



**Empowering European Families**

# **Towards more party autonomy in European family law and succession law**

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**ELI conference**

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# Comparative family law

- Existing divergence in substantive family law within Europe in relation to divorce law, property law, maintenance law, pension rights and inheritance rights
- Divergence for all types of relationships: marriage, registered partnership and informal relationships
- Potential problems for international couples:
  - legal unpredictability resulting in unexpected surprises
  - insufficient protection of economically weaker partner
  - no effective freedom of movement
  - no effective use of party-autonomy

# Formal relationships

Substantive law differs as to rights and duties of former spouses and registered partners, for instance:

- Marital property system
  - Separation of property system or community of property system
  - Status of marital contracts and discretion of the court
- Maintenance rights and duties differ across Member-States:
  - - e.g. maintenance rights related to a fault or no fault based divorce, prescribed time limits for the duration of maintenance rights, relevance of a new relationship of the maintenance creditor.

# Formal relationships

After their divorce Harry has to pay maintenance to Jannet. Some months later Jannet meets Bob. They start to live together as a couple.

What happens to the right/duty to maintenance?

# Informal relationships

Substantive law differs as to rights and duties of former partners, for instance:

- Property system
- Special protection in relation to the house
- Maintenance
- Household expenses

# Informal relationships

Finnish Hanna and Dutch Peter lived as a couple for five years in Amsterdam. They did not conclude a cohabitation contract. Hanna financed all costs of the household during the relationship, whereas Peter's savings grew. At the relationship breakdown Hanna expects Peter to pay compensation, but Peter refuses. According to Finnish law (Finnish Act on the Dissolution of the Household of Cohabiting Partners (26/2011)) she would be entitled to compensation, but under Dutch law there is no clarity whether Peter has to compensate Hanna.

# Aims of the project

- To develop model marriage agreements, both prenuptial and postnuptial, on rights and duties of spouses and registered partners (workstream 2)
- To develop model cohabitation agreements on rights and duties of informal partners (workstream 3)

# Methodology

Comparative law analysis of EU-Member States: admissibility and enforceability of contracts

1. Drafting questionnaire
2. Country reports by National Correspondents on the basis of the questionnaire
3. Drafting of the model contracts
4. Evaluation
5. Public workshop

# Commission on European Family Law

## CEFL

- National reports of the EU Member States, Principles of European Family Law and Explanatory Notes [www.ceflonline.net](http://www.ceflonline.net)
- Frame of reference for national, European and international legislation
- Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses (2004)
- [Principles of European Family Law Regarding Parental Responsibilities (2007)]
- Principles of European Family Law Regarding Property Relations Between Spouses (2013)
- Principles of European Family Law Regarding Informal Relationships (expected 2016)

# Final remark

Combining party autonomy in both private international law and substantive family law can have an empowering effect on families in Europe.