

---

---

**HOW TO RESOLVE TRANSNATIONAL CONFLICTS  
IN MARRIAGES, REGISTERED PARTNERSHIPS AND SUCCESSIONS**

**IN EASY READING**

---

---



Legal disclaimer. All information, content, and references available in this book are provided for research and general informational purposes only. The information provided in this book does not, and is not intended to, constitute legal advice. Readers of this book should contact their attorney to obtain advice with respect to any particular legal matter mentioned in this book. No reader of this book should act or refrain from acting on the basis of information in this book without first seeking legal advice from counsel in the relevant jurisdiction.

Information in this book may not constitute up-to-date legal or other information. Although every precaution has been taken to verify the accuracy of the information contained in this book, neither the authors nor the publisher assume any responsibility for errors or omissions. No liability is assumed for damages that may result from the use of information, content, or references in this book.

© 2020 Authors as indicated in the e-book reserve their copyright. Copying is permitted only for non-commercial purposes provided that the source is cited. Each author is responsible for his or her own chapter or part of the chapter and the publisher assumes no liability for any use of the contents or violations of third party rights.



This project was funded by the European Union's  
Justice Programme (2014-2020)

The content of this e-book represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This e-book has been published within the EU Justice Project  
“Personalized Solutions in European Family and Succession Law (PSEFS)”  
No. 800821-JUST-AG-2017/JUST-JCOO-AG-2017.

Este libro electrónico está disponible en español e inglés  
Se puede obtener más información en el sitio web del Proyecto [www.euro-family.eu](http://www.euro-family.eu).

© Entity, 2020

Editor and writer of the original:  
María José Cazorla González

Adaptation to easy reading  
Adapta Plena Inclusion Madrid  
Text validation  
Adapta - Grupo Amás/Amás Fácil

European easy-to-read logo: Inclusion Europe

More information at [www.easy-to-read.eu](http://www.easy-to-read.eu)

ISBN: 978-84-1377-086-4

---

---

## INDEX

---

---

<b>FOREWORD</b>	
BY ALMUDENA CASTRO-GIRONA MARTÍNEZ .....	7
<b>WHAT ARE YOU GOING TO READ IN THIS BOOK?</b> .....	9
<b>MARRIAGE AND REGISTERED PARTNERSHIP</b> .....	11
1. What is marriage? .....	12
2. What types of marriages exist in the European Union? .....	12
3. What does it mean that a marriage is cross-border? .....	12
4. What is a domestic partnership?.....	12
5. How can I make my domestic partnership official?.....	13
6. What is a Registry? .....	13
7. Is it the same to get married as to live with my partner? .....	13
8. My partner and I want to live together, but we do not want to sign up. What can happen?.....	13
9. What are the differences between married couples and registered domestic partnerships? .....	14
10. What is the economic regime of marriage? .....	14
11. What are marriage agreements? .....	15
12. When can a married couple sign a marriage contract? .....	15
13. What are the property relations of a domestic partnership?.....	15
14. What is a property consequences agreement between members of a domestic partnership? .....	16
15. When can an unmarried couple sign a property agreement? .....	16
16. I have a disability. Can I get married or become part of a common-law couple and choose the economic regime?.....	16
17. What if I have my capacity modified by a court judgement and I want to get married or be a domestic partner? .....	16
18. What is enhanced cooperation in the European Union?.....	17
<b>THE RESOLUTION OF LEGAL DISPUTES IN CROSS-BORDER MARRIAGES ...</b>	18
<b>CHOOSING THE JUDGE OR NOTARY IN CROSS-BORDER     MARRIAGE DISPUTES</b> .....	19
19. There is a conflict in a cross-border marriage, and they want a divorce. Which authorities do they have to go to for a divorce? .....	19
20. My partner and I are in a cross-border marriage from different countries of the European Union. Can we choose the judge or the notary to resolve our divorce? .....	19
21. What are the countries of the European Union that have strengthened cooperation to resolve marital economic conflicts?.....	20

22. I am Spanish and have filed for divorce, separation or the annulment of a marriage in another country of the European Union. Which authority will decide? .....	20
23. My partner has died. Which authority decides on all matters related to inheritance, money and property in common? .....	20
24. How is a judge or notary chosen to decide on matrimonial matters when there is a conflict? .....	21
25. Before 29 January 2019, the rules for cross-border marriages were different. Who decides on divorces, separations and annulments of cross-border marriages occurring before that day? .....	21
<b>CHOOSING A COUNTRY LAW FOR CROSS-BORDER MARRIAGE DISPUTES</b> .....	<b>23</b>
26. A couple was married before 29 January 2019, when the rules for cross-border marriages were different from today. Can they choose the law of a country to organize issues related to money, property, inheritance and conflict resolution? .....	23
27. Can all cross-border marriages make this choice living in European Union countries? .....	23
28. A cross-border married couple has chosen a country to apply the law that will organize the issues related to marriage. Can the couple decide to change which country's law will apply? .....	23
29. What law should property and money follow for a cross-border marriage? .....	24
30. How does choosing the law of a country affect the organization of the economic issues of marriage? .....	24
31. How does choosing the law of one country or another affect debt? .....	25
32. Do all judges and courts in European Union countries have to apply the rule of cross-border marriages that has been in existence since 29 January 2019? .....	26
33. A cross-border marriage has not been agreed upon in the law of a country that organizes the economic issues of their marriage. What law should a judge apply in this case, for example, when the couple gets divorced? .....	26
34. What are the types of matrimonial property regimes arrangements for marriage? .....	26
35. Do the countries of the European Union have any kind of economic agreement that applies when the members of the married do not choose the deal they want? .....	27

<b>CROSS-BORDER PARTNERSHIPS</b>	
<b>WHO ARE REGISTERED PARTNERSHIPS .....</b>	<b>29</b>
<b>CHOICE THE JUDGE OR NOTARY FOR</b>	
<b>CROSS-BORDER REGISTERED PARTNERSHIPS .....</b>	<b>30</b>
36. Can a domestic partner make a property consequences arrangement from different European Union countries? .....	30
37. When can a registered partnership make an agreement to choose the judge's country in case of conflict? .....	30
38. Can the registered partner choose who solves the economic conflict? .....	30
39. How does the couple make the agreement to choose the judge's or notary country in case of conflict? .....	31
40. A judge in one country is already working to resolve the separation of a registered partnership or the inheritance of one of the partners. Can the couple choose another judge? .....	31
41. Can the couple only choose the judge's country or a particular judge within a country? .....	31
42. What happens if registered partners do not choose a judge? .....	31
<b>CHOOSING A COUNTRY'S LAW FOR PROPERTY RELATIONS OF CROSS</b>	
<b>BORDER REGISTERED PARTNERSHIPS .....</b>	<b>32</b>
43. Can a registered partnership choose the law of the country that will organize issues related to money, property, inheritance and conflict resolution as a registered domestic partner? .....	32
44. Can domestic partners choose the law of any European Union country? .....	32
45. The members in a registered partnership has chosen a law in a country without law on registered partnerships. What happens then? .....	32
46. How can a couple choose the law of a country to organize their economic affairs? .....	33
47. When can the couple make an agreement to choose the law of a country in case of conflict? .....	33
48. How can the registered partner make their property agreement and the law applicable to it? .....	33
49. What are the consequences of choosing a country's law for registered domestic partnerships? .....	34
50. The members of a domestic partnership have chosen the law of a country, but the property and other goods are in another country. What is the law that applies? .....	34
51. How does choosing the law of one country or another affect debt? .....	34
52. What is a partnership ownership agreement? .....	34

<b>CONFLICT RESOLUTION ON CROSS-BORDER SUCCESSION .....</b>	<b>35</b>
<b>CHOOSING THE JUDGE OR NOTARY IN CONFLICTS</b>	
<b>AFFECTING CROSS-BORDER INHERITANCE .....</b>	<b>36</b>
53. Can the couple in a registered partner or marriage choose the judge for matters related to the inheritance when one of the two dies? .....	36
54. Can the couple choose only the judge's country or a particular judge within a country? .....	36
55. How does a married or registered partner make an agreement to choose the judge's country for inheritance? .....	36
56. When can a married or registered partner choose the judge for inheritance issues? .....	36
57. Who is necessary in the agreement to elect a judge? .....	37
58. Can the elected judge make decisions about all the money, assets and property of the estate or only some of them? .....	37
59. When is it advisable for a married or registered partner to make an agreement to choose a country's judge for succession matters? .....	37
<b>CHOOSING A COUNTRY'S LAW FOR CROSS-BORDER INHERITANCE DISPUTES .....</b>	<b>39</b>
60. Can a person choose the law of a country to decide on the property he or she leaves as his or her inheritance? .....	39
61. How can a person choose the law of a country for the assets that he or she leaves in his or her inheritance? ...	39
62. Can someone choose the law of any country? .....	39
63. Can a person choose the law of another country? .....	40
64. Can a person choose the laws of several countries for matters relating to the assets he or she leaves in his or her estate? .....	40
65. Can a person change the choice about the law of the country he or she wants or override that choice? .....	40
66. Who can choose the law of the country that will decide about an inheritance? .....	40
67. How does a person have to make the agreement to choose the law of a country for assets left in his or her inheritance? ....	40
68. Under what conditions does the choice of the law of a country count? .....	41
69. When is it advisable for a person to choose the law of a country? .....	41

---

---

## Foreword

**by Almudena Castro-Girona Martínez, Notary Public.**

*Director of the Aequitas Foundation of the CGN. President  
of the Human Rights Commission of the UINL*

---

---

Dear Reader,

Under the title “How to resolve transnational conflicts in marriages, registered partnership and inheritance” this highly practical work contributes to making access to justice effective for all citizens on an equal footing within the Europea Union.


It is part of the European Union-funded programme “Personalized Solutions in European Family and Succession Law (PSEFS)” and provides basic and necessary legal information on such sensitive matters as family and inheritance law within the Europea Union.

It is structured in four chapters, and first analyses legal concepts such as marriage and partnerships, informing the reader of the differences between them.

It then looks at specific legal aspects such as the economic regime of marriage, marriage settlements and finally deals with the resolution of cross-border disputes in the case of marriages and partnerships, addressing issues such as divorce or the settlement of matrimonial property regimes and informing the citizen of the competent authority and the applicable law.

The final chapter deals with cross-border inheritance law, firstly clarifying when we are faced with a situation that must be dealt with under the European inheritance regulation and, on that basis, providing the reader with legal information on how to choose the law applicable to my succession, what law I can choose or what happens if I have not made a choice.

Finally, the question and answer structure makes it easier for the reader to understand and analyse the subject matter.



The Aequitas Foundation, which I manage, was created in 1999 within the General Council of Notaries, to promote the development and effectiveness of the rights of the most vulnerable people in society. The reflection that led to its birth was the following: the notary, in the exercise of his function, is intimately linked to the rights of the person and the welfare of families and must collaborate in providing legal solutions to the problems of people who are in a situation of vulnerability and lack of such fair treatment.

In a certain way, this work makes the name of the Aequitas Foundation a reality, as it allows for equity, fair treatment and equality among citizens. Perhaps that is why the Director of the project, my admired and beloved María José Cazorla González, asked me to write this brief prologue, my recognition and thanks to you.

Finally I say goodbye:

I hope that you will find it useful to use this instrument that we make available to society.

My gratitude to all those who have made this possible  
And with the conviction that we will continue to work together as this is the best way to fulfil our foundation's motto "Together, we can do more" which is the best way to put our hands at the service of society.



---

---

## What are you going to read in this book?

---

---

This book is entitled How to Resolve Transnational Conflicts in Marriages, Domestic Partnerships and Succession and is published by Dykinson

This book addresses many doubts about what European rules say when there are conflicts over money, goods and properties in the following cases:

1. When a **marriage** is formed by two people from two different countries.
2. When a **domestic partnership** is formed by two people from two different countries and they are a registered partnership.
3. When a **person dies** and has several nationalities, lives between several countries or has a partner or family in different countries.

There are European standards that clarify:

- The laws that must be considered in these situations.
- The judges or notaries who must make decisions to resolve conflicts regarding the situations we have explained above.

The book has 4 chapters.

The first chapter explains some important terms, such as what is a marriage and a common-law relationship according to the law.



The following chapters explain the rules for each case:  
**marriage, registered partnership and succession.**

All chapters have several questions and answers.

We believe that this is an easier way to explain these issues that are so complicated. Today, there is a greater chance of a couple being from different countries of the European Union, whether they marry or live together.

This has consequences for rights, money and property.

We want all people to be able to know and understand these issues that can be so important in their lives.

---

---

## **Marriage and registered partnership**

---

---

## 1. What is marriage?

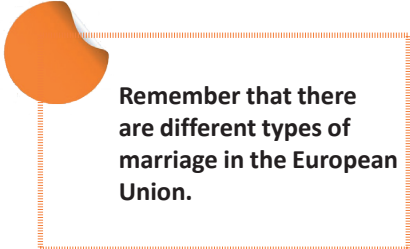
Marriage is a union of two people before the law. Those two people are joined together because they have a relationship of love, that is, that they love each other and want to live together. Additionally, they want to keep their relationship going over time And potentially start a family.

## 2. What types of marriages exist in the European Union?

In the European Union, all countries allow marriages between people of different sexes, that is, between a man and a woman.

Only a few countries also allow marriages between people of the same sex, i.e., between 2 men or between 2 women. For example, Spain, France, Germany and the Netherlands allow same-sex marriage in addition to marriage between people of different sexes.

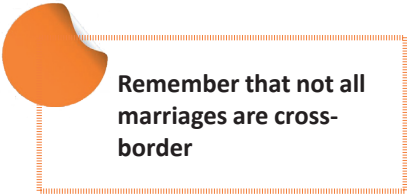
Other countries, such as Italy, Romania, Slovakia, Greece or Lithuania, only allow marriage between people of different sexes, that is, between a man and a woman.



Remember that there are different types of marriage in the European Union.

## 3. What does it mean that a marriage is cross-border?

A marriage is cross-border when both partners are from different countries. For example, the man is Spanish, and the woman is Italian. In this guide, we will discuss only issues related to cross-border marriages composed of people from European Union countries.



Remember that not all marriages are cross-border

## 4. What is a domestic partnership?

A domestic partnership is a union of two people living together who have a love relationship, meaning that they love each other and want to keep their relationship going over time. Domestic partnerships can be between people of different sexes, that is, between a man and a woman, or between people of the same sex,

that is, between 2 men or 2 women.

## 5. How can I make my domestic partnership official?

A common-law couple makes their relationship official when they sign up for a domestic partnership registry. At that time, the individuals in that couple become registered domestic partners.

The registered partnership is an office of the Administration in charge of documenting these unions of people.

Registered partners are not partners, who have married.

Registered partners are also not domestic partners who live together, but have never officially registered their partnership.

## 6. What is a Registry?

A Registry is an office of the Administration that documents people's identities and lives.

The Civil Registry is the registry where marriages are registered in Spain. Each country has its own register.

This registry is responsible for recording births, deaths and marriages. Marriages must be recorded in the Civil Registry.

Common-law couples must be entered in the Register of Common-law Couples.

## 7. Is it the same to get married as to live with my partner?

No, they are different situations.

A common-law couple can be registered in a common-law registry or live as a couple without being registered.


A marriage is always registered, for example, in Spain marriages are registered the Civil Registry.

## 8. My partner and I want to live together, but we do not want to sign up. What can happen?

An unregistered couple is an unregistered domestic partnership.

That relationship is not official for the Administration.

When the unregistered partnership has a domestic problem, they have to prove their relationship, and some European rules governing only registered partnerships do not apply.



Remember  
that marriage  
is not the same  
as a registered  
partnership

For example, a couple has been together for several years. One of them dies, and the other wants to claim the widow's pension. That person has to prove when they initiated a domestic partnership. Without registration, legal matters are more complicated.

## 9. What are the differences between married couples and registered domestic partnerships?

The main differences have to do with with issues of money and property.

The first difference is that **marriage** calls for some forms of distribution of money and property by law when the couple divorces or one person dies.

The law states that married couples can organize their assets together or separately.

This is important, for example, when the marriage ends in divorce or when one of them dies.

In the case of **registered partnerships**, they do not have those forms of remedy by law when they split up or one of them dies. Domestic partners must have a written agreement. Domestic partners can agree to organize their assets jointly or separately, but they must go to the notary and inform the register of unmarried couples.


This agreement is necessary in some cases, for example, when the couple buys a house.

Two other important differences have to do with with the couple's rights to inherit each other's money and property and with the right to receive a pension when one member of the couple dies.

## 10. What is the economic regime of marriage?

The matrimonial property regime is the set of rules about who has a marriage and affects the following:

- How the couple organizes their money and assets.




Remember some differences between marriage and registered partnerships

- What rights they have when one person dies or when they get divorced.
- What rights other people have regarding that money and property.

**For example**, a man and a woman get married. The man and woman had money and property before they were married. Then, the married man and woman buy a house. Additionally, the married man and woman have children. The matrimonial property regime indicates the rules related to how the marriage organizes its assets, what assets each person gets if there is a divorce or what assets the partner and children receive when the other partner dies.

### 11. What are marriage agreements?

Marriage settlements are a contract that a couple signs to determine their property regimes as a married couple, that is, the rules on how they organize their money and property and the rights they have regarding those assets for the duration of the marriage.



Remember the importance of your will when you are going to make or modify your marriage agreement

### 12. When can a married couple sign a marriage contract?

A married couple can sign their marriage contract before or after they are married. They can also change the contract during their marriage. It is necessary to go to a notary to prepare the agreement and sign it.

### 13. What are the property relations of a domestic partnership?

The property consequences of registered partnership are a set of rules similar to the economic regime for marriages but that apply to unmarried couples. When the common-law couple is registered, the property consequences are that of a registered partnership. During partnership, registered partners usually earn money and buy goods and property (for example: cars, houses, furniture). Sometimes they buy goods and property together. They may also share costs and debts.

Sometimes, partners do not agree about their property relations. This can be called a dispute regarding property relations

#### 14. What is a property consequences agreement between members of a domestic partnership?

A property consequences agreement is a pact signed by a domestic partner to determine their economic regime. It is similar to a marriage contract.

#### 15. When can an unmarried couple sign a property agreement?

A common-law couple can sign a property agreement before or after going to the Registry of Common-law Couples. They can also change the agreement during their time as a couple. They both need to go to a notary to prepare the agreement and sign it.

#### 16. I have a disability. Can I get married or become part of a common-law couple and choose the economic regime?

**Yes**, but you must meet 2 conditions:

- Each State says from what age you can register your union or get married.
- You **must be able to understand** what marriage means or what a common-law relationship means. In addition, you have to want it for yourself. In some cases, it may be necessary to have a support person, for example, when you want to make a marriage settlement or when you want to make an agreement as part of an unmarried couple about patrimonial consequences if the domestic partnership dissolves.

#### 17. What if I have my capacity modified by a court judgement and I want to get married or be a domestic partner?

Remember that the International Convention on the Rights of Persons with Disabilities recognises legal capacity for all persons. Therefore, all persons can get married or join as a registered partner and establish their economic agreements, but in compliance with the rules established in each country. Remember to inform yourself of these rules before you get married or sign a marriage agreement

16 Some people with disabilities have a modified ability to act.



The modification of the ability to act is a measure decided by a judge to protect a person's rights and interests and indicate the supports necessary for their life because the individual has difficulty making decisions or to cover his or her basic needs.

When a person with modified capacity wants to get married, we have to examine the decision made by the judge and the support the individual needs.

## **18. What is enhanced cooperation in the European Union?**

Enhanced cooperation is the **agreement between 2 or more European Union countries to move forward on common issues that interest them.**

Countries agree on how to manage some issues, but they retain some of their own characteristics.

Other countries of the European Union can join when they want to.

In this guide, we discuss enhanced cooperation between or among some European Union countries related **to legal disputes in cross-border marriages, cross-border registered partnership, and inheritance within these marriages and registered partnerships.**



---

---

## The resolution of legal disputes in cross-border marriages

---

---

---

---

## ***Choosing the judge or notary in cross-border marriage disputes***

---

---

**Remember that the competent authorities are the judge or notary in general, but there are exceptions because there are countries where only judge will be competent.**

### **19. There is a conflict in a cross-border marriage, and they want a divorce. Which authorities do they have to go to for a divorce?**

They can go to a judge or a notary.

When the marriage has children, they can only go to a judge.

The legal specialists call such courts competent courts.

### **20. My partner and I are in a cross-border marriage from different countries of the European Union.**

#### **Can we choose the judge or the notary to resolve our divorce?**

Yes, when you both belong to countries that are part of the so-called enhanced cooperation of the European Union to resolve marital economic conflicts.

The country must meet one of the following criteria:

- It is the country where you and your spouse live.
- It is the country from which you both have the same nationality. You both can have the same nationality for 2 reasons:
  - One has a nationality, and the other has a dual nationality (for example, a marriage between a Spanish man and a woman who has French and Spanish nationality)
  - You both have the same nationality but live in another country (for example, 2 Spaniards living in France)
- The country where one of the 2 individuals lives.

In all European Union countries, a judge has this authority.  
In some countries, a notary also has this authority.  
In the latter case, the couple must ask which notaries have this authority.


## 21. What are the countries of the European Union that have strengthened cooperation to resolve marital economic conflicts?

The countries of reinforced cooperation for the resolution of economic conflicts in cross-border marriages are **Germany, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden.**

There are countries of the European Union that are outside of this enhanced cooperation.

These countries are Denmark, Estonia, Slovakia, Hungary, Ireland, Latvia, Lithuania, Poland and Romania.

The United Kingdom is negotiating its exit from the European Union and was not participating in this enhanced cooperation agreement.



Remember that it is important to know which countries in Europe participate in enhanced cooperation and which do not

## 22. I am Spanish and have filed for divorce, separation or the annulment of a marriage in another country of the European Union.

### Which authority will decide?

In these cases, the entity that has authority in the country for these kinds of decisions in such conflicts is based on the following:

In every country, a judge has this authority.

In some countries, a notary also has this authority.

## 23. My partner has died. Which authority decides on all matters related to inheritance, money and property in common?

The authority figure who makes these decisions will always be a **judge or a notary.**

It will be a judge or notary who has the power to make decisions on inheritance issues and common property in marriages.

## 24. How is a judge or notary chosen to decide on matrimonial matters when there is a conflict?

The judge or the notary, depending on the country, can decide on the economic matrimonial dispute.

They decide on this disputes must follow this order:

- The country where the couple used to live on a regular basis.
- The last country where the couple lived together, when one of them still lives there.
- The country where the member of the marriage lives who receives the petition for divorce, separation or annulment of the marriage.
- The country where one of the two members of the marriage lives, when the two file for divorce jointly.
- The country where the marriage partner lives who is filing for divorce, when he has already lived there for a year.
- The country where the member of the marriage lives who is filing for divorce, when he has been living there for six months and is a national of that country.

The examples help us to better understand the application of the laws but they are not rules, so each case has its own solution taking into consideration the interests of the parties and the law applicable at that time.

**For example**, in the latter case, a Spanish woman marries a Frenchman and lives in France.

Sometime later, they split up.

The Spaniard returns to Spain, and after 6 months, she asks for a divorce.

In this case, a Spanish judge will decide on the divorce.


Finally, any judge from a European Union country can decide on matrimonial economic conflicts when the two members of the marriage are from the same country.

## 25. Before 29 January 2019, the rules for cross-border marriages were different.

### Who decides on divorces, separations and annulments of cross-border marriages occurring before that day?

The judge decides according to the international rules on marriages. In the case of Spain, the rules that are considered are as follows:

- The law of the country chosen by the 2 members when they get married.

- 
- The law of the country where the 2 members live.
  - The law of the country where they live after they are married.
  - The law of the country where they were married.

These options disappear when the married couple agrees to accept the current European standard, which has applied since 29 January 2019.


---

---

## *Choosing a country law for cross-border marriage disputes*

---

---



You should consider that the choice of law by the spouses can help you avoid conflicts.

**26. A couple was married before 29 January 2019, when the rules for cross-border marriages were different from today.**

**Can they choose the law of a country to organize issues related to money, property, inheritance and conflict resolution?**

Yes, but they must do so in writing.

They can choose the law of the following countries:

- The country where the couple lives.
- The country of which they have the same nationality, when one of them has applied for dual citizenship.
- The country where they were married.

**27. Can all cross-border marriages make this choice living in European Union countries?**

Yes, when the members of the couple both live in an European Union country

and they agree to choose the law

of one of the European Union enhanced cooperation countries to resolve marital economic conflicts.

**28. A cross-border married couple has chosen a country to apply the law that will organize the issues related to marriage. Can the couple decide to change which country's law will apply?**

Yes, they can change within these options:

- The country where the couple lives.
- The country for which they have the same nationality when one of them has applied for dual citizenship.
- The country where they were married.

**For example**, a Frenchman and a German woman get married in Germany, and they live in France.

First, they choose German law to organize

all the issues of marriage, being the country where they got married.

A few years later, they prefer to change to French law, as this is the country where they live.

## 29. What law should property and money follow for a cross-border marriage?

Money and property must follow the law of the country that the married couple has chosen, even if that money and those assets are in another country. This rule only applies when countries are part of the European Union enhanced cooperation to resolve marital economic conflicts.

**For example**, a Frenchman and a German woman who are married choose German law to organize all the issues of marriage. Both have assets in France, Germany and Belgium. That couple gets divorced after a few years. The law to be applied for the distribution of property is German.

The examples help us to better understand the application of the laws but they are not rules, so each case has its own solution taking into consideration the interests of the parties and the law applicable at that time.

## 30. How does choosing the law of a country affect the organization of the economic issues of marriage?

Choosing the law of one country or another affects several issues:

- The organization of the assets of the marriage into different groups or categories and any exchange of these goods between groups or categories.

**For example**, in a marriage, a woman inherits her father's money when he dies

The money from an inheritance belongs only to the person who inherits it, even though she's married.

The woman decides to keep the money in an account in her and her husband's name.

That inherited money is no longer only hers; rather, it now belongs to both of them, because it is understood that you have made a donation to your spouse, unless proven otherwise.

This is an example of a change of category in how to organize the assets of a marriage.

- The responsibility that each member of the marriage has regarding each other's debts.
- The rights and obligations of the two members of the marriage with respect to the money and property held by them.

Each State has its own laws governing these matters in different manners, which is why the choice of applicable law is so important.



Remember the importance of choice the applicable law

- Divorce, separation and annulment of the marriage.
- The distribution of money and property when the marriage ends in divorce or one member of the couple dies.
- The distribution of the inheritance with other people when one member of the couple dies.
- The validity of marriage settlements, that is, the validity of the marriage settlement to organize their money and property.

### 31. How does choosing the law of one country or another affect debt?

It depends on the type of agreement the married couple has to organize their money and assets.

Married couples have 2 types of arrangements, called regimes:

- Community of property:

Both have joint ownership of the money and property.

When one has a profit, it is for both of them.

When one has a debt, it is for both of them,

provided that the debt is for family obligations or responsibilities, or is signed by both.

- Regime of separation of property:

Each member of the marriage has his or her money and property.

When there is a profit, it belongs to the individual alone.

When there is a debt, it also belongs to the individual alone.

When there is a profit from one spouse's assets, it is theirs alone.

When there is a debt derived only from the assets or agreements of one of the spouses,

it is also theirs alone.

**Case 1:** A married couple in a community of property (partnership regime) buys a house

and asks the bank for a loan, signed by both.

The couple cannot pay back the loan.

Therefore, the bank claims the debt from both of them.

**Case 2:** In a marriage with a separation of property regime, the husband buys a car, and the wife buys a house.

They each take out a loan.

After a while, the husband has problems

paying off the car loan.

The bank can only claim payment from the husband.

It cannot claim anything from the wife

because they have a separation of property regime,

and he alone bought the car.

It is important to remember that the rules governing the matrimonial property regimes are complicated and their application depends on the specific case, and they change in each country. For this reason, legal advice is recommended before making the choice.

### **32. Do all judges and courts in European Union countries have to apply the rule of cross-border marriages that has been in existence since 29 January 2019?**

No, only the judges and courts of the countries that are of the so-called enhanced cooperation of the European Union resolve marital economic conflicts:

Austria, Belgium, Bulgaria, Germany, Cyprus, Croatia, Finland, France, Greece, Italy, Luxembourg, Slovenia and Spain, Malta, the Netherlands, Portugal, the Czech Republic and Sweden. The rest will apply their country's rules.

### **33. A cross-border marriage has not been agreed upon in the law of a country that organizes the economic issues of their marriage.**

**What law should a judge apply in this case, for example, when the couple gets divorced?**

The judge must apply the law of the country that corresponds to the following order:

- The country where the couple lives.
- The country of which they have the same nationality when one of them has applied for dual citizenship.
- The country where they were married.

The judge may decide to apply the law of another country when the person asking for the divorce proves the following:

- That the married lived in another country for longer than the current one.
- That the married agreed to accept the rules of the other country where they lived to organize the affairs related to their property.

### **34. What are the types of matrimonial property regimes arrangements for marriage?**

There are several types of matrimonial property regimes arrangements in European Union countries for married couples. The 3 most common agreements are as follows:

**- Separation of property:**

Each member of the marriage has his or her own money and assets. When there is a profit, it is the individual's alone.

Remember that there are many economic regimes in Europe and freedom of agreement for spouses, with some exceptions. These are only the most common matrimonial property regimes in Europe.

When there is a debt, it is also the individual's alone.

When there is a profit to be made from one's assets, it is yours alone.

When there is a debt arising only from one's assets or agreements, it is also yours alone.

**- Community of property:**

Both have the money and the property of the goods together.

When one has a profit, it is both of theirs.

When one has a debt, it is both of theirs.

It is also called a community of property.

Provided that the debt is for family obligations or burdens, or is signed by both.

**- Participation in acquisitions regime:**

It works like a separation of property.

When a marriage separates or one of them dies, the living spouse (widow or widower) is entitled to a share of the profits that he or she produced during the marriage.

### **35. Do the countries of the European Union have any kind of economic agreement that applies when the members of the married do not choose the deal they want?**

A judge will always ask if there is a matrimonial property regime arrangement in the marriage.

The agreement will be the first choice.

When the agreement does not exist or the judge cannot enforce it, then the law will indicate what kind of agreement exists.

Almost every country in the European Union has an economic law to cover marriages that do not have an agreement, except for England and Wales in the UK.


**The default economic regimes in each country are as follows:**

- Separation of property: Austria, Greece and Ireland apply by law the separation of property, i.e., each member of the marriage has his or her money and goods.

Member States: Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia

Portugal and Romania apply by law the community of property, that is, the couple both have the money and the goods together.

- Participation in acquisitions regime: Germany, Cyprus, Denmark, Finland and Sweden apply profit-sharing by law, which works like the separation of property, but when they separate or divorce from the marriage there is profit sharing.



In the case of Spain, there are differences:

- Catalonia and the Balearic Islands have a separation of property.
- The rest of Spain has a community of property.

In the case of the United Kingdom, there are also differences:

- England and Wales do not have a default type of agreement.
- Scotland and Northern Ireland have a separation of property.

---

---

**Cross-border partnerships  
who are registered partnerships**

---

---

---

---

## ***Choice the judge or notary for cross-border registered partnerships***

---

---

### **36. Can a domestic partner make a property consequences arrangement from different European Union countries?**

An economic agreement is a pact that is signed by a common-law couple to decide their economic regime.

It is similar to a marriage agreement.

A common-law couple from different European Union countries can make a economic agreement


when they do so before judges in the following countries:

Austria, Belgium, Bulgaria, Croatia, Germany, Slovenia, Spain, Estonia, Finland, France, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, the Czech Republic and Sweden.

The group of so-called participating countries have agreed to these property consequences arrangements for a domestic partnership.

The countries of the European Union that are not among the countries participating in these economic agreements for an unmarried couple are Cyprus, Denmark, Slovakia, Hungary, Ireland, Latvia, Lithuania, Poland and Romania.

The United Kingdom is negotiating its exit from the European Union.



**The agreements help to avoid possible economic conflicts for the members of the registered partner.**

### **37. When can a registered partnership make an agreement to choose the judge's country in case of conflict?**

The couple can make this agreement:

- Before or after they have a conflict as a couple.
- Before or after they are registered as a couple.

### **38. Can the registered partner choose who solves the economic conflict?**

Yes, in most countries

the parties can agree to have the judge of one country who decides on your property dispute.

In some countries a property dispute can be decided by a notary.

### **39. How does the couple make the agreement to choose the judge's or notary country in case of conflict?**

The couple has to make the agreement in writing, signed by both of them. The agreement can be part of the domestic partnership agreement or it can be a separate agreement.

### **40. A judge in one country is already working to resolve the separation of a registered partnership or the inheritance of one of the partners.**

#### **Can the couple choose another judge?**

Sometime, but this is not usual because the first judge could indicate that the agreement is not valid.

However, when there are two judges from two countries who have started working on a conflict for different members of a couple at the same time, the domestic partnership agreement affecting the judges' countries applies. If registered partners already choose a judge for property disputes, their agreement will not be respected.

Property disputes will be resolved in the country, where a judge is already deciding on inheritance.

The agreement is valid when it concerns judges who are both in the so-called participating countries.

### **41. Can the couple only choose the judge's country or a particular judge within a country?**

The couple can only choose the country of the judge who may have to make a decision regarding a conflict that the couple has.

The couple cannot choose a particular judge within that country.

### **42. What happens if registered partners do not choose a judge?**

In this case special rules will determine, in which country their property dispute will be decided.

Usually this will be the country where they both live at the time when the dispute comes before a judge.

If registered partners do not live in the same country, additional rules exist, which determine, where the dispute will be decided.

**Remember that the choice of a country's judge by the parties has exceptions**

**The competent court**

---

---

## Choosing a country's law for property relations of cross border registered partnerships

---

---

### 43. Can a registered partnership choose the law of the country that will organize issues related to money, property, inheritance and conflict resolution as a registered domestic partner?

Yes, the couple can choose the law of a country, that will **govern their property relations**.

When the couple does not choose the law of a country, the judge will apply the law of the country where they live.



Remember before choosing the applicable law of a State, that not all the Member States of the European Union have rules governing de facto unions, whether registered or not.

### 44. Can domestic partners choose the law of any European Union country?

Yes, but that country must have laws that recognize registered domestic partnerships.

Some European Union countries do not recognize registered partners.

These countries are Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia.

This means that the law must include some rules, which regulate property relations of registered partners. If the chosen law does not recognize registered partnerships, the choice will not have effect.

### 45. The members in a registered partnership has chosen a law in a country without law on registered partnerships.

#### What happens then?

The choice is not good. The couple's partnership agreement does not count, and it does not have any legal effect.

Depending on the case, the couple has to check that the country they choose has

- A law on cohabiting couples of different sexes.
- A law on same-sex partnerships.



## 46. How can a couple choose the law of a country to organize their economic affairs?

The registered partner can choose the law of the following countries:

- The country where both or one of the members live when they sign the agreement.
- The country of nationality of one of the two members.
- The country where the couple has registered as a domestic partnership.

Remember that there are many variables to take into account before choosing the applicable law and here we only highlight some of them.

## 47. When can the couple make an agreement to choose the law of a country in case of conflict?

The registered partnership can make this agreement before or after of to be registered as a domestic partner.

The couple can change the agreement as many times as they want. They can also decide that the agreement cannot be changed.

## 48. How can the registered partner make their property agreement and the law applicable to it?

The couple must make the agreement in **writing, signed by both of them**. The agreement can be part of the domestic partnership agreement, or it can be a separate agreement.

In addition, the agreement must comply with the form of this type of agreement according to the laws of the countries where the individuals in the couple live.

They must take into account the list of participating European Union countries.

These participating countries are Germany, Austria, Belgium, Bulgaria, Croatia, Estonia, Slovenia, Spain, Finland, France, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, the Czech Republic and Sweden.

The cases may be as follows:

- They both live in a participating country: they must comply with the form of these agreements according to the laws of that country.
- They live in different participating countries: they must comply with the form of these agreements according to the laws of the two countries.
- They live in two countries, but one country is a participant and the other country is not a participant: they must comply with the form of these agreements according to the laws of both countries.

Remember that every State has its own regulation on the economic agreements of the Registered partnerships. In addition, there are of the European Union participating in the enhanced cooperation and others do not.

- They both live in non-participating countries: they do not have to comply in a necessary way with the agreements of the laws of the two countries.

It is possible to consult the laws that each country require about the form of the agreements on this website: <https://www.euro-family.eu/atlas>


#### **49. What are the consequences of choosing a country's law for registered domestic partnerships?**

Both partners and judges must take this law into account to resolve issues of money, property, inheritance and conflict as a couple.

#### **50. The members of a domestic partnership have chosen the law of a country, but the property and other goods are in another country.**

##### **What is the law that applies?**

Only the law of the country the couple has chosen applies, even if property and other assets are in another country.



Effects of the choice of law applicable to the property of the registered union

#### **51. How does choosing the law of one country or another affect debt?**

The law of the chosen country will indicate the liabilities of each person in a domestic partnership regarding their debts. When a partner has debts that he or she cannot pay, for example, the other member can say that the law they have chosen allows him or her to release himself or herself from the responsibility of that debt to his or her partner.

In other words, everyone must pay his or her own debts unless he or she agrees to help the other pay his or her debts or the law of the chosen country allows them to help pay each other's debts.

#### **52. What is a partnership ownership agreement?**

It is the agreement signed by the two members of a registered domestic partnership to organize their money, their assets and debt obligations as a couple.

---

---

## **Conflict resolution on cross-border succession**

---

---

---

---

## ***Choosing the judge or notary in conflicts affecting cross-border inheritance***

---

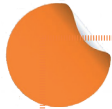
---

### **53. Can the couple in a registered partner or marriage choose the judge for matters related to the inheritance when one of the two dies?**

Yes, the European rule allows both partners in a marriage or cross-border partnership to agree in court about who will make decisions

**on issues related to inheritance.**

The judge must be from the same country as the law they have chosen to organize matters related to the inheritance.



Remember that everything that is decided in life could help to avoid problems when we have died

### **54. Can the couple choose only the judge's country or a particular judge within a country?**

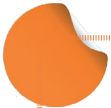
The couple can make both choices:

- They can choose a particular judge from a country.
- They can choose a country for any judge in that country.

In these cases, no other judge can take care of these matters.

### **55. How does a married or registered partner make an agreement to choose the judge's country for inheritance?**

The agreement must be in **writing and signed by both individuals.**



Remember that the judge decides when there is a conflict

### **56. When can a married or registered partner choose the judge for inheritance issues?**

Any time, but the judge's country must be the same as that of the law of the country of the person who dies.

The chosen country may be one of the following:

- The country of the person's nationality when the two of them made the deal.

- The country of nationality that the person has when he or she has died.

There is a problem when the couple chooses the country of law and the judge while they are both alive: they may change their nationality and change the law they choose.

It can also be the case that a person has two nationalities and changes the country and the law for inheritance. The valid law will always be the last one an individual chooses. The previous choices are not valid.

### **57. Who is necessary in the agreement to elect a judge?**

This is a complicated question because there can be many heirs when a person dies.

For example, the heirs can be the children, the couple, and the parents, among others.

The European standard says that the judge's choice agreement is valid as long as the heirs accept it.

When the heirs reject the agreement, the elected judge must decline to address the matter.

Remember that the rules of succession are complex, and that their application to the specific case allows us to know who is the competent court in that case.

### **58. Can the elected judge make decisions about all the money, assets and property of the estate or only some of them?**

The elected judge makes decisions about all the money, assets and property, even if they are in other countries.

However, that judge can decide to waive decisions affecting the property in another country when a person interested in the inheritance is asking because the judge thinks that the country will not accept his or her decision.

Remember that the judge decides when there is a conflict

### **59. When is it advisable for a married or registered partner to make an agreement to choose a country's judge for succession matters?**

It can be important when one of the two partners or one of the members of the marriage lives outside the European Union.

A judge in a European Union country can make decisions about the assets of a person's estate in the following cases:

- When that person has the nationality of a country in the European Union.
- When that person has lived in the European Union country for less than 5 years before going to the country outside the European Union where he or she now lives.
- When that person's assets are in the same country of his or her nationality.

**For example**, a male Spaniard lives in the United States.


That Spaniard has property in Spain.

When he dies, a Spanish judge can make decisions about his estate for the inheritance.

When the couple in a domestic partnership or marriage does not sign an agreement about the judge of a country, the judge resolving issues of inheritance may be as follows:

- A judge in the country where the deceased lived.
- A judge of the country where the money, goods and property come from the person who has died.

When a person chooses the law of a country, the heirs can choose the judge in that same country.



**The examples help us to better understand the application of the laws but they are not rules, so each case has its own solution taking into consideration the interests of the parties and the law applicable at that time.**

---

---

## ***Choosing a country's law for cross-border inheritance disputes***

---

---

### **60. Can a person choose the law of a country to decide on the property he or she leaves as his or her inheritance?**

Yes, a person can choose the law of a country for matters relating to inheritance.


### **61. How can a person choose the law of a country for the assets that he or she leaves in his or her inheritance?**

A person can make the choice of the law of a country for the assets he or she leaves in his or her inheritance, either expressly or tactically:

- Expressly: the person indicates the country in a document.
- Tacitly: the person does not leave it in writing but leaves it implicitly that he or she wants the country of his nationality to be the legal authority.

**For example**, a male Spaniard tells several family members and friends that he wants the law governing the assets he leaves in an inheritance to be the Spanish one.

However, the best case is when the person indicates the country expressly, especially when he or she wants it to be the country of his or her nationality.



Remember the importance of the choice of law applicable to the inheritance, in order to avoid future conflicts

### **62. Can someone choose the law of any country?**

No, people can only choose the law of the country of which they are a national when they create the document or the nationality they have when they die. When a person has several nationalities, they can choose the law of the country of any of those nationalities.

### 63. Can a person choose the law of another country?

Yes, but the heirs cannot choose the judge when, in addition, the person who has died had the nationality of that other country.

### 64. Can a person choose the laws of several countries for matters relating to the assets he or she leaves in his or her estate?

No.

### 65. Can a person change the choice about the law of the country he or she wants or override that choice?

**Yes, a person can change to another country's law or annul the original choice without choosing the law of another country.**

However, it is advisable to leave the choice about the law of a country expressly in writing.

### 66. Who can choose the law of the country that will decide about an inheritance?

Only the person who is going to leave an inheritance can choose the law of the land that will apply. None of the heirs can choose it.

### 67. How does a person have to make the agreement to choose the law of a country for assets left in his or her inheritance?

It is advisable that the choice be expressed in writing.

A judge may accept the choice of a viva voce only in very specific cases, for example, in a life-threatening situation and with witnesses who can confirm that choice.

The written document must comply with the requirements of the of these documents from the chosen country, which may be:

- The country where the person made the document.
- The country of nationality of the person.
- The country where the person had his or her residence in effect for the laws.
- The country where the person lived.

The examples help us to better understand the application of the laws but they are not rules, so each case has its own solution taking into consideration the interests of the parties and the law applicable at that time.



## **68. Under what conditions does the choice of the law of a country count?**

The choice of the law of a country, or the change of country or the annulment of a choice has as a condition that the person does it voluntarily and understands what he or she is doing.

## **69. When is it advisable for a person to choose the law of a country?**

It is best for the person to choose the law of the country where he or she lives rather than leave the decision to others after he or she dies.

There are cases in which it is advisable to choose the law of a particular country, for example, when a person lives between two countries or he or she is planning to move to another country to live.

It is also recommended for people who are going to live in another country but who have their relatives and their assets in their country of birth and prefer that the law of their country of birth organize the affairs of their inheritance.