



Training of lawyers on EU Civil Law (TRADICIL)

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**Jurisdiction, recognition and enforcement of decisions in
matrimonial matters and matters of parental responsibility.**

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PRESENTATION SUMMARY

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility

I. Conflict of jurisdiction

- I. Breakdown of the marital bond
- II. Parental authority
- III. Lis pendens

II. Acknowledgment and enforcement:

- I. Divorce pronounced in a member state.
- II. Divorce pronounced in a third country

Key steps in private international law

1. Resolution of the conflict of jurisdictions

Which judge has jurisdiction?

2. Resolution of the conflict of law

Which law applies?

3. Application of the designated law

4. Circulation of courts decisions

How is the decision acknowledged and enforced in France or abroad?

SITUATIONS	JURISDICTION	APPLICABLE LAW
Breakdown of the marital bond	<ul style="list-style-type: none"> - Regulation Brussels II b - Article 1070 Code of Civil Procedure - Article 14 and 15 Civil Code 	Rome III
Parental responsibility	<ul style="list-style-type: none"> - Regulation Brussels II b - The Hague Convention 1996 - Article 1070 Code of Civil Procedure - Article 14 and 15 Civil Code 	<ul style="list-style-type: none"> -Hague Convention 1996 -Hague Convention 1980 on the civil aspects of child abduction (if applicable)
Maintenance obligations	Regulation of Maintenance Obligations	Regulation of Maintenance Obligations
Matrimonial property regimes	Regulation of Matrimonial Property	Regulation of Matrimonial Property
Registered partnerships	Regulation of Registered Partnerships	Regulation of Registered Partnerships

I. CONFLICT OF JURISDICTION

PART I - JURISDICTION : BREAKDOWN OF THE MARITAL BOND

Key points on jurisdiction under Brussels II b

- **7 alternative grounds** of jurisdiction-
without a ranking.
- Criticisms of these grounds
 - Does not prevent forum shopping.
 - Does not prevent the race to seize the court.
 - Does not allow connection to be made by a choice of court clause.

Article 3: General jurisdiction

In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:

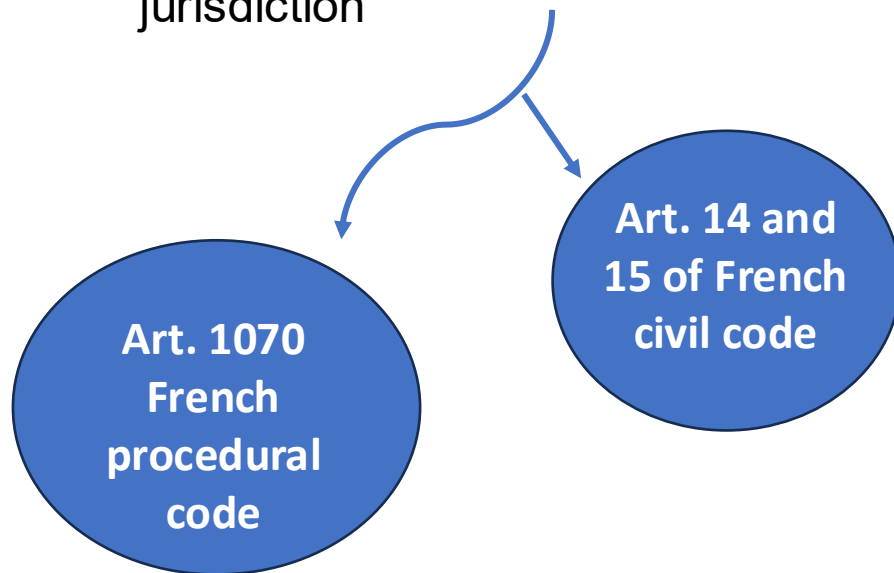
(a) in whose territory:

- i) the spouses are habitually resident, or
 - ii) the spouses were last habitually resident, insofar as one of them still resides there, or
 - iii) the respondent is habitually resident, or
 - iv) in the event of a joint application, either of the spouses is habitually resident, or
 - v) the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
 - vii) the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;
- (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.

PART I - JURISDICTION : BREAKDOWN OF THE MARITAL BOND

Residual jurisdiction

- Where no specific jurisdiction exists in Europe
- Reference to national rules of jurisdiction



Article 6: Residual jurisdiction

1. Subject to paragraph 2, where no court of a Member State has jurisdiction pursuant to Article 3, 4 or 5, jurisdiction shall be determined, in each Member State, by the laws of that State.
2. A spouse who is habitually resident in the territory of a Member State; or a national of a Member State, may be sued in another Member State only in accordance with Articles 3, 4 and 5.
3. As against a respondent who is not habitually resident in and is not a national of a Member State, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

PART I - JURISDICTION : BREAKDOWN OF THE MARITAL BOND

Article 1070 of the Code of Civil Procedure

The territorially competent family court judge is:

- the judge of the place where the family resides;
- if the parents live separately, the judge of the place of residence of the parent with whom the minor children usually reside in the case of joint parental authority, or of the place of residence of the parent who exercises sole parental authority; in other cases, the judge of the place where the party who did not initiate the proceedings resides.

In the case of a joint application, the competent judge is, at the parties' discretion, the judge of the place where either party resides.

However, when the dispute concerns only child support, child support, spousal support, or compensatory allowance, the competent judge may be the judge of the place where the creditor spouse or the parent who primarily cares for the children, even if they are adults, resides.

Territorial jurisdiction is determined by residence on the date of the application.

Article 1070 du Code de Procédure Civile

Le juge aux affaires familiales territorialement compétent est :

- le juge du lieu où se trouve la résidence de la famille ;
- si les parents vivent séparément, le juge du lieu de résidence du parent avec lequel résident habituellement les enfants mineurs en cas d'exercice en commun de l'autorité parentale, ou du lieu de résidence du parent qui exerce seul cette autorité
- dans les autres cas, le juge du lieu où réside celui qui n'a pas pris l'initiative de la procédure.

En cas de demande conjointe, le juge compétent est, selon le choix des parties, celui du lieu où réside l'une ou l'autre.

Toutefois, lorsque le litige porte seulement sur la pension alimentaire, la contribution à l'entretien et l'éducation de l'enfant, la contribution aux charges du mariage ou la prestation compensatoire, le juge compétent peut être celui du lieu où réside l'époux créancier ou le parent qui assume à titre principal la charge des enfants, même majeurs.

La compétence territoriale est déterminée par la résidence au jour de la demande.

PART I - JURISDICTION : BREAKDOWN OF THE MARITAL BOND

Article 14 of the Civil Code

A foreigner, even if not residing in France, may be summoned before French courts for the execution of obligations contracted by him in France with a Frenchman; he may be brought before the courts of France for obligations contracted by him in a foreign country towards Frenchmen.

Article 15 of the Civil Code

A French citizen can be brought before a French court for obligations he has contracted in a foreign country, even with a foreigner.

Article 14 du Code Civil

L'étranger, même non résidant en France, pourra être cité devant les tribunaux français, pour l'exécution des obligations par lui contractées en France avec un Français ; il pourra être traduit devant les tribunaux de France, pour les obligations par lui contractées en pays étranger envers des Français.

Article 15 du Code Civil

Un Français pourra être traduit devant un tribunal de France, pour des obligations par lui contractées en pays étranger, même avec un étranger.

PART I - JURISDICTION : BREAKDOWN OF THE MARITAL BOND

Notion of habitual residence

- Essential notion in family private international law
- Difficult notion to define
- Autonomous notion
- Case law notion
- Factual notion

Court de Cassation, 1st Civil, 14th December 2005- n°05-10951:

” But given that habitual residence, **an autonomous concept** of community law, is defined as the place where the person concerned has established, with the intention of giving it a stable character, the permanent or habitual centre of his interests; and that the judgment, after noting that the jurisdiction of the French courts could only be based on the habitual residence of the defendant, applied this definition.”

CJUE, 3^{ème} Chambre, 25 november 2021, C-289/20, IB c : FA:

“The notion of habitual residence is characterised by two elements, on one hand the willingness of the interested party to fix the habitual centre of their interests in a specific place and on the other hand a presence indicating a sufficient degree of stability on the territory of the Member State discussed.”



UNIQUE NOTION

PART I - JURISDICTION : PARENTAL AUTHORITY

Grounds of jurisdiction, upheld by Brussels II b:

- General jurisdiction of the judge based on the habitual residence of the child
 - **Article 7: General Jurisdiction**
- Jurisdiction of substitution in cases where it is not possible to determine habitual residence, based on sole presence of the child.
 - **Article 11: Jurisdiction based on the presence of the child.**
- Rules of jurisdiction in emergency cases.
 - **Articles 15: Provisional and precautionary measures in emergency cases.**
- Residual recourse to national rules when no judge in a any member state has jurisdiction.
 - **Article 14: residual jurisdiction.**

PART I - JURISDICTION : PARENTAL AUTHORITY

New grounds of jurisdiction put in place by Brussels II b :

- Propagation of jurisdiction for incidental questions -> **Article 16 : incidental questions**

BUT remains limited and vague for interpretation

A widening of the propagation of voluntary jurisdiction -> **Article 10: Choice of Jurisdiction**

- Conditions of substance and form to fulfill
- Authorization of conventions and choice of jurisdiction.
- Autonomous existence of these conventions.

PART I - JURISDICTION : LIS PENDENS

Triple identity:

1. Same cause
2. Same objective
3. Same parties

Lis pendens: Definition

The circumstance that occurs when two jurisdictions were seized in the same dispute whilst both being equally competent to deal with the case.

PART I - JURISDICTION : LIS PENDENS

European:

Two Member States jurisdictions

Article 20 paragraph 3 of Regulation Brussels II b: Lis pendens and dependent actions.

Method of implementation:

- Jurisdiction seized second, delays adjudication.
- Jurisdiction seized first, establishes its jurisdiction.

International:

The regulations in family law only regulate lis pendens with EU States.

Exception: A third party state - signatory to the Hague Convention 1996 (thus concerning parental responsibility).

Article 97- Relationship with the Hague Convention 1996

Method of implementation by the judge:

- Search for a conventional rule
- Otherwise the application of a national rule.

Article 100 – French Procedural Code

PART I - JURISDICTION : LIS PENDENS

Date the jurisdiction is seized?

- Autonomous definition of the seizure of the jurisdiction= **Article 17 - Seizing a jurisdiction**

According to the Regulation- a jurisdiction is seized in the following circumstances:

- The date of filing of the document instituting proceedings.

OR

- The date at which the authority in charge receives the document.

PART I - JURISDICTION : LIS PENDENS

Steps in the new divorce proceedings

1. Date at which the petition is filed with the registry



2. Date of transmission/reception of the petition to the bailiff

3. Date of transmission of the petition by the bailiff.

4. Date of the placement of the act of transmission with the clerk of the family judge.



5. Date of reception of the petition by the central foreign authority.

6. Date of effective transmission by the foreign central authority.

7 . Date the petition is filed with the court

Persistent
uncertainties

II. ACKNOWLEDGMENT AND ENFORCEMENT OF A DECISION

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

System reinforced by Brussels II b (see art. 30, 31 and 65)

- Based on the principle of mutuel trust.
- Principle: “reconnaissance de plein droit”.
- Prior certificate for a legal decision or an extrajudicial title.
 - Copy of title to establish authenticity.
 - Certificate delivered by the entity designated by the original member state (multilingual form, numbered, annexed to the Regulation ‘European judicial passport’).
- Concerning parental responsibility, there is no specific condition.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Motives for non-acknowledgment

- **Enumeration**
 - Contrary to public order.
 - Lack of respect of the rights of defense
 - Irreconcilability with another decision.
- The limited nature of the reasons for refusal

Article 30 : Recognition of a decision

Recognition of a decision given in matters of divorce, legal separation, or annulment of marriage shall be refused:

- a) if recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
- b) if the document instituting proceedings or an equivalent document has not been served on the defaulting defendant in sufficient time and in such a manner as to enable them to prepare their defence, unless it is established that the defendant has unequivocally accepted the decision; if the decision is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought; or
- c) if the decision is irreconcilable with a decision given previously in another Member State or in a third country in proceedings between the same parties, provided that the earlier decision meets the conditions necessary for its recognition in the Member State in which recognition is sought.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Article 35: Documents to be produced for enforcement

1. For the purposes of enforcement in a Member State of a decision given in another Member State, the party seeking enforcement shall provide the authority competent for enforcement with:
 - (a) a copy of the decision, which satisfies the conditions necessary to establish its authenticity; and
 - (b) the appropriate certificate issued pursuant to Article 36.
2. For the purposes of enforcement in a Member State of a decision given in another Member State ordering a provisional, including a protective, measure, the party seeking enforcement shall provide the authority competent for enforcement with:
 - (a) a copy of the decision, which satisfies the conditions necessary to establish its authenticity;
 - (b) the appropriate certificate issued pursuant to Article 36, certifying that the decision is enforceable in the Member State of origin and that the court of origin:
 - (i) has jurisdiction as to the substance of the matter; or
 - (ii) has ordered the measure in accordance with Article 27(5) in conjunction with Article 15; and
 - (c) where the measure was ordered without the respondent being summoned to appear, proof of service of the decision
3. The authority competent for enforcement may, where necessary, require the party seeking enforcement to provide a translation or transliteration, in accordance with Article 91, of the translatable content of the free text fields of the certificate which specifies the obligation to be enforced.
4. The authority competent for enforcement may require the party seeking enforcement to provide a translation or transliteration, in accordance with Article 91, of the decision if it is unable to proceed without such a translation or transliteration.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Article 38: Grounds for refusal of recognition of decisions in matrimonial matters

The recognition of a decision relating to a divorce, legal separation or marriage annulment shall be refused:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked;
- (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the decision unequivocally;
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is invoked; or
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a non-Member State between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Divorce by mutual consent (DCM)

- Innovation by the law of modernization of justice of 2016, Article 229-2 of the Civil Code.
- Exclusion of the field of application of the Regulation Brussels II a.

CJUE, 1^{ère} Ch., 20 déc. 2017, aff. C-372/16, Soha Sahyouni c/ Raja Mamish :

“Following article 1, paragraph 1, under a) of this regulation, “this applies regardless of the nature of the jurisdiction....of the divorce”. Regarding article 2, point 4, defines the notion of “decision” in the sense of the regulation as targeting notably “all decision of divorce given by a jurisdiction of a member state, regardless of the denomination of the decision, including the terms of the “arret”, “jugement” or “ordonnance.”

It would not be coherent to define in a different manner the same term of divorce used in these two regulation and to make them diverge in their respective fields.”

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Divorce by mutual consent

- Innovation by the law of modernization of justice of 2016, Article 229-2 of the Civil Code.
- Exclusion of the field of application of the Regulation Brussels II bis.

**CJUE, Gde Ch., 15 nov.2022, aff. C-646/20,
Senatsverwaltung für Inneres und
Sport,Standesamtsaufsicht c/ TB (§54):**

It can be deduced from this case law that any public authority that brings a "decision" according to article 2, point 4 of the Brussels II bis regulation, must keep the control of the pronouncement of divorce, which implies in the setting of the divorces by mutual consent, that it proceeds to an examination of the conditions of divorce regarding national law as well as the reality and the validity of the consent of the spouses to divorce.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Divorce by mutual consent

- Innovation by the law of modernization of justice of 2016, Article 229-2 of the Civil Code.
- Exclusion of the field of application of the Regulation Brussels II bis.
- A major contribution of the Brussels II ter Regulation : full recognition.

Recital 70: “Such agreements must be assimilated to decisions regarding recognition.”

Article 2: Definitions:

”Agreements” at the end of Chapter 4, an act is not an authentic act which was concluded by the parties if the subjects falling within the field of application of the current regulation and which was registered by a public authority notified to this effect to the Commission by a member state, following article 103.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Divorce by mutual consent

- Principle of “reconnaissance de plein droit”
- “European judicial passport”.
- Maintaining requirements:
 - Must be recorded by a public authority.
 - Must be prepared or recorded formally in a member state(+ concerning parental authority, not contrary to the superior interest of the child)

Article 65 Recognition and enforcement of authentic instruments and agreements

1. Authentic instruments and agreements on legal separation and divorce which have binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Section 1 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Article 64: Field of application

The current section applies in divorce proceedings, separation of the body and parental responsibility to authentic deeds which were established and recorded formally in a member state whose jurisdictions are competent following chapter 2 and the agreement registered there.

Recital 14: However, the agreements which are neither a decision nor an authentic act, yet were recorded by a public authority certified to do so, could be be circulated. These public authorities could include the notaries registering the agreements, even if they carry out a liberal profession.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Article 66: Certification

Notwithstanding paragraph 2, in matters of parental responsibility, the certificate cannot be delivered if elements indicate that the contents of the authenticated deed or agreement are contrary to the superior interests of the child.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A MEMBER STATE

Divorce by mutual consent:

- Limits:
 - Exclusion of the patrimonial effects which are covered by the Brussels II b Regulation.
 - Circulation only between the member states.
 - Exclusion of the agreements registered before the 1st August 2022.
- The possibility for a member state to refuse the acknowledgement or enforcement of an agreement.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A THIRD COUNTRY

Conditions of international regularity in a foreign decision

Cour de Cassation, Civil Chamber, 7 January 1964, Munzer

Sets out the conditions of legality.

- Jurisdiction of a foreign judge.
- Legality of the procedure followed.
- Jurisdiction of the applicable on the substance.
- Non infringement of the French public order
- Absence of fraud.

Cour de Cassation, Civil Chamber, 20 February 2007, n°05-14.082 Cornelissen

Suppresses certain conditions of legality

- Jurisdiction of the foreign judge.
- Legality of the procedure followed.
- Non infringement of the French public order.
- Absence of fraud.

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A THIRD COUNTRY

Conditions of international regularity in a foreign decision

- Jurisdiction of a foreign judge based on a characterized link.
- Lack of infringement of public order.
 - Procedural public order.
 - Substantive public order.
- Absence of fraud
 - Fraud in the court decision.
 - Evasion of the law

Cass. Civ.1^{ère}, 6 février 1985, n°83-11.241

« Toutes les fois que la règle française de solution des conflits de juridiction n'attribue pas compétence exclusive aux tribunaux français, le tribunal étranger doit être reconnu compétent si le litige se rattache d'une manière caractérisée au pays dont le juge a été saisi, et si le choix de la juridiction n'a pas été frauduleux.»

Cours de Cassation, 1st Chamber, 6 February 1985, n° 83-11.241

“All the time that the French rule of solution of conflicts of jurisdiction, does not attribute exclusive jurisdiction to the French tribunals, the foreign tribunal must be recognized as competent if the dispute relates to a distinctive manner in the country where the judge was seized, if the choice of the jurisdiction was not fraudulent.”

PART II - ACKNOWLEDGMENT AND ENFORCEMENT: DIVORCE PRONOUNCED IN A THIRD COUNTRY

Effects in France of a foreign decision of divorce

- Principle of “*reconnaissance de plein droit*”: unless when the judgement gives rise to acts of materiel enforcement on the assets or coercion (Cour de cassation, 28 February 1860, Bulkley case).
- Scope: even without ”exequatur” the foreign decision interferes with the introduction of a new request in France.
- Control of the legality (incidentally or principally)
- Executory force



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Hugues Gaston

International Child Abduction

Paris, 3 December 2025



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SEMANTICS

- WRONGFUL REMOVAL OF A CHILD
- WRONGFUL RETENTION OF A CHILD

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IV. ABDUCTION OUTSIDE THE 1980 HAGUE CONVENTION SCOPE

USEFUL RESOURCES

- International Child Abduction Section (INCADAT):
<https://www.hcch.net/fr/instruments/conventions/specialised-sections/child-abduction>
- European Judicial Network: https://e-justice.europa.eu/topics/trainings-judicial-networks-and-agencies/european-judicial-network-civil-and-commercial-matters/about-network/fr_fr
- Network of Hague Judges: <https://www.hcch.net/fr/instruments/conventions/specialised-sections/child-abduction/ihnj> (*Marie Lambling et Marie Vautravers*)

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- *Dalloz Action – Family law*, Dalloz, 2023 / 2024
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- Practical Guide to the “Bruxelles II ter” Regulation: <http://jafbase.fr/Doc%20g%C3%A9n%C3%A9rale/guide%20pratique%20pour%20lapplication%20du%20r%C3%A8glement%20bruxelles-DS0923030FRN%20%281%29.pdf>
- Conference of 8 February 2024 at the *Cour de cassation*: <https://www.courdecassation.fr/agenda-evenementiel/la-lutte-contre-les-enlevements-denfants-travers-les-frontieres>

I. CONTEXT

- A child is wrongfully removed from his or her State of habitual residence
- The person whose rights of custody have been breached starts proceedings to enforce their rights and obtain the child's return.

II. APPLICABLE TEXTS

- Convention of 25 October 1980 on the Civil Aspects of International Child Abduction : [HCCH 1980 Child Abduction Convention](#)
- Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction : [Bruxelles II ter Regulation](#)
- Bilateral Conventions

III. THE MAIN LEGAL FRAMEWORK:

HCCH 1980 Child Abduction Convention

A. **Applicability of the Convention – Preliminary conditions**

- Children up to 16 years of age
- Children habitually residing in a Contracting State¹
- Wrongful child removal or retention

B. **Procedural rules**

- Hague Convention
- Code of Civil Procedure: **Articles 1210-4 et seq.** of the Code of Civil Procedure (Section V: Wrongful international removal of children – **Articles 1210-4 to 1210-12**), **article 481-1** of the Code of Civil Procedure and **articles 1137 et seq.** of the Code of Civil Procedure on oral proceedings before the family judge.

C. **Substantive settlement of the situation**

- Principle of immediate return
- Determining the child’s habitual residence
- Determining “rights of custody” within the meaning of the Convention
- Absence of consent to the removal or retention
- Exceptions to return
 - Child’s objection
 - (Subsequent) acquiescence
 - “*Grave risk*” exception
 - Fundamental principles of the requested State
- Remedies
 - Appeal
 - Appeal on points of law (Cour de cassation)

¹Contracting parties : <https://www.hcch.net/fr/instruments/conventions/status-table/?cid=24>

III. THE MAIN LEGAL FRAMEWORK:

Procedural rules resulting from the Convention


The Convention does not lay down a complete set of procedural rules applicable before national courts. However, a few procedural principles are laid down:

- **Article 2:** Contracting States “shall use the most expeditious procedures available”.
- **Article 11:** the administrative or judicial authorities must act expeditiously with a view to securing the child’s return,
 - If the judge has not reached a decision within six weeks, the applicant may request a statement of the reasons for the delay.
- **Article 26:** equivalent to Article 700 of the French Code of Civil Procedure (cost shifting)
- **Article 29:** direct application by the individual is permitted (right to bring proceedings directly confirmed by the Cour de cassation (1st. Civ. Chamber, 7 June 1995, n° 94-15.860)

III. THE MAIN LEGAL FRAMEWORK:

Procedural rules resulting from the Convention – Central Authorities

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- The Convention aims for the Contracting States to designate a Central Authority
- The attributions of such Central Authorities are defined by **Article 7 of the Hague Convention**
- The French Central Authority is the European and Private International Law and Cooperation Bureau of the Ministry of Justice (DEDIPE)
- The person whose right of custody have been breached may apply to the Central Authority of the State of the child’s habitual residence or to that of the Stat of refuge, “for assistance in securing the return of the child” (**Article 8 of the Convention**)

III. THE MAIN LEGAL FRAMEWORK:

Procedural rules under domestic law

The French Code of Civil Procedure lays down the procedure before French family courts:

- **Article 1210-6:** refers to the accelerated procedure on the merits
- **Article 481-1:** the administrative or judicial authorities must act expeditiously with a view to securing the child's return.
 - Application brought by writ of summons;
 - Hearing date requested by simple letter in view of the nature of the procedure (no application by petition, still less “short-notice” proceedings);
 - Filing of the case before the hearing
- **Article 1139 et seq.:** rules applicable to oral proceedings before the family judge.
- The public prosecutor must necessarily take part in the proceedings.

III. THE MAIN LEGAL FRAMEWORK:


Substantive Settlement of the dispute – Preliminary conditions

- **Children from birth to 16 years of age.**
- **Case of *in utero* abduction:**
 - Initially accepted by the *Cour de cassation* (1st Civ. Chamber, 26 October 2011, n° 10-19.905)
 - Contrary case-law by the European Union Court of Justice (Judgment of 8 June 2017, Case C-111/17)
 - The *Cour de cassation* reversed its position (1st Civ. Chamber, 12 June 2020, n° 19-24.108)
- **Determining the habitual residence:**
 - **Notion:** the place which, for the child, reflects social and family integration in a given environment and thus the “centre of his or her life” (ECJ, 2 April 2009, Case C-523/17, *Mercredi*)
 - **Requirements:**
 - The child must be physically present in that State;
 - Numerous factual elements must show that the centre of the child’s life is located in that State (cumulative indicia method : *Cour de cassation*, 1st Civ. Chamber, 12 June 2020, n° 19-24.108)
 - The parent’s intention is one factor among others and must not outweigh the rest.
- **Issue at stake:** determining the applicable rights of custody

III. THE MAIN LEGAL FRAMEWORK:

Substantive Settlement of the dispute – Characterisation of wrongful removal

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- Under **Article 3 of the Hague Convention** of 25 October 1980, the removal or retention of a child is to be considered wrongful where:

“a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State

III. THE MAIN LEGAL FRAMEWORK:

Substantive Settlement of the dispute – Characterisation of wrongful removal

- **Determining rights of custody : Article 5(a)** of the Hague Convention defines “*rights of custody*” as follows:
 - “a) “*rights of custody*” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;”
- Rights of custody within the meaning of the Convention are construed broadly:
 - They cover the right to decide the child’s place of residence and therefore the right to consent to a change of residence (*Cour de cassation, 1st Civ. Chamber, 4 May 2017, n° 17-11.031*)
- Absence of consent *ab initio* (**Article 13(1)(a)**)

III. THE MAIN LEGAL FRAMEWORK:

Substantive settlement of the dispute – Exception to return

Late application – Article 12(2)

- Application lodged one year after the removal (or the date on which the retention became wrongful)
- With proof of the child's integration in the new State
- The court may refuse return, but may still order it
- For calculating the time-limit in France, the application is considered “lodged” when the family judge is seized (not when the Central Authority is seized)

Child's objection – Article 13(2)

Grave risk – Article 13(1)(b)

- Seriousness of the risk:
- Examples of grave risk or intolerable situation:
 - State that will not be able to protect the child when the risk is established (health issues not covered, violence with no effective child-protection system in place, etc.)
 - Specific case of the argument based on the rupture of the relationship between the child and the parent who removed the child.
- Burden of proof
- **Specificity in case of an intra-European abduction:** impossibility to refuse the return when the applicant provides guarantees that the situation will not be intolerable (**Article 27, 3° of the Brussels II ter Regulation**)

Acquiescence – Article 13(1)(a)

Return contrary to the fundamental principles of the requested State

III. THE MAIN LEGAL FRAMEWORK:

Substantive Settlement of the dispute – Parallel decisions given in France or abroad

- **Article 16:** mechanism of stay of proceedings precisely in order to avoid this situation, until a final decision is given on whether or not the removal/retention is wrongful
- **Article 17:** a decision on the merits given after the removal but before the decision of the return judge in the requested State cannot serve as a ground for refusing return
- **Decision by the judge of the State of habitual residence:**
 - Must be taken into account, especially in the context of European cooperation: **principle of mutual trust.**
 - If a European decision on the merits has been given, in principle it should take precedence over the return procedure, as a decision on the merits delivered by a competent judge of a Member State and enforceable in France

III. THE MAIN LEGAL FRAMEWORK:

Substantive Settlement of the dispute – Immediate return and enforcement of the decision

- **Principle of immediate return**
- Decision enforceable by operation of law notwithstanding appeal (enforceable as a provisional measure by default)
- Enforcement carried out under the authority of the public prosecutor (and no longer the prosecutor general as seen earlier)
- Possibility of ordering a penalty payment (“*astreinte*”)

III. THE MAIN LEGAL FRAMEWORK:

Substantive Settlement of the dispute – Remedies

- **Appeal:** “*short-notice*” circuit
 - Legal time-limit: 15 days from service of the judgment (**Article 481-1** of the Code of Civil Procedure)
- ***Cour de cassation* petition** (only on points of law):
 - Legal time-limit: 15 days from service of the judgment (**Article 1210-12** of the Code of Civil Procedure)

III. THE MAIN LEGAL FRAMEWORK:

Substantive settlement of the dispute – Specifics under the Brussels II ter Regulation

- **Applicable to intra-European abductions**
- **Article 23:** role of Central Authorities
- **Article 24:** obligation of celerity. The Member States' courts must deliver their decision within six weeks
- **Article 25:** promotion of amicable dispute resolution dispositions
- **Article 27** on the return proceedings
 - Strengthened obligations of expedition
 - Possibility of organizing rights of access and contact during the proceedings
 - Possibility of ordering provisional measures in case of return, which will be recognized and enforceable in the State of return
- **Article 28:** obligation of celerity. The competent authorities must make sure the return decision is executed within six weeks
- **Article 29:** proceedings following a non-return decision in application of **Article 13(1)(b) of the Hague Convention**

III. THE MAIN LEGAL FRAMEWORK:


Family judge of the habitual residence face with a decision of non-return (foreign)

- **The abduction took place from France to an EU Member State and no decision has been given while awaiting the return decision**
 - (important: no obligation for the judge seized “on the merits” to stay the proceedings in this configuration):
 - Subsequent lack of jurisdiction: **Article 9 of the Brussels II ter Regulation**
 - Specific case where the return is refused on the basis of **Article 13 of the 1980 Hague Convention (grave risk or child’s objection)**:
 - **The judge gives the decision on the merits nonetheless, which may involve fixing the child’s residence in France notwithstanding the non-return.**
 - **In doctrine and practice, this is called “return notwithstanding”.**
- **The abduction took place from France to a non-EU State**
 - Likely lack of jurisdiction (if the child’s habitual residence is not located in France, which justified the refusal of return in the other State)
 - Possibility of continuing the proceedings if jurisdiction was acquired when the court was seized on the merits (i.e. residual rules of international jurisdiction)
 - Enforcement difficulties in the requested State, conflicting decisions

III. THE MAIN LEGAL FRAMEWORK:

Substantive settlement of the dispute – Recent case law

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- **Paris Court of Appeal, 3-5, 10 December 2024, n° 24/12937**
 - Significant *in concreto* assessment by the Court regarding the grave-risk exception (context of the Israel/Palestine war)
- ***Cour de cassation*, 1st Civ. Chamber, 10 July 2024, n° 24-12.156**
 - The child's return may, exceptionally, be ordered to another State where the applicant resides, if this makes it possible to restore the child to a familiar environment and thereby to restore a certain continuity in his or her living and developmental conditions.

III. THE MAIN LEGAL FRAMEWORK:

Family judge seised on the merits – Exit ban (prohibition on leaving the territory)

- **Article 373-2-6, 4th paragraph of the Civil Code**
 - Leaving the country is a routine act of parental authority
 - An exit ban therefore infringes on the usual rules of parental authority and freedom of movement: a proportionality test of the measure is required (*Cour de cassation*, 1st Civ. Chamber, 8 March 2017, n° 15-26.664)
- **Constant case-law of the courts of appeal:**
 - *“The parent seeking this exceptional measure must show a serious risk that the other parent will abduct the child (previous attempts, repeated threats, absence of any ties between the other parent and French territory, etc.). This measure, which in effect gives each parent a veto over the organisation of the child’s travel with the other, cannot be ordered, merely to allay one parent’s concerns”* (Douai Court of Appeal, 12 May 2016, n° 15/03818; Paris Court of Appeal, 3-2, 13 June 2017, n°15/03467)

III. ABDUCTION OUTSIDE THE 1980 HAGUE CONVENTION SCOPE

Family judge seized on the merits – Exit ban (prohibition on leaving the territory)

- **Return mechanism laid down by a bilateral convention**
 - Egypt (https://www.justice.gouv.fr/sites/default/files/migrations/portail/art_pix/eci_conv_egypte.pdf), Djibouti, Algeria, Lebanon
- **Cooperation mechanisms, but no real instruments similar to the 1980 Hague Convention:**
 - Generally, presuppose the existence of a decision, and a cooperation procedure via the central authorities on the basis of that decision
- **No bilateral convention – no international cooperation – no specific mechanism**
 - The family judge is seized on the merits (**Article 1137 of the Code of Civil Procedure**) or in summary proceedings (**Article 1073 of the Code of Civil Procedure**, exercising the powers of the judge ruling in summary proceedings).
 - Verification of international jurisdiction to rule on the merits or in summary proceedings: jurisdiction rules previously presented by Professor Estelle GALLANT, in particular **Article 15 of the Regulation** which, in case of urgency, authorises the French judge to take provisional or protective measures when the child is in France.
 - Decision fixing the child's residence (temporary if summary proceedings) at home of the parent living abroad, with an order for the surrender of identity documents subject to a penalty payment (*astreinte*), if necessary
 - Possibility of criminal proceedings: very limited effectiveness



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Emmanuelle Bonboire-Barthelemy

Recognition and enforcement in family matters

Paris, 3 December 2025



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INTRODUCTION: The distinction between recognition and enforcement

- ❖ The effects of a foreign judgment are threefold: **substantive effectiveness, res judicata, and enforceability.**
 - *Example with a foreign judgment granting a divorce:*
 - *Substantive effectiveness: the judgment confers the status of divorced on the spouses, enabling them to remarry for example.*
 - *Res judicata: once the divorce judgment has been issued, it cannot be challenged through a new divorce petition before another court.*
 - *Enforceability: the judgment can produce binding effects (on assets or persons), for instance where it provides for post-divorce spousal maintenance.*

- ❖ A distinction must be made between:
 - **Recognition of foreign judgments**: This consists of conferring *res judicata* and *substantive effectiveness* on the foreign judgment.

 - **The exequatur of foreign judgments**: This confers *enforceability* on the foreign judgment.

1) Decisions issued by a Member State of the European Union


2) Decisions issued by a third country with an international convention

3) Decisions issued by a third country outside the scope of a convention

1) Enforcement of a foreign judgment issued by a Member State of the European Union

1) Enforcement of a foreign judgment issued by a Member State of the European Union

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- ❖ EU framework = mutual trust between Member States
- ❖ Each aspect of the divorce must be assessed **separately** to identify the EU instrument governing recognition and enforcement :
 - Civil and commercial matters: Regulation (EU) No 1215/2012 of 12 December 2012 (Brussels I recast)
 - Parental responsibility :
 - Regulation (EC) No 2201/2003 of 27 November (Brussels IIa)
 - For actions since 1 August 2022: Regulation (EU) No 2019/1111 of 25 June 2019 (Brussels II recast)
 - Matrimonial property regimes: Regulation (EU) No 2016/1103 of 24 June 2016
- ❖ We will focus on :
 - **Recognition of the divorce itself (A)**
 - **Enforcement concerning maintenance obligations (B)**

1) Enforcement of a foreign judgment issued by a Member State of the European Union

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A. Recognition of a EU divorce decision

Instrument: Brussels II Recast Regulation - Regulation (EU) No 2019/1111 of 25 June 2019

1) **Material Scope:**

- Only the dissolution of marriage benefits from recognition rules.
- Applies to French out-of-court divorce by mutual consent if EU jurisdiction rules are met.

2) **Territorial Scope:**

- Decision must originate from a EU Member State.
- Denmark and UK excluded.

3) **Temporal Scope:**

- Applies to decisions issued on or after 1 August 2022.
- Earlier decisions fall under the previous Brussels II Regulation.

1) Enforcement of a foreign judgment issued by a Member State of the European Union

A. Recognition of a EU divorce decision

- ❖ Decisions issued in one Member State are **automatically recognised** in others (Art. 30)
 - *Example: A French national can directly request the French Central Civil Status Office to update records based on a final Italian divorce decision.*

- ❖ **Recognition may be challenged**, either:
 - As a principal action (recognition / non-recognition), or
 - Incidentally, before a court hearing another dispute.

- ❖ **Grounds for non-recognition** (Art. 38, exhaustive):
 - 1) Public policy breach
 - *Example: A decision disregarding equality between spouses.*

 - 2) Infringement of rights of defence
 - *Example: Defendant not informed in sufficient time to prepare a defence.*

 - 3) Incompatibility with another decision
 - *Example: Divorce decision irreconcilable with a marriage annulment decision.*

1) Enforcement of a foreign judgment issued by a Member State of the European Union

B. Enforcement of a EU Divorce Decision *The Example of Maintenance Obligations*

❖ (1) Decisions from a Member State bound by the 2007 Hague Protocol :

- Automatic recognition: no special procedure required
- Abolition of exequatur (Art. 17)
- No requirement for certification of the judgment in the State of origin
 - *Practical consequence (Art. 20): The creditor must only provide:*
 - *a copy of the decision;*
 - *the standard form (Annex I), in the language of the enforcing State;*
 - *a document stating the outstanding arrears and date of calculation.*
- Safeguards – Refusal of Enforcement (Art. 21) : Enforcement may be refused on limited grounds
 - *Example (Point No 30): the debtor has already paid the debt at the time of enforcement, or certain assets are non-attachable.*

❖ (2) The State of origin is not bound by the Hague Protocol (ex. Denmark) : the decision first be declared enforceable in the State of enforcement (Art. 26)

**2) Enforcement of a foreign judgment
from a third State in the presence of an
international convention**

2) Enforcement of a foreign judgment from a third State in the presence of an international convention

❖ Multilateral convention :

➤ **Lugano Convention of 30 October 2007 : EU, Switzerland, Norway and Iceland**

Example: Enforcing a Swiss judgment in an EU Member State

- **Step 1 – Application** : File an application for a declaration of enforceability in your EU Member State.
- **Step 2 – Initial non-contradictory procedure** : The court examines the case without hearing the debtor and verifies only the following documents : the foreign judgment, the standard certificate under the Lugano Convention and evidence of service, where the judgment was given in default.
- **Step 3 – Declaration of enforceability** : If the formal requirements are met, the court issues the declaration.
- **Step 4 – Appeal by the debtor** : The debtor may challenge the declaration. The appeal is strictly limited to the grounds in Articles 34–35, such as:
 - violation of public policy;
 - inadequate service of the petition;
 - incompatibility with an earlier judgment.
- **Step 5 – Enforceability**

❖ Bilateral conventions

- *From a French perspective : we have bilateral treaties with a large number of States—Gabon, Benin, Burkina Faso, Cameroon, the Central African Republic, Congo-Brazzaville, Côte d’Ivoire, Djibouti, Madagascar, Mali, Togo, Chad, Senegal, Niger, Mauritania, but also Lebanon, China, the United Arab Emirates, Laos, Mongolia, Vietnam, and several others.*

3) Enforcement of a foreign decision from a third country outside an international convention

3) Enforcement of a foreign decision from a third country outside an international convention (common law)

❖ In this scenario, the recognition and enforcement of judgments from third States **fall under national law**

❖ In France :

- Automatic recognition of certain judgments: in matters relating to personal status and legal capacity (Bulkley ruling – French Court of Cassation, 28 February 1860).
- **Cornelissen case law (French Court of Cassation, 20 February 2007, No. 05-14.082) -**
Three cumulative conditions for exequatur :
 - **The jurisdiction of the foreign court;**
 - **Compliance with international public policy;**
 - **The absence of fraud**

3) Enforcement of a foreign decision from a third country outside an international convention (common law)

Example: Enforcing a US judgment in France

1. Jurisdiction of the foreign court : The judge verifies that no French court has exclusive jurisdiction.

→ *Example* : A French couple includes a choice-of-court clause in favour of French courts in their marriage contract

2. Compliance with international public policy

- **Substantive public policy** : freedom of marriage; equality of spouses upon divorce (Cass. 1re civ., 17 Feb. 2004, no. 01-11.549); equality of parents in exercising parental authority (Cass. 1re civ., 4 Nov. 2009, no. 09-15.302); respect for private and family life etc.
- **Procedural public policy** : the defendant was unable to defend themselves; a default judgment is rendered without proof that the defendant was duly served etc.

3. Absence of fraud : The judge verifies that the foreign judgment is free from: fraud relating to jurisdiction, fraud to the applicable law, fraud through procedural manoeuvres to neutralise French proceedings.

→ *Example* : The wife files for divorce in France. Shortly after, the husband initiates proceedings in the US and obtains a faster judgment.



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Oana Ghita

Property of international couples (marriages and registered partnerships)

Paris, 3 December 2025



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- 1. Introduction**
 - 2. EU Regulatory Framework**
 - 3. Autonomy of Will in Family Private International Law** - How autonomy functions in conflicts of law and jurisdiction. Application in marriage, divorce (Rome III), and property matters.
 - 4. Registered Partnerships in Europe**
 - 5. CEFL Principles on Spouses' Property Relations**
 - 6. European Comparative Trends**
 - 7. Romanian Law in the European Context**
 - 8. Conclusions**
- 

Property Matters (Matrimonial Regimes & Registered Partnerships) – GUIDE LINES

Both EU Regulations 2016/1103 (matrimonial property regimes) and 2016/1104 (property consequences of registered partnerships) aim to ensure **predictability and legal certainty** in cross-border property relations of couples.

1. Purpose of the Regulations (Property Focus)

The two 2016 Regulations govern:

- **The law applicable** to couples' *property regimes*, and
- **Jurisdiction** of courts in disputes concerning those property regimes.

Their objective is to ensure that spouses and registered partners — and third parties such as creditors — can **foresee which property rules apply** and which court has jurisdiction.

2. Party Autonomy in Property Matters

Both Regulations give couples **the right to choose** the law governing their property regime.

A. For Matrimonial Property (Reg. 1103/2016)

Spouses or future spouses may choose:

- ✓ The law of the state where either spouse has habitual residence at the time of the agreement; or
- ✓ The law of the state whose nationality either spouse holds.

B. For Registered Partnerships (Reg. 1104/2016)

Partners or future partners may choose:

- The law of the state of habitual residence or nationality, **provided that the chosen law recognizes property effects of registered partnerships.**

This limitation means: not every legal system can be chosen — only those that actually regulate partnership property.

Formal safeguards

To ensure informed consent, the choice-of-law agreement must:

- ✓ be in writing,
- ✓ be dated and signed,
- ✓ and may need to meet additional national formalities.

3. Applicable Law When No Choice Is Made

If the parties do not choose a law, the Regulations determine one based on objective, predictable factors.

A. Matrimonial Property Regimes — Objective Determination

Law of:

- First common habitual residence after marriage, or**
- Common nationality at the time of marriage, or**
- State with the closest connection.**

This cascade ensures that the applicable property law reflects the couple's real life situation.

B. Registered Partnerships — Objective Determination

If no law is chosen, the applicable law is:

- the law of the state in which the partnership was formally registered.**

This emphasizes the institutional nature of registered partnerships and ensures high predictability.

4. Jurisdiction in Property Matters

The Regulations link **jurisdiction** to **applicable law** to strengthen predictability:

- A couple can choose the courts of the country whose law governs their property regime.
- Courts handling *succession* of a deceased spouse/partner may also hear property regime issues connected to that succession.

This coherence prevents conflicting decisions and strengthens third-party protection.

5. Excluded Matters (Not Governed by Property Regulations)

For clarity, the Regulations **exclude** certain areas from their scope, meaning they do *not* regulate:

- taxation, administrative matters,
- maintenance obligations,
- succession as such (except limited interaction),
- social security,
- pension rights adjustments,
- the validity of the marriage or partnership itself,
- or the nature of real-property rights / land registration.

Only the *economic regime of the couple* falls within their property rules.

6. Core Principle for Property: Predictability

The heart of the Regulations is ensuring that:

- Spouses and partners can organize their **property relations** in advance.
- Third parties (banks, creditors, purchasers) can rely on clear, identifiable property rules.
- Cross-border couples can anticipate the consequences of acquiring, managing, or liquidating property.

Party autonomy, connecting factors, and unified jurisdiction rules all serve this goal.

1. Legal Nature of Registered Partnerships

- A registered partnership is a legally recognized union between two persons whose relationship is officially recorded by a competent authority.
- It differs from cohabitation (a purely factual relationship) and from marriage (which has a well-defined matrimonial property regime).
- In EU law, registered partnerships are recognized as a distinct concept with their own patrimonial effects, even if national laws vary widely.

2. Property Regimes in Registered Partnerships

Across various jurisdictions, registered partnerships may adopt one of several models:

A. Identical or Similar to Matrimonial Property Regimes

Some countries treat registered partners similarly to spouses and apply:

- ✓ **Community of property** rules (shared ownership of assets acquired during the partnership), or
- ✓ Allow partners to choose between community, separation of assets, or other regimes through partnership agreements.

B. Opposite Approach: Separation of Property as the Default

Other legal systems deliberately distinguish partnerships from marriage by applying:

- ✓ **Separation of assets as the default rule**, meaning each partner remains the owner of their own property unless they choose otherwise.

Example: French PACS (civil solidarity pact) — since 2006, the legal default is separation of property; community exists only if expressly agreed.

3. Contractual Freedom

A key principle in registered partnerships is **freedom of contract**, allowing partners to shape their own property regime through agreements. Partners may:

- Choose a community-type regime,
- Choose separation of assets,
- Create hybrid or customized arrangements (if allowed by national law).

This flexibility differentiates registered partnerships from marriage, where available property regimes are strictly defined by law.

4. Relationship With Third Parties

Property rules extend to how partners interact with third parties (creditors, buyers, etc.).

A registered partnership generates:

- Rights and obligations regarding jointly owned assets,
- Rules on management, liability, and division of property when the partnership ends or one partner dies.

5. Dissolution of a Registered Partnership

When a registered partnership ends:

- The property regime determines how common assets and debts are divided.
- If no agreement exists, the **default statutory regime** of that legal system applies.

6. Perspective for Romanian Law (de lege ferenda)

- Romania currently does **not** regulate registered partnerships.
- Introducing such legislation would provide legal protections for many cohabiting couples.
- Major policy choices for legislators will include:
 1. **How much contractual freedom** couples should have.
 2. **Which default property regime** to apply in the absence of an agreement (community or separation).

ON MATRIMONIAL PROPERTY REGIMES

The jurisdictions surveyed recognise many different kinds of marital property regimes, but differences exist between the applicable default regimes and, where available, between the optional regimes. The available regimes, according to the CEFL's systematisations, comprise the following:

- Community of property
- Community of accrued gains/participation in acquisitions
- Deferred community of property
- Separation of property
- Separation of property with distribution by the competent authority

The community of property – the statutory matrimonial regime in the Romanian Civil Code

The community of property regime represents the rule in the field of matrimonial regimes in the Romanian legal system, therefore anytime the spouses do not choose another regime through a matrimonial convention, the community of property regime is applied by default. Similarly, when the matrimonial convention is sanctioned with nullity, the community of property regime is applied. If the spouses did not sign a convention before starting the marriage, they have the possibility to sign one at any time during the marriage, changing thus the matrimonial regime under which they got married. A new modification of the matrimonial convention can be done only after at least one year had passed since the last modification, and the modifications of the matrimonial regime, in order to become opposable to third parties, must be registered in the National Notarial Matrimonial Registry.

The proof that possessions are personal and not common must be made every time a spouse invokes the existence of an exclusive right to property, because with regard to the community of property regime, the legislator provided for a relative assumption, according to Article 343 NCC. For the movable possessions acquired before entering the marriage, an inventory can be completed by a notary public or privately, if the spouses so convene. In the absence of such an inventory, it is presumed, until proven otherwise, that the possessions are common.

Conventional matrimonial regimes in the current Romanian legal system

The separation of property regime (Articles 360-365 NCC)

The separation of property regime has generated certain controversies, the conservatory legal literature considering it to be more of an “inexistence of the regulation of patrimonial relationships between spouses, than a matrimonial regime”. According to other opinions, this matrimonial regime is considered to be fair, especially when the spouses belong to the same socio-professional category, when there is an economic equality between them or when they start the marriage while possessing relatively equal assets.

Article 360 NCC provides that each of the spouses is the exclusive owner of the possessions acquired before entering the marriage, as well as the possessions he or she acquires after entering the marriage. The proof of private movable possessions is made through the inventory done by the notary public, irrespective of the way in which these possessions were acquired, at the time the matrimonial regime is adopted by the spouses

The conventional community regime (Articles 366-368 NCC)

The conventional community regime represents the only conventional regime of community regulated by the new Civil Code. It applies, according to Article 366 NCC, when there is derogation from the statutory regime, made through a matrimonial convention. According to Article 367 NCC, the object of the matrimonial convention which the spouses use to adopt this regime could contain the further aspects:

- a) Inclusion in the community, in whole or in part, of the possessions acquired or the private debts created before or after entering the marriage, with the exception of the possessions used for personal purposes and the possessions required for the occupation of each of the spouses, if they do not belong to a business which pertains to the community of property;
- b) The restriction of the community to the possessions or the debts expressly determined in the matrimonial convention, regardless of whether they were acquired or, as appropriate, born before or after entering the marriage, with the exception of duties entered by any of the spouses to cover the ordinary expenses of marriage;
- c) The compulsoriness of the agreement of the spouses for concluding certain administration acts; in this case, if for one of the spouses is impossible to express his or her will or if the spouse is abusively opposing the act, the other spouse can conclude by himself or herself the transaction, but only with the preliminary agreement of the tutelary Court.

d) Enshrining the “preciput” clause; the enforcement of the “preciput” clause is made “in nature”, or, if this is not possible, the enforcement is made through equivalent, from the net value of the community active;

According to Article 333(1) NCC, the “preciput” clause offers the surviving husband the right to retrieve, before the succession is partitioned, one or more of the common possessions, owned in joint tenancy or in co-ownership.

The legislator, thus, allows the spouses to stipulate such a clause in the object of the matrimonial convention.

e) Methods regarding the liquidation of the conventional community.

The possibility to liquidate the matrimonial regime may be stipulated in the matrimonial convention. For example, this clause can take the shape of the following options:

- Partition of common property in equal shares, irrespective of the contribution of the spouses to the active or the passive of the community;
- One of the spouses could receive the bare ownership, and the other spouse could receive the usufruct;
- The stipulation of unequal shares, according to which the partition of common property will be made etc.

CONCLUSIONS

The comparative overview of European matrimonial property regimes demonstrates a clear and consistent trend toward strengthening the autonomy of the spouses while preserving essential principles of protection and fairness. EU Regulations 2016/1103 and 2016/1104 reinforce this direction by establishing a predictable framework for determining the applicable law and competent jurisdiction in cross-border situations. Party autonomy, supported by formal safeguards and transparency requirements, emerges as a central instrument for ensuring flexibility and legal certainty in patrimonial relations.

National systems increasingly allow spouses to tailor their property regime through marital agreements, to choose between various statutory regimes, or even to design hybrid arrangements. At the same time, most jurisdictions have adopted enhanced control mechanisms — notarial intervention, duties of disclosure, judicial correction clauses — aimed at preventing imbalances and safeguarding the interests of the spouses, minor children, and third parties.



Training of lawyers on EU Civil Law (TRADICIL)

Emilia Pasi

**Comparative analysis: main features of Cypriot family law and
emerging challenges**

Paris, 3 December 2025



Co-funded by the European Union

INTRODUCTION & SCOPE

Family law is both deeply personal and profoundly social.

It governs marriage, divorce, parental responsibility, adoption, and child protection.

My objective today is threefold:

1. To outline the main features of Cypriot family law.
2. To compare them with EU and international standards.
3. To reflect on recent reforms and emerging challenges faced by Cyprus as an EU Member State.

Throughout the presentation, I will highlight how Cyprus aligns its national legislation with European regulations such as **Brussels II ter**, **Rome III**, and the jurisprudence of the **European Court of Human Rights (ECHR)**



HISTORICAL & LEGAL BACKGROUND

Cyprus has a unique hybrid legal heritage combining: • common-law influences from the British administration, and • civil-law elements after independence in 1960.

For decades, family matters were regulated by religious authorities. This changed in 1990 with the **Family Courts Law**, which established a unified, secular jurisdiction.

Since then, Cyprus has gradually aligned itself with:

- the **European Convention on Human Rights**, and
- the **EU Charter of Fundamental Rights**, especially in matters relating to equality, private life, access to justice, and the rights of the child.

Importantly, as the EU progressively expanded judicial cooperation in family law, Cyprus adapted its procedural framework so that domestic courts could operate within the **European Judicial Area**.



MARRIAGE AND CIVIL UNIONS



Marriage in Cyprus is governed by the **Marriage Law of 2003**, which recognizes both civil and religious ceremonies. A major milestone was the **Civil Union Law of 2015**, granting recognition to both heterosexual and same-sex partnerships. Civil partners enjoy almost all the rights of married couples, but adoption remains excluded.

In comparison with other EU Member States:

- Cyprus introduced civil unions later than other EU countries
 - but earlier than several Eastern European Member States.
- ECHR jurisprudence, particularly **Oliari v. Italy**, pushed many states including Cyprus toward more inclusive recognition of same-sex relationships.

DIVORCE AND DISSOLUTION



Cyprus recognizes several grounds for divorce, including:

- irretrievable breakdown,
- adultery,
- domestic violence,
- long-term separation.

Comparative EU element: While substantive grounds for divorce remain national, the **Brussels II ter Regulation** governs cross-border jurisdiction, recognition, and enforcement of divorce judgments. Thus, a Cypriot divorce decree is automatically recognized in all other EU Member States.

Recent Cypriot reforms (2022–2024):

- Reduction of the separation period from 4 to 2 years.
- Cyprus introduced consensual divorce, allowing couples to separate by mutual agreement.
- Shortened Church notification period for religious marriages (from 3 months to 6 weeks).
- Divorce cases now handled by a single judge instead of a three-judge panel.

Planned reform: a **unified “single application” system**, allowing divorce, custody, maintenance, and property issues to be resolved together – similar to integrated procedures in countries like Spain or Sweden.

PROPERTY RELATION BETWEEN SPOUSES

Cyprus follows a separation-of-property system under the **Spouses' Property Relations Law of 1991**.

This regime is consistent with several Mediterranean jurisdictions, including Greece and Malta.

On dissolution: A spouse may claim compensation for contributions – financial or domestic – based on the principle of equitable distribution, rather than automatic 50/50 sharing.

Cyprus is one of the EU Member States that participate in the enhanced cooperation through Regulation (EU) 2016/1103. Regulation (EU) 2016/1103 provides the rules for determining jurisdiction, the applicable law, and the recognition and enforcement of decisions in matters of matrimonial property regimes.



PARENTAL RESPONSIBILITY & CUSTODY

The central principle is the **best interests of the child**. After divorce, joint parental responsibility is the default legal rule.

Courts assess:

- the child's welfare and stability,
- the child's preferences (depending on maturity),
- each parent's capacity to support the child.

Comparative EU element:

Under **Brussels II ter**, parental responsibility decisions made by Cypriot courts must be recognized and enforceable throughout the EU. This includes custody orders, residence orders, and access rights.

Cyprus also adheres to international standards such as:

- the **UN Convention on the Rights of the Child**, and
- Article 8 ECHR on private and family life.



MAINTENANCE OF MINORS & SPOUSES IN CYPRUS

In Cyprus, maintenance matters are primarily regulated by:

- Family Courts

(Family Courts Law – Law 216/90) * Amendments to family law aligned with the European framework.

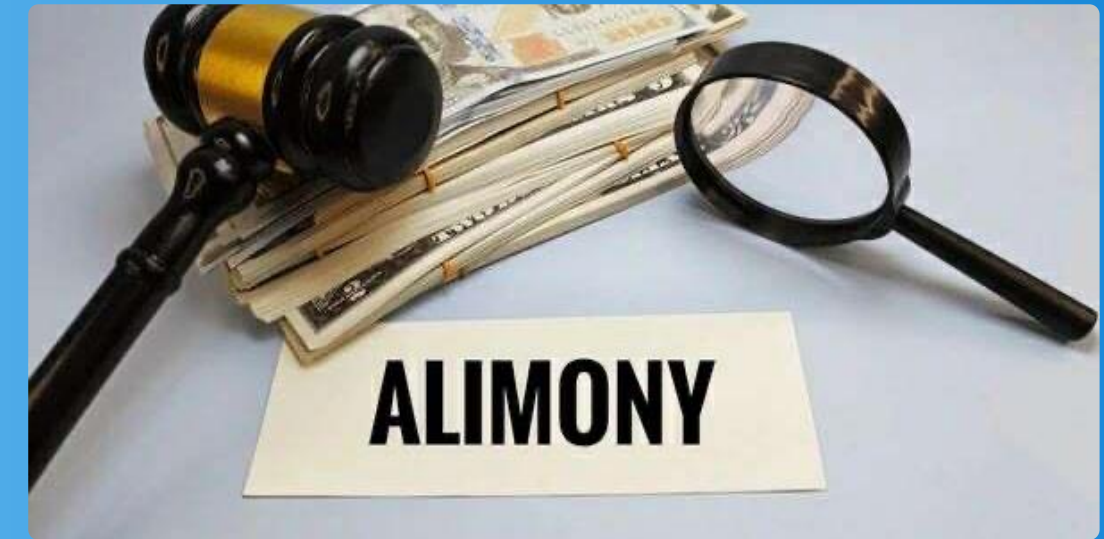
Maintenance of minors:

Parents have a legal and absolute obligation to support the child until the age of 18.

The obligation may continue after the age of 18 if the child is studying, undergoing mandatory military service or unable to support itself for serious reasons.

The amount is determined based on:

- the financial capacities of the parents
- the child's needs
- the family's standard of living prior to separation



Maintenance of spouse:

- Awarded when there is a financial imbalance caused by divorce or separation.
- Usually granted as transitional maintenance, not permanent, except in specific cases (disability, serious illness, long-term absence from employment due to family care).

EUROPEAN FRAMEWORK

Cyprus applies the core European regulations

Regulation (EC) No. 4/2009

- Provides a unified system for the recognition and enforcement of maintenance decisions across the EU.
- Facilitates the collection of maintenance when parents reside in different Member States.
- Ensures cooperation between central authorities for application submission, locating debtors, and transferring judicial decisions.

Brussels IIb Regulation (2019/1111)

- Regulates cross-border cases regarding parental responsibility and divorce.
- Objective: protection of the child's best interests and effective enforcement of decisions across the EU.

FAMILY MEDIATION IN CYPRUS

Mediation has become increasingly central to resolving family disputes in Cyprus.

Legal Basis:

- **Mediation in Family Disputes Law (2019)**
- Relevant Family Court procedural rules

Mediation is voluntary but strongly encouraged for:

- custody and contact arrangements,
- parental responsibility disputes,
- child maintenance,
- limited property disputes.

Recent reforms (2023–2025):

- Mandatory **information sessions** prior to litigation – similar to practices in other EU members
- Professional accreditation and training requirements for mediators.
- Closer cooperation between mediators and Family Courts.

Comparative EU element:

These reforms reflect EU policy promoting **alternative dispute resolution** to reduce litigation and support child-centered conflict resolution.



ADOPTION, CHILD PROTECTION & FOSTER CARE

Adoption in Cyprus is governed by the Adoption Law of 1995.

Cyprus is a party to the **Hague Convention on Intercountry Adoption**, which ensures procedural safeguards similar to those used across the EU.

The Adoption Law (Law 19(I)/1995) in Cyprus allows adoption by court order. An application can be made by a person or persons if one is a permanent resident (or has lived in Cyprus for 2+ years) and at least 25 years old (or 21 if a relative of the child). Applications can be made by:

- (a) both spouses jointly,
- (b) a natural parent with their spouse, or
- (c) the stepparent of the child.



CROSS-BORDER CHILD ABDUCTION IN CYPRUS AND THE EU LEGAL FRAMEWORK

The Context of Cross-Border Child Abduction in Cyprus

- Cyprus hosts a large number of mixed families, Cypriot, European and third-country nationals
- This makes it particularly vulnerable to cross-border child abduction
- Cases often involve the removal or retention of a child without the consent of the other parent, creating complex legal, psychological, and social challenges

EU Legal Framework

Until 2022, the main EU instrument governing parental responsibility and child abduction was Regulation Brussels IIa (2201/2003).

Since 1 August 2022, the Brussels IIb Regulation (2019/1111) applies, introducing stronger and faster mechanisms to protect children across EU Member States.

ABDUCTION THROUGH THE OCCUPIED AREAS AND THE “ERCAN” AIRPORT

Legal and Operational Vacuum

The so-called “Ercan” airport in the occupied part of Cyprus is not recognised by the Republic of Cyprus or the EU. It lies outside EU jurisdiction and beyond border control, making it a route that can be exploited for child abduction.

Main Risks

- Rapid exit from the EU legal system (via Turkey to non-EU destinations)
- No real-time law-enforcement access or data exchange
- EU and Hague mechanisms unenforceable in the occupied areas
- Since the Hague Convention cannot be applied when a child is abducted through the occupied areas, the issue can only be resolved through diplomatic negotiations

Human Impact

- Severe psychological trauma and loss of stability for the child
- Disruption of education, welfare, and legal protection

WHY THIS MATTERS FOR EUROPE

Cyprus is an external EU border, and the existence of an uncontrolled area undermines the effectiveness of EU child-protection frameworks.

Therefore, cases of child abduction in Cyprus are not only a national issue, but a European issue of security, justice, and human rights.

Strengthening prevention, coordination, and cross-border mechanisms is essential to ensure that no child can be removed from the European protective sphere through legal loopholes and political complexities.



KEY FEATURES OF BRUSSELS IIB

- Accelerated return procedures: Mandatory timeframes for judicial authorities to ensure swift decisions and prevent prolonged unlawful retention.
- Enhanced cooperation between Central Authorities: Cyprus's Central Authority works closely with counterparts across the EU to locate children, facilitate mediation, and coordinate action.
- Child-focused decision-making: Courts must hear the child and ensure that decisions reflect the best interests of the child, not only parental rights.
- Automatic recognition and enforcement: Decisions on custody or return issued in one Member State are automatically recognised and enforced in all others, reducing delays and legal obstacles.

IMPLEMENTATION IN CYPRUS

Cyprus fully applies Brussels IIb, alongside the Hague Convention of 1980.

Cypriot courts and authorities have adopted specialised procedures to handle abduction cases rapidly, especially when the child has been taken to or from another EU Member State.

COMPARATIVE EU PERSPECTIVE

Cyprus shares many features with other Mediterranean jurisdictions, yet retains certain distinctive characteristics:

Similarities:

- strong historical influence of religion,
- gradual liberalization of family structures,
- continued political debate over same-sex marriage.

Differences:

- Civil unions were adopted later than in Western Europe,
- Cyprus is moving more cautiously on LGBTQ+ parental rights.

However, EU membership has encouraged Cyprus to modernize procedures, increase judicial cooperation, and strengthen protection of fundamental rights.



EU AND ECHR INFLUENCE

Family law remains primarily a national competence, but European law significantly influences Cypriot practice.

EU Influence

Cyprus implements:

- **Brussels II ter** — on jurisdiction, recognition, enforcement, and international child abduction.
- **Rome III** — determining applicable law in cross-border divorces (for participating states; Cyprus applies Rome III selectively depending on party choice).
- EU procedural harmonization standards emphasizing efficiency and child protection.

ECHR Influence

The European Court of Human Rights has shaped Cypriot law in areas such as:

- rights of unmarried and same-sex partners,
- child protection and state obligations,
- procedural fairness,
- protection from domestic violence.

This shows how Cypriot family law is both nationally rooted and European-driven, illustrating a dual dynamic of sovereignty and integration.

RECENT REFORMS & ONGOING CHALLENGES

Cyprus is now implementing one of its most comprehensive reform agendas in decades.

1. Parental Relations Reform

- Combating parental alienation
- Strengthening Social Welfare Services
- Improving enforcement of custody orders,
- Debate over introducing presumptive 50/50 shared care.

2. Family Court Modernisation

- one judge handling all disputes per family,
- faster procedures,
- increased consistency – similar to unified family court models in Germany and Portugal

3. Adoption & Foster Care Reform

- Updated training and supervision,
- Harmonization with EU child-protection standards.

4. Equality for Civil Partners

- Ongoing debate on adoption rights for same-sex unions,
- Future recognition of same-sex marriage.

5. Cross-Border Cases

Cyprus faces a rising number of international disputes involving relocation, child abduction, and recognition of foreign orders.

EU cooperation mechanisms especially under Brussels II ter are essential to resolving these cases efficiently.

CONCLUSION

In conclusion, the family-law system of Cyprus reflects a careful balance between tradition and modernization. Rooted in cultural and religious heritage, it increasingly incorporates European human-rights values, equality principles, and procedural harmonisation.

The current reform process is ambitious and transformative. Its success will depend on institutional modernization, cross-border cooperation, and a strong commitment to protecting children and supporting families.

