriages based on a condition. If the canon were changed, it had to be redrafted so as to preserve the eighteen-century-old Eastern tradition in this matter.

³⁶*Nuntia*, 27 (1988), 58 (c. 829). In the canon, "celebration of the marriage" was added after the word "form."

³⁷For a full report of these meetings, see: *Nuntia*, 6 (1978), 34-41.

However, the issue remained unresolved until a norm was proposed for the 1980 Schema. In this regard, the *Coetus* formulated canon 161 of the 1980 Schema to state: "Marriage cannot (*nequit*) be entered into under condition; *if a condition is nonetheless placed, it is considered not to have been made, with due regard for c. 159 §2 (CCEO c. 824 §2).*"³⁸ The *Praenotanda* to the 1980 Schema explained the addition of the clause (in italics) to CA canon 83 as follows: "This was done only after much consideration and study. Matrimonial consent is, in no way, supplied by this clause, but the very act of just impugning marriage on the ground of a placed condition remains entirely precluded."³⁹

During the *denua recognitio* of the 1980 Schema, seven consultative bodies disapproved of canon 161 either because *nequit* remained unclear or because the added clause was unsatisfactory. However, the study group was not inclined to change the canon for the time being. Reference was specifically made to the forthcoming promulgation of the parallel Latin norm (*CIC* c. 1102), which stated in §1: "Marriage based on a condition concerning the future cannot be validly (*valide*) contracted." The study group felt that, if the Legislator replaced *nequit* with *valide*, this would resolve the interpretative problem in the previous Eastern norm. At the same time, that simple change in the norm would most clearly reflect the ancient tradition of the East that could not conceive of marriages subject to conditions.⁴⁰

When *CIC* canon 1102 was, in fact, promulgated, *PCCICOR* followed suit by reintroducing CA canon 83, but replacing *nequit* with *valide* in the wording. In place of canon 161 of the 1980 Schema, then, *SCICO* canon 821 clearly provided: "Marriage based on a condition cannot be validly celebrated."⁴¹ No further observations or amendments were made to *SCICO* canon 821, which became *CCEO* canon 826.

In the matter of marriages based on a condition, the difference between the Eastern and Latin traditions is evident. In marriages between Eastern Catholics, the parties cannot condition their individual consent to the celebration of the sacrament. Otherwise, the marriage celebration is invalid. According to the new Latin norm, a marriage based on a future condition is also invalid. However, the Latin discipline allows the placing of past or present conditions and the marriage will be valid or invalid,

³⁸*Nuntia*, 10 (1980), 50 (c. 161).

³⁹*Nuntia*, 10 (1980), 14.

⁴⁰*Nuntia*, 15 (1982), 79-80 (c. 161).

⁴¹*Nuntia*, 24-25 (1987), 148 (c. 821).

insofar as the subject matter of the condition exists or not. For example, in a marriage between Latin Catholics, the following condition can be placed: "I will marry you if you do not have AIDS." If it turns out that the other party had AIDS at the time of the marriage celebration, the marriage will be invalid.

A problem presents itself in an interritual marriage. Can the same condition be placed by a Latin Catholic who marries an Eastern Catholic? In an eventual annulment decision, which law is the tribunal judge to apply? Joseph Prader wrote that each party's consent is regulated by his/her proper marriage law. Since the Latin norms allow a present condition to be placed, the Latin Catholic can do so and the judge would be guided by *CIC* canon 1102 §2, not *CCEO* canon 826, in coming to a decision.⁴² Responding to the same case, Salachas maintains that the judicial sentence "must apply by analogy, and with greater reason, the principle governing impediments" (*CCEO* c. 790 §2).⁴³ If the Eastern party cannot condition the matrimonial consent (*CCEO* c. 826), the Latin party should be subject to the same rule. Salachas states: "Matrimonial consent is an act of the will by which a man and a woman constitute marriage; it is a unitary act..."⁴⁴

However, the issue raised by the difference between *CCEO* canon 826 and *CIC* canon 1102 does not concern impediments but, rather, it deals with conditions that vitiate consent. Therefore, *CCEO* canon 790 §2 would not be applicable here. Nor would it seem that the *CCEO* canon 826 could be applied to the Latin party by analogy. A tribunal judge could only have recourse to analogy where, unlike the case of *CIC* canon 1102, there were Latin norms lacking with respect to conditions attached to matrimonial consent (*CIC* c. 19; *CCEO* c. 1501). While it is true, for example, that the unitary act of the marriage celebration necessarily follows one rule respecting canonical form, marriage consent is given by the two parties to the marriage and is regulated by each party's respective legislation.⁴⁵ Therefore, there would seem to be no doubt that the tribunal judge, in our

⁴²J. Prader, *La legislazione matrimoniale latina e orientale: Problemi interecclesiali, interconfessionali e interreligiosi*, Rome: Edizioni Dehoniane, 1993, 44.

⁴³*CCEO* c. 790 §2 states: "An impediment, even if only one of the parties has it, still renders the marriage invalid."

⁴⁴D. Salachas, *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese Orientali*, Rome/Bologna: Edizioni Dehoniane, 1994, 177.

⁴⁵See also: Joseph Prader, "Il consenso matrimoniale condizionato," in *Il matrimonio nel Codice dei canoni delle Chiese orientali [Studi giuridici XXXII]* (Vatican City: Libreria Editrice Vaticana) 1994, 281.

example case, would apply *CIC* canon 1102 in coming to a decision. Furthermore, in the example given, suppose the Eastern Catholic does not have AIDS and the marriage is valid, but the couple, five years later, is tired of each other and the sacrifices involved in marriage. The couple's friend, who has been studying Eastern canon law, states that the marriage may well have been invalid since no condition at all should have been placed in accord with *CCEO* canon 826. If the couple were to petition for an annulment on this ground, would it not amount to an outright subversion of the rules and principles established by the Church for the right administration of justice?

Despite these things, including the odious example just given, some might argue that, for years since the promulgation of the Eastern Code, we have been arguing that the two Codes are interrelated and, in fact, are two integral parts of the one body of canon law of the Catholic Church. This is especially true in the context of the interecclesial celebration of the sacraments such as marriage. If we are really to consider both Codes together in the case where the Latin party to a marriage places a present condition and the language of *CCEO* canon 826 is so clear as to preclude the celebration of a marriage under a condition, can the parties be said to be marrying validly? Although these questions and the ongoing debate surrounding them need definitive answers, *De concordia inter Codices* does not address the differences between *CCEO* canon 826 and *CIC* canon 1002. In their continuing solicitude for harmonizing the two Codes, particularly in the context of interecclesial relations, the Legislator or the Pontifical Council for Legislative Texts will undoubtedly be called upon to reconcile these differences by providing greater clarity on the subject of a celebrated marriage based upon a condition.

Conclusion

In his apostolic letter, *De concordia inter Codices*, Pope Francis expressed his constant solicitude for a concordance between the two Codes of the Catholic Church. By way of the letter's Preamble and eleven articles, His Holiness made changes to a number of Latin norms thereby achieving a greater harmony between the Latin and Eastern Codes. Despite the pope's concern for an appropriate degree of harmony between the Codes, he also acknowledged that the Codes have their own peculiarities which make them mutually independent. As a result, while *De concordia inter Codices* harmonized a number of parallel norms of the Codes, others remain disharmonious oftentimes because of different traditions upon which the two separate and distinct Codes of the universal Church are based.

With specific reference to the articles of *De concordia inter Codices*, part 1 of this paper endeavoured to examine the harmony achieved between parallel norms of the Latin and Eastern Codes. Then, part 2 considered several unresolved questions raised as a result of the publication of the *motu proprio*. These issues remain and represent a certain disharmony between the two Codes of the Church. In the ongoing work of canonical science to reconcile disharmonious areas of the Codes especially regarding interecclesial relations, the guidance of the Legislator and the Pontifical Council for Legislative Texts will prove to be essential.

Appendix

APOSTOLIC LETTER
GIVEN *MOTU PROPRIO*
OF THE SUPREME PONTIFF

FRANCIS

De concordia inter Codices

BY WHICH SOME NORMS OF THE CODE OF CANON LAW ARE
CHANGED

[THE PREAMBLE]

Because of Our constant solicitude for a concordance between the Codes, We came to observe some points of difference between the norms of the Code of Canon Law and the Code of Canons of the Eastern Churches.

On one hand, the Codes have common norms and, on the other hand, their own peculiarities which make them mutually independent. However, it is necessary that, even in these specific norms, there be an appropriate degree of harmony. Indeed, these discrepancies, if and to the extent they are present, have a negative effect on pastoral practice, especially in cases in which relations between subjects belonging respectively to the Latin Church and an Eastern Church are governed.

This happens particularly these days, to be sure, when the migration of peoples results in many Eastern Christian faithful living in Latin territories. This new situation creates multiple pastoral and juridical questions which need to be resolved with appropriate norms. It needs to be remembered that Eastern faithful are bound to observe their own rite

wherever they are (cfr. CCEO can. 40 §3; Vat. II Ecum. Conc. Decr. *Orientalium Ecclesiarum*, 6) and, as a result, the competent ecclesiastical authority is to see to it most earnestly that appropriate means are provided them to be able to fulfill this obligation (cfr CCEO can. 193 §1; CIC can. 383 §§1-2; Postsyn. Ap. Exhort. *Pastores gregis*, 72). Harmonizing the norms is certainly one of the means that will help to foster the growth of the venerable Eastern rites (cfr CCEO can. 39), allowing the Churches *sui iuris* to exercise pastoral care in a more effective way.

However, it is necessary to keep in mind the need to recognize the disciplinary peculiarities of the regional context in which these inter-ecclesial relations take place. In the West, which for the greater part is Latin, we must find a just equilibrium between safeguarding the proper law of the Eastern minority and respect for the historical canonical tradition of the Latin majority, so as to avoid any undue clashes and conflicts and to promote fruitful collaboration among all the Catholic communities present in a given territory.

Another reason for integrating the norms of CIC with explicit dispositions parallel to those found in CCEO is the need of better defining relations with the faithful belonging to non-Catholic Eastern Churches, who are now present in increasing numbers in Latin territories.

It is also to be noted that canonists' commentaries have pointed to discrepancies to be found between both Codes and almost unanimously indicate the particular issues and how to render them harmonious.

Therefore, the purpose of the norms introduced by this *Motu Proprio* is that of arriving at a concordant discipline that offers certainty in the exercise of pastoral care in individual cases.

The Pontifical Council for Legislative Texts, by way of a Commission of experts in Eastern and Latin canon law, has identified the issues mainly in need of legislative adjustment, by elaborating a text sent to approximately thirty Consultors and experts around the world, as well as to the authorities of Latin Ordinariates for Easterners. After having considered the observations received, the Plenary Session of the Pontifical Council for Legislative Texts has approved a new text.

All this considered, We now dispose the following:

Art. 1. The following text entirely takes the place of can. 111 of the Code of Canon Law, in which a new paragraph is added and some expressions are changed:

<p>§ 1. Ecclesiae latinae per receptum baptismum adscribitur filius parentum, qui ad eam pertinent vel, si alteruter ad eam non pertineat, ambo concordi voluntate optaverint ut proles in Ecclesia latina baptizaretur; quodsi concors voluntas desit, Ecclesiae sui iuris ad quam pater pertinent adscribitur.</p> <p>§2 <i>Si vero unus tantum ex parentibus sit catholicus, Ecclesiae ad quam hic parens catholicus pertinet adscribitur.</i></p> <p>§3 <i>Quilibet baptizandus qui quartum decimum aetatis annum expleverit, libere potest eligere ut in Ecclesia latina vel in alia Ecclesia sui iuris baptizetur; quo in casu, ipse ad eam Ecclesiam pertinet quam elegerit.</i></p>	<p>§1. Through the reception of baptism, the child of parents who belong to the Latin Church is enrolled in it, or, if one or the other does not belong to it, both parents have by mutual agreement chosen to have their offspring baptized in the Latin Church. If there is no mutual agreement, the child is enrolled in the Church <i>sui iuris</i> to which the father belongs.</p> <p>§2. But if only one of the parents is Catholic, the child is enrolled in the Church to which the Catholic parent belongs.</p> <p>§3. Anyone to be baptized who has completed the fourteenth year of age can freely choose to be baptised in the Latin Church or in another Church <i>sui iuris</i>; in that case, the person belongs to the Church which he or she has chosen.</p>
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Art. 2. The following text entirely takes the place of can. 112, in which a new paragraph is added and some expressions are changed.

<p>§1. <i>Post receptum baptismum, alii Ecclesiae sui iuris ascribuntur:</i></p> <p>1° <i>qui licentiam ab Apostolica Sede obtinuerit;</i></p> <p>2° <i>coniux qui, in matrimonio ineundo vel eo durante, ad</i></p>	<p>§1. After the reception of baptism, the following are enrolled in another Church <i>sui iuris</i>:</p> <p>1° a person who has obtained permission from the Apostolic See;</p> <p>2° a spouse who, at the time of or during marriage, has declared that</p>
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<p><i>Ecclesiam sui iuris alterius coniugis se transire declaraverit; matrimonio autem soluto, libere potest ad latinam Ecclesiam redire;</i></p> <p><i>3° filii eorum, de quibus in nn. 1 et 2, ante decimum quartum aetatis annum completum itemque, in matrimonio mixto, filii partis catholicae quae ad aliam Ecclesiam sui iuris legitime transierit; adepti vero hac aetate, iidem possunt ad latinam Ecclesiam redire.</i></p> <p><i>§2. Mos, quamvis diuturnus, sacramenta secundum ritum alius Ecclesiae sui iuris recipiendi, non secumfert adscriptionem eidem Ecclesiae.</i></p> <p><i>§3. Omnis transitus ad aliam Ecclesiam sui iuris vim habet a momento declarationis factae coram eiusdem Ecclesiae Ordinario loci vel parochi proprio aut sacerdote ab alterutro delegato et duobus testibus, nisi rescriptum Sedis Apostolicae aliud ferat; et in libro baptizatorum adnotetur.</i></p>	<p>he or she is transferring to the Church <i>sui iuris</i> of the other spouse; when the marriage has ended, however, the person can freely return to the Latin Church</p> <p>3° before the completion of the fourteenth year of age, the children of those mentioned in nn. 1 and 2 as well as, in a mixed marriage, the children of the Catholic party who has legitimately transferred to another Church <i>sui iuris</i>; on completion of their fourteenth year, however, they can return to the Latin Church.</p> <p>§2. The practice, however prolonged, of receiving the sacraments according to the rite of another Church <i>sui iuris</i> does not entail enrolment in that Church.</p> <p>§3. Every transfer to another Church <i>sui iuris</i> takes effect at the moment a declaration is made before a local ordinary of the same Church or the proper pastor or a priest delegated by either of them and two witnesses, unless the rescript of the Apostolic See provides otherwise; this is to be noted in the baptismal register.</p>
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Art. 3. The following text entirely takes the place of can. 535 #2 of the code of Canon Law:

<p>§ 2. <i>In libro baptizatorum adnotentur quoque adscriptio Ecclesiae sui iuris vel ad aliam transitus, necnon confirmatio, item quae pertinent ad statum canonicum christifidelium, ratione matrimonii, salvo quidem praescripto can. 1133, ratione adoptionis, ratione suscepti ordinis sacri, necnon professionis perpetuae in instituto religioso emissae; eaeque adnotationes in documento accepti baptismi semper referantur.</i></p>	<p>§2. In the baptismal register are also to be noted enrollment in a Church <i>sui iuris</i> or transfer to another Church, confirmation, and those things which pertain to the canonical status of the Christian faithful by reason of marriage, without prejudice to the prescript of canon 1133, of adoption, of reception of sacred orders, and of perpetual profession made in a religious institute. These notations are always to be noted on a baptismal certificate.</p>
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Art. 4. The following text entirely takes the place of can. 868 §1. 2° of the Code of Canon Law:

<p>§1. 2° <i>spes habeatur fundata eum in religione catholica educatum iri, firma § 3; quae si prorsus deficiat, baptismus secundum praescripta iuris particularis differatur, monitis de ratione parentibus.</i></p>	<p>§1. 2° there must be a founded hope that the infant will be brought up in the Catholic religion, without prejudice to §3; if such hope is altogether lacking, the baptism is to be delayed according to the prescripts of particular law after the parents have been advised about the reason.</p>
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Art. 5. Can. 868 of the Code of Canon Law will have a third paragraph as follows:

<p>§3. <i>Infans christianorum non catholicorum licite baptizatur, si parentes aut unus saltem eorum aut is, qui legitime eorundem locum tenet, id petunt et si eis corporaliter aut moraliter impossibile sit</i></p>	<p>§3. Infants of non-Catholic Christians are licitly baptised if their parents or at least one of them or the person who legitimately takes their place request it and if it is physically or</p>
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<i>accedere ad ministrum proprium.</i>	morally impossible for them to approach their own minister.
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Art. 6. *Can. 1108 of the Code of Canon Law will have a third paragraph as follows:*

<i>§3. Solus sacerdos valide assistit matrimonio inter partes orientales vel inter partem latinam et partem orientalem sive catholicam sive non catholicam.</i>	§3. Only a priest validly assists at a marriage between Eastern parties, or between a Latin party and an Eastern party, whether Catholic or non-Catholic.
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Art. 7. *The following text entirely takes the place of can. 1109 of the Code of Canon Law:*

<i>Loci Ordinarius et parochus, nisi per sententiam vel per decretum fuerint excommunicati vel interdicti vel suspensi ab officio aut tales declarati, vi officii, intra fines sui territorii, valide matrimoniis assistunt non tantum subditorum, sed etiam, dummodo alterutra saltem pars sit adscripta Ecclesiae latinae, non subditorum.</i>	Unless the local ordinary and pastor have been excommunicated, interdicted, or suspended from office or declared such through a sentence or decree, by virtue of their office and within the confines of their territory they assist validly at the marriages not only of their subjects but also, provided that at least one of them is enrolled in the Latin Church, of those who are not their subjects.
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Art. 8. *The following text entirely takes the place of can. 1111 §1 of the Code of Canon Law:*

<i>§ 1. Loci Ordinarius et parochus, quamdiu valide officio funguntur, possunt facultatem intra fines sui territorii matrimoniis assistendi, etiam generalem, sacerdotibus et diaconis delegare, firmo tamen eo quod praescribit can. 1108 § 3.</i>	§1. As long as they hold office validly, the local ordinary and the pastor can delegate to priests and deacons the faculty, even a general one, of assisting at marriages within the limits of their territory, without prejudice to the prescript of can. 1108 §3.
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Art. 9. *The following text entirely takes the place of can. 1112 §1 of the Code of Canon Law:*

<p>§1. <i>Ubi desunt sacerdotes et diaconi, potest Episcopus dioecesanus, praevio voto favorabili Episcoporum conferentiae et obtenta licentia Sanctae Sedis, delegare laicos, qui matrimoniis assistant, firmo praescripto can. 1108 § 3.</i></p>	<p>§1. Where there is a lack of priests and deacons, the diocesan bishop can delegate lay persons to assist at marriages, with the previous favourable vote of the conference of bishops and after he has obtained the permission of the Holy See, without prejudice to the prescript of can. 1108 §3.</p>
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Art. 10. *Can. 1116 of the Code of Canon Law will have a third paragraph as follows:*

<p>§3. <i>In iisdem rerum adiunctis, de quibus in §1, nn. 1 et 2, Ordinarius loci cuilibet sacerdoti catholico facultatem conferre potest matrimonium benedicendi christifidelium Ecclesiarum orientalium quae plenam cum Ecclesia catholica communionem non habeant si sponte id petant, et dummodo nihil valida vel licitae celebrationi matrimonii obstet. Idem sacerdos, semper necessaria cum prudentia, auctoritatem competentem Ecclesiae non catholicae, cuius interest, de re certiore faciat.</i></p>	<p>§3. In the circumstances mentioned in §1, nn. 1 and 2, the local ordinary can confer on any Catholic priest the faculty of blessing the marriage of the Christian faithful of Eastern Churches which do not have full communion with the Catholic Church, if they spontaneously seek it, and provided that nothing prevents the valid and licit celebration of the marriage. This priest, always with the necessary prudence, is to inform the competent authority of the non-Catholic Church concerned.</p>
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Art. 11. *The following text entirely takes the place of can. 1127 §1 of the Code of Canon Law:*

<p>§1. <i>Ad formam quod attinet in matrimonio mixto adhibendam, serventur praescripta can. 1108; si tamen pars catholica matrimonium</i></p>	<p>§1. The prescripts of can. 1108 are to be observed for the form to be used in a mixed marriage. Nevertheless, if a Catholic party</p>
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<p><i>contrahit cum parte non catholica ritus orientalis, forma canonica celebrationis servanda est ad liceitatem tantum; ad validitatem autem requiritur interventus sacerdotis, servatis aliis de iure servandis.</i></p>	<p>contracts marriage with a non-Catholic party of an Eastern rite, the canonical form of the celebration must be observed for liceity only; for validity, however, the presence of a priest is required and the other requirements of the law are to be observed.</p>
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