

Divorce and Registered Partnerships in Private International Law **Revised Version of August 2001**

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A. Divorce

I. Jurisdiction according to Brussels II

The Regulation (EC) No. 1347/2000 of 29 May 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility for Children of both Spouses¹ has entered into force on 1 March 2001. According to Article 2 (1) of the Regulation a petition for divorce may be brought in member states with which the spouses are connected either by their habitual residence or by common nationality or (for the U.K.) by common domicile. These heads of jurisdiction are very liberal insofar as there are hardly any obstacles to seise a tribunal of a divorce matter. According to Article 2 (1) last indent, e. g., an Italian woman, disappointed by her marriage in Germany can bring a petition for divorce in Italy half a year after she had left Germany.

All these heads of jurisdiction shall not be questioned. They rather serve as important facts which have to be taken into account when formulating a choice of law-rule for divorce. Experience shows that the more liberal you are in providing jurisdiction for legal matters the more unlikely it is that the *lex fori* will be a fair choice governing divorce.

II. Applicable Law

1. National Solutions

In Appendix no. 1 I have collected the national solutions of some European states in order to find out the general attitude of the member states with respect to choice of law in matters of divorce. These national solutions may be summarised as follows :

- a) Most states prefer an actual common connecting factor which is either
 - the common *lex patriae* (for countries favouring the principle of nationality as, e. g., Austria, Belgium, Czech Republic, France, Germany, Greece, Hungary, Italy, Liechtenstein, Luxemburg, Netherlands, Poland, Portugal, Rumania, Spain, Turkey)
 - common *lex domicilii* if there is no common *lex patriae* in states mentioned before
 - common choice of law (this is provided in Hungary, the Netherlands and the Belgian draft)
- b) If there is no connecting factor actually common to the spouses there are different solutions given
 - (1) former common *lex patriae* or *lex domicilii* if at least one of the spouses still keeps the former common nationality or domicile (Austria, Germany, Greece, Hungary, Liechtenstein)
 - (2) law of the common closest connection (Germany, Greece, Italy, Portugal, Rumania)
 - (3) *lex fori* as the *lex patriae* of one of the parties (Belgium, France, Hungary, Sweden)Not mentioned are here those provisions which provide a forum and the *lex fori* as *lex patriae* for nationals of the forum state if they cannot obtain a divorce abroad (cp., e. g., Germany, Iceland, Norway, Switzerland)
- (4) *lex fori* as *lex ultimae spei* (e. g. Hungary, Luxemburg, Poland, Spain, Turkey).

2. International Solutions

There are very few international instruments on the law applicable to divorce.

a) Hague Convention of 1902

The Hague Convention of 12 June 1902 on the Applicable Law and Jurisdiction with respect to Divorce and Separation is not in force any more. It provided a very difficult solution to be explained by the fact that in former times divorce was not possible in all countries. Therefore divorce could only be given in competent fora (Articles 5 and 6) if divorce was allowed by the *lex patriae* of the couple and the *lex fori* (Article 1 and 2). Under these conditions the divorce was governed by the *lex fori* (Article 3).

b) Código Bustamante of 1928

According to the Latin American Código di derecho internacional privado (Código Bustamante) divorce is governed by the law of the matrimonial domicile (Article 52).

c) Nordic Convention of 1931

The Scandinavian Convention of 6 February 1931 fixes jurisdiction and orders the *lex fori* as the applicable law for divorce (Article 7). Divorce jurisdiction is given to a Scandinavian country if the spouses are domiciled in this country or had their last domicile in this country and one of the spouses is still domiciled there. Ultimately divorce may be petitioned by Scandinavian citizens living abroad in a non-Scandinavian country.

¹ Brussels II ; OJ 2000, L 160/19.

III. Proposals for a EU-Regulation

Because of the liberal regulation of jurisdiction in the Regulation Brussels II it is not proper to have divorce governed by the *lex fori*. In addition it has to be kept in mind that some effects of divorce are governed by the law applied to a divorce petition. According to Article 8 (1) Hague Convention of 1973 on the Law Applicable to Maintenance Obligations the law applied to a divorce also governs the maintenance obligations between the divorced spouses. This Convention is in force in seven member states of the EU (France, Germany, Italy, Luxemburg, Netherlands, Portugal, Spain) and Japan, Poland, Switzerland and Turkey. Therefore the law governing divorce should be fixed carefully.

1. Proposal

My proposal to be discussed is :

- choice of law by the parties (they may choose one of their *leges patriae* or *leges domicilii* or the *lex fori*)
- if there is no choice by the parties
 - the law at their actual common habitual residence in one state applies
 - the law of their former habitual residence in a State applies if there is no more a common actual habitual in this state and if one spouse still is habitual resident in this state
 - the law of their effective common nationality governs if indent 1 and 2 do not apply
 - ultimately the law of the state applies with which the marital relationship had the closest connection.

2. Comments

There should be a limited choice by the parties. This is provided by the Belgian draft, by the Dutch law and by Hungary. Such a choice by the parties will relieve the court from the task to fix the law of the closest connection (either by common habitual residence or nationality or some other connecting factor).

If there is no choice, divorce should be governed by the law of the state in which both spouses have their common habitual residence or – to avoid a unilateral fixing of the law applicable – *had* their habitual residence if one spouse keeps his/her habitual residence in this state. Ultimately the law of the closest connection may govern. This law may be the common *lex patriae* or any other law with which the marital relationship had close connections.

B. Registered Partnerships

I. National Law

1. Substantial Law

There are some jurisdictions in Europe which already introduced registered partnerships. These are Denmark, France, Germany, Netherlands, Norway and Sweden (cp. Appendix No. 2). In other countries there are projects to introduce registered partnerships (Switzerland).

a) Creation of Registered Partnerships

Registered partnerships may be created by

- partners of the same sex or also by partners of different sex (France, Netherlands)
- registered contract (France), ceremony (Netherlands) or by simple registration (Denmark, Germany, Norway, Sweden)
- partner of whom at least one is a local citizen (Denmark) or also by foreign partners (France, Germany, Netherlands, Norway, Sweden)

Registration is forbidden if

- there is a close family relationship between partners
- at least one of them is still married
- at least one of them is already registered as a partner to another one.

b) Effects of Registration

There are at least two types of registered partnership in Europe. The first one creates almost the same effects created by marriage (Denmark, Netherlands, Norway, Sweden). The other one has less effects and is more similar to a matrimonial contract (France, Germany). This has to be kept in mind because when recognising a partnership registered abroad it has to be distinguished between different types of such partnerships.

c) Termination of Registered Partnerships

Registered partnerships may be terminated *inter vivos* by

- common declaration of the partners and registration (France, Netherlands)
- unilateral declaration (France, Netherlands)
- marriage of a partner (France, Netherlands)
- court order (Denmark, Germany, Netherlands, Norway, Sweden)

2. Private International Law

a) Jurisdiction

(1) Registration

The six countries with registered partnerships assume jurisdiction for the creation and dissolution of partnerships which may be registered and dissolved according to their domestic law. The preconditions for registration are mentioned in Appendix No. 2. The Scandinavian countries required that at least one of the partners must be a local citizen but abandoned this requirement in their amending legislation. France and the Netherlands differ insofar as

also two aliens may register as partners if they are local residents. In Germany everybody may register according to German law ².

The German conflicts rule on registered partnership has been inserted as Article 17a into the EGBGB. This provision reads :

Artikel 17a EGBGB : Eingetragene Lebenspartnerschaft

(1) Die Begründung, die allgemeinen und die güterrechtlichen Wirkungen sowie die Auflösung einer eingetragenen Lebenspartnerschaft unterliegen den Sachvorschriften des Register führenden Staates. Auf die unterhaltsrechtlichen und die erbrechtlichen Folgen der Lebenspartnerschaft ist das nach den allgemeinen Vorschriften maßgebende Recht anzuwenden ; begründet die Lebenspartnerschaft danach keine gesetzliche Unterhaltsberechtigung oder kein gesetzliches Erbrecht, so findet insoweit Satz 1 entsprechende Anwendung.

(2) Artikel 10 Abs. 2 gilt entsprechend. Unterliegen die allgemeinen Wirkungen der Lebenspartnerschaft dem Recht eines anderen Staates, so ist auf im Inland befindliche bewegliche Sachen § 8 Abs. 1 des Lebenspartnerschaftsgesetzes und auf im Inland vorgenommene Rechtsgeschäfte § 8 Abs. 2 des Lebenspartnerschaftsgesetzes in Verbindung mit § 1357 des Bürgerlichen Gesetzbuchs anzuwenden, soweit diese Vorschriften für gutgläubige Dritte günstiger sind als das fremde Recht.

(3) Bestehen zwischen denselben Personen eingetragene Lebenspartnerschaften in verschiedenen Staaten, so ist die zuletzt begründete Lebenspartnerschaft vom Zeitpunkt ihrer Begründung an für die in Absatz 1 umschriebenen Wirkungen und Folgen maßgebend.

(4) Die Wirkungen einer im Ausland eingetragenen Lebenspartnerschaft gehen nicht weiter als nach den Vorschriften des Bürgerlichen Gesetzbuchs und des Lebenspartnerschaftsgesetzes vorgesehen.

The unofficial English translation of Article 17 a EGBGB reads as follows :

Article 17a EGBGB : Registered Partnership

(1) The creation, the general and special property effects and the dissolution of a registered partnership are governed by the substantive law of the State of registration. The effects as to maintenance and succession are subject to the general rules on the applicable law [i. e. Article 18 and 25 EGBGB or Hague Conventions] ; if according to these rules the registered partnership does not create rights for maintenance or succession, sentence 1 [of this paragraph] applies.

(2) Article 10 (2) [EGBGB : choice of name] applies *mutatis mutandis*. If the general effects of the partnership are governed by the law of another State, § 8 (1) of the Partnership Act applies to movables located in Germany and § 8 (2) of the Partnership Act applies to transactions stipulated in Germany if these sections are more favourable to third parties in good faith than the foreign law.

(3) If there are registered partnerships between the same persons according to the law of different States, the partnership registered last determines the effects described in paragraph 1.

(4) The effects of a partnership registered abroad are not recognised insofar as they go beyond the effects provided by the Civil Code and the Partnership Act.

There are drafts for choice of law rules relating to the conclusion of registered partnerships. The Dutch draft of 1998 prepared by the Netherlands Standing Government Committee on Private International Law ³ provides in Article 2 :

1. La conclusion d'un partenariat enregistré aux Pays-Bas est soumise aux dispositions de l'article 1 :80a Code Civil.

2. La capacité de chacun des partenaires pour conclure un partenariat enregistré aux Pays-Bas est régie par le droit néerlandais.

3. En ce qui concerne la forme, un partenariat enregistré aux Pays-Bas ne peut être consacré valablement que par l'officier de l'état civil, en respectant les prescriptions du droit néerlandais, sous réserve des compétences des fonctionnaires diplomatiques et consulaires étrangers.

The Belgian draft provides that a partnership may be registered and dissolved in Belgium if at least one of the partners is a Belgian subject, domiciled or habitually resident in Belgium at the time of registration or dissolution (Article 57 § 2).

The Yugoslavian Statute of 1982 on Private International Law provides only rules for the effects of an unregistered *de facto* partnership (Artikel 39).

(2) Termination

According to the newly enacted § 661 (3) Code of Civil Procedure (ZPO) German courts have jurisdiction to deal with the termination of a partnership by court decree if

1. one partner is German or was German at the time of registration or
2. both partners are habitually resident in Germany or
3. one partner is a stateless person with habitual residence in Germany or
4. one partner is habitually resident in Germany or
5. the partnership has been created by registration in Germany.

The Dutch Draft provides for jurisdiction in Article 33 :

² Art. 17a EGBGB, § 1 LPartG.

³ Cp. *Tijdschrift voor familie- en jeugdrecht* 1998, 156-159.

1. En ce qui concerne la dissolution du partenariat enregistré, le juge est compétent quand le partenariat enregistré a été conclu aux Pays-Bas.

2. Pour ce qui est de la dissolution du partenariat enregistré conclu à l'étranger, le juge est compétent si au moment du dépôt de la demande :

- a) les deux partenaires ont la nationalité néerlandaise ou
- b) l'un des deux partenaires enregistrés est domicilié aux Pays-Bas depuis douze mois ou, s'il est néerlandais, depuis six mois.

3. L'article 429c, alinéa 15 du Code de procédure civile n'est pas applicable.

The Belgian draft adds to Article 57 § 2 mentioned *supra* that dissolution may also be granted if the partnership has been concluded in Belgium (Article 57 § 2 sent. 2) and Belgian law applies to the registered partnership (Article 57 § 3).

b) Applicable Law

(1) Registration

Article 17a (1) German EGBGB and the Dutch draft apply the *lex fori* [*supra* at 2 a (1)] and the Belgian draft refers in Article 58 § 1 *per analogiam* to Article 43 and 44 on the law applicable to the validity of marriages. According to Article 43 the *lex patriae* of every partner should decide whether a partnership can be validly created.

(2) Effects

Under German law [*supra* at 2 a (1)] the effects of a registered partnership are governed

- either by the general rules on maintenance and succession
- or by the law of the registering state with respect to other effects.
- any case the effects governed by foreign law are only recognised to the extent that they are not stronger than provided by the BGB and the Partnership Act.

In the Dutch draft there are detailed rules on the law applicable to the effects of a registration. The effects of a partnership registered in the Netherlands are the most important problem of such a relation. These rules may be summarised as follows :

- personal legal relationships are governed by Dutch law (Article 3) ;
- property regime is governed by the law designated by the partners before entering into their registered partnership (Articles 4-15) ; such a designation is mandatory ;
- maintenance is governed by the Hague Convention of 1973 (Article 17) ;
- there is no special rule on the law governing succession. If the law governing succession in general provides succession rights for registered partners (as, e. g., in Article 4 : 879a BW) the partner will be treated accordingly.

The Belgian draft refers to the law of the effects of marriage (Article 58 § 1).

(3) Termination

According to Article 17a (1) German EGBGB and to Article 16 of the Dutch draft [*supra* I 2 a (2)] the termination of a partnership registered in Germany or the Netherlands is governed by the respective *lex registrationis*.

The dissolution of a partnership, registered abroad is provided for in Article 31 of the Dutch draft :

1. La question de savoir si l'on peut mettre fin à un partenariat enregistré conclu à l'étranger par consentement mutuel ou par dissolution et pour quels motifs, est régie par le droit néerlandais.

2. En dérogation à l'alinéa 1, le droit de l'Etat où le partenariat enregistré a été conclu est applicable si les deux partenaires ont élu ce droit dans leur accord relatif à la cessation du partenariat enregistré par consentement mutuel.

3. En dérogation à l'alinéa 1, le droit de l'Etat où le partenariat enregistré a été conclu est applicable en cas de cessation par dissolution si lors du procès :

- a. les deux partenaires ont élu ce droit ou si l'un des partenaires ne s'est pas opposé à ce choix ou
- b. l'un des partenaires a élu ce droit et les deux partenaires ont un lien social effectif avec l'Etat où le partenariat a été conclu.

4. Le droit néerlandais détermine les modalités de la dissolution du partenariat enregistré conclu à l'étranger.

The Belgian draft refers to the rules for divorce (Article 58 § 1 and Article 53, 54).

c) Recognition of Partnerships Registered Abroad

(1) Recognition of Registration

Articles 18-30 of the Dutch draft extensively deal with the recognition of partnerships registered abroad. The central provisions are Articles 18 and 19 :

Article 18

1. Le partenariat enregistré conclu en dehors des Pays-Bas et qui est valable selon le droit de l'Etat où il a été conclu ou qui y est devenu valable par la suite, est reconnu comme tel.

2. Pour l'application des alinéas 1 et 2, le droit comprend les règles de droit international privé.

3. Un partenariat enregistré est présumé valable si une déclaration y relative a été délivrée par une autorité compétente.

Article 19

Nonobstant l'article 18, un partenariat enregistré conclu en dehors des Pays-Bas ne sera pas reconnu si cette reconnaissance est manifestement contraire à l'ordre public.

The other articles deal with the effects of a partnership registered abroad. The most important feature is that most effects are fixed to the law which governs the creation of the partnership. Except for maintenance (Article 32) there is no “conflit mobile”.

(2) Recognition of the Termination Obtained Abroad

According to German law foreign decisions terminating a partnership are recognised according to the general provision of § 328 Code of Civil Procedure.

The Dutch draft provides in Article 35 :

1. La cessation par consentement mutuel du partenariat enregistré qui a été obtenue en dehors du Royaume, est reconnue si elle y a été accomplie valablement.
2. La dissolution du partenariat enregistré obtenue en dehors du Royaume après une procédure équitable est reconnue aux Pays-Bas si elle a été établie par la décision d’un juge ou d’une autre autorité compétente à cet égard.
3. La dissolution du partenariat enregistré obtenue en dehors du Royaume et qui ne remplit pas une ou plusieurs des conditions posées dans l’alinéa précédent sera néanmoins reconnue aux Pays-Bas s’il est clair que l’autre partie dans la procédure étrangère a, expressément ou tacitement, consenti à la dissolution lors de la procédure ou si elle l’a acceptée après.

According to the Belgian draft the general rules on recognition for foreign judgments apply.

II. Proposals for a EU-Regulation

Before submitting some proposals for a EU-Regulation it has to be remembered why there are special problems with respect to choice of law rules for registered partnerships. The reason is a matter of substantive law. Whereas the institution of marriage is known everywhere and one system of rules can be substituted by another one, a registered partnership is a recently enacted relationship which is not known everywhere and where a reference to certain jurisdictions will be a reference to not existing rules of substantive law. This has to be taken into account when formulating certain rules for registered partnerships.

1. Registration

a) Jurisdiction

Jurisdiction for registration should be given to national authorities of at least one of the partner is

- a citizen of the forum state or
- a person habitually resident in the forum state

b) Applicable Law

A registered partnership is created according to the *lex fori*.

Another proposal may take Article 3 of the 1978 Hague Marriage Convention as a model and provide as follows :

Le partenariat enregistré doit être conclu :

1. lorsque les futurs partenaires répondent aux conditions de fond prévues par la loi interne de l’Etat de la conclusion, et que l’un d’eux a la nationalité de cet Etat ou y réside habituellement ; ou
2. lorsque chacun des futurs partenaires répond aux conditions de fond prévues par la loi interne désignée par les règles de conflit de lois de l’Etat de la conclusion.

2. Effects

The effects of a registered partnership should be governed, as far as possible, by the law of the state where the registered partnership has been created. This can be done for matters of

- personal relations
- property
- maintenance.

Even maintenance should be treated differently from the 1973 Hague Convention. If, e. g. Dutch-German partners move to Switzerland there would be no maintenance obligation under Swiss law according to Articles 4-6 Hague Convention. The maintenance obligation should be treated as if were created by contract governed by the *lex loci* registration independently of any change of domicile, habitual residence or nationality.

Domestic law may provide for succession rights of registered partners⁴. In international relations this problem must be left to the law governing succession and to the partners who may remove some uncertainties by leaving wills. Also adoption of the partner’s child should be left to the general rules governing adoption as it is provided for any adoption of step children.

3. Termination

a) Jurisdiction

An international instrument on jurisdiction may be designed were liberally. Member states without domestic legislation on registered partnerships may be willing to exercise their jurisdiction very broadly and member states without any domestic legislation on registered partnerships may prefer not to ratify the convention. But even if they don’t, they may be ready to terminate a partnership registered abroad and apply foreign law. Therefore I would provide the same jurisdiction rules as for divorce provided by Article 2 of the Regulation Brussels II.

b) Applicable Law

So long as registered partnerships are not known everywhere, the dissolution of such a relation should be governed by the law under which it had been created.

4. Recognition of Partnerships Registered Abroad

⁴ Cp. Art. 4 :879a BW.

a) Recognition of Creation

For such a recognition the provisions of Articles 9-14 of the 1978 Hague Convention may be applied *mutatis mutandis* :

Article A

Le partenariat enregistré qui a été valablement conclu selon le droit de l'Etat de la conclusion, ou qui devient ultérieurement valable selon ce droit, est considéré comme tel dans tout Etat contractant sous réserve des dispositions de ce chapitre.

Article B

Lorsqu'un certificat d'enregistrement a été délivré par une autorité compétente, le partenariat enregistré est présumé être valable jusqu'à preuve du contraire.

Article C

Un Etat contractant ne peut refuser de reconnaître la validité d'un partenariat enregistré que si, selon le droit de cet Etat, un des partenaires au moment de la conclusion :

1. était marié ou enregistré comme partenaire ;
2. était à un degré de parenté en ligne directe avec l'autre partenaire ou était son frère ou sa soeur, par le sang ou par adoption ; ou
3. n'avait pas atteint l'âge minimum requis pour s'enregistrer comme partenaire et n'avait pas obtenu la dispense nécessaire ; ou
4. n'était pas mentalement capable de donner son consentement ; ou
5. n'avait pas librement consenti au partenariat enregistré.

Toutefois, la reconnaissance ne peut être refusée dans le cas prévu au chiffre 1 de l'alinéa précédent si le partenariat enregistré est devenu ultérieurement valable par suite de la dissolution ou de l'annulation du mariage ou enregistrement précédent.

Article D

Les règles de chapitre s'appliquent même si la question de la reconnaissance de la validité du partenariat enregistré doit être tranchée, à titre incident, dans le contexte d'une autre question.

Toutefois, ces règles peuvent ne pas être appliquées lorsque cette autre question est régie, d'après les règles de conflit de lois du for, par le droit d'un Etat non contractant.

Article E

La présente Convention ne fait pas obstacle dans un Etat contractant à l'application de règles de droit plus favorables à la reconnaissance des partenariats enregistrés conclus à l'étranger.

Article F

Un Etat contractant peut refuser la reconnaissance de la validité d'un partenariat enregistré si cette reconnaissance est manifestement incompatible avec son ordre public.

b) Recognition of Termination

As the different kinds of termination of a registered partnership, court decisions and declarations by the partners have to be distinguished.

A court decision terminating a registered partnership should be recognised unless a ground (reason ?) for non-recognition provided by Article 15(1) of Brussels II is given. If the registered partnership is terminated by private acts, the termination will be valid in every Member state if valid according to the law governing the creation of the partnership.

Appendix 1 : Divorce

country	applicable law
Austria Austr. IPR-Gesetz §§ 20, 18, 9	<ul style="list-style-type: none"> • actual common <i>lex patriae</i> or last common <i>lex patriae</i> if one of the spouses kept it, • subsidiarily actual common <i>lex domicilii</i> (habitual residence) or last common <i>lex domicilii</i> if one of the spouses kept the former common domicile (habitual residence) <p>[a renvoi will be accepted : IPR-Gesetz § 5]</p>
Belgium a) present situation Code civil and Act of June 27, 1960	<ul style="list-style-type: none"> • common <i>lex patriae</i> • Belgian law if one of the mixed couple is a Belgian national • two <i>leges patriae</i> if a foreign couple of different foreign nationalities asks for divorce <p>[a renvoi will be accepted]</p>
b) Reform project (Article 53)	<ul style="list-style-type: none"> • Choice by the spouses of <ul style="list-style-type: none"> – <i>lex patriae</i> of one of them – Belgian law • if there is no choice <ul style="list-style-type: none"> – common <i>lex domicilii</i> (hab. res.) – if no common <i>lex domicilii</i>, common <i>lex patriae</i> – in all other cases : Belgian law

Czech Republic P.I.L. Statute of 1963, § 22	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily <i>lex fori</i>
Denmark	<ul style="list-style-type: none"> • <i>lex fori</i> <p>Danish courts have jurisdiction if</p> <ul style="list-style-type: none"> – respondent is domiciled in Denmark or – petitioner is domiciled in Denmark and either is there domiciled since two years or was domiciled in Denmark in the past – petitioner is Danish and cannot obtain divorce at his/her domicile abroad – both spouses are Danish citizens and respondent does not object to jurisdiction of Danish courts – divorce is asked for after on separation granted in Denmark during the last five years
Finland	<ul style="list-style-type: none"> • <i>lex fori</i> <p>Finish courts have jurisdiction if at least one spouse is domiciled in Finland</p>
France Code civil Art. 310	<ul style="list-style-type: none"> • French law applies if <ul style="list-style-type: none"> – both spouses are French citizens – both spouses are domiciled in France – one spouse is French – no foreign law wants to be applied • foreign law applies if French law does not apply and foreign law wants to be applied
Germany EGBGB Artt. 17, 14	<ul style="list-style-type: none"> • actual common <i>lex patriae</i> or last common <i>lex patriae</i> if one of the spouses kept it, • subsidiarily actual common <i>lex domicilii</i> (hab. residence) or last common <i>lex domicilii</i> if one of the spouses kept the former common domicile (hab. residence) • subsidiarily law of the common closest connection. <p>[a renvoi will be accepted : EGBGB Art. 4 (1)]</p>
Greece Astikos Kodix Artt. 16, 14	<ul style="list-style-type: none"> • actual common <i>lex patriae</i> or last common <i>lex patriae</i> if one of the spouses kept it • subsidiarily law of the common closest connection
Hungary P.I.L. Regulation §§ 40, 11, 9	<ul style="list-style-type: none"> • choice of Hungarian law (Art. 9) • if no choice <ul style="list-style-type: none"> – actual common <i>lex patriae</i> or last common <i>lex patriae</i> – subsidiarily Hungarian law if one spouse is a Hungarian citizen – subsidiarily last common <i>lex domicilii</i> – subsidiarily <i>lex fori</i> <p>[a renvoi will be accepted : P.I.L. Reg. § 4]</p>
Iceland Marriage Law Art. 114	<ul style="list-style-type: none"> • <i>lex fori</i> of Icelandic courts having jurisdiction if <ul style="list-style-type: none"> – respondent is domiciled in Iceland – petitioner is domiciled in Iceland since at least two years before filing the petition – petitioner is a citizen of Iceland and cannot get a divorce at his/her domicile abroad – both spouses are Icelandians subjects and respondent submits to Icelandic jurisdiction
Ireland	I assume : <i>lex fori</i> or common <i>lex domicilii</i>
Italy P.I.L. Statute 1995 Art. 31	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily law of the state within which the marital relationship has its centre of gravity <p>[a renvoi will be accepted : P.I.L. Statute Art. 13 (1)]</p>
Liechtenstein FL-IPR-Gesetz of 1996 Art. 21, 19, 10	<ul style="list-style-type: none"> • Identical with Austrian law • Liechtenstein law if one of the spouses is a Liechtenstein citizen
Luxemburg Code civil Art. 305	<ul style="list-style-type: none"> • actual common <i>lex patriae</i> • subsidiarily actual common <i>lex domicilii</i> • subsidiarily <i>lex fori</i>

	[a renvoi will be accepted (cp. Lex. 18/2(1993))]
Netherlands a) present situation Statute of 25/3/1981	<ul style="list-style-type: none"> • choice of Dutch law • if no choice <ul style="list-style-type: none"> – common effective <i>lex patriae</i> – if one spouse has no close connection to his/her <i>lex patriae</i> the common <i>lex domicilii</i> applies unless the spouses choose their common <i>lex patriae</i> as governing – subsidiarily common <i>lex domicilii</i> (hab. residence) – subsidiarily <i>lex fori</i>
b) Reform project Art. 37	The same rules apply as today
Norway	<ul style="list-style-type: none"> • <i>lex fori</i> of Norwegian courts having jurisdiction if <ul style="list-style-type: none"> – respondent is domiciled in Norway – petitioner is a Norwegian citizen domiciled abroad and cannot file a petition abroad – both spouses are Norwegian subjects and respondent submits to Norwegian courts
Poland P.I.L. Stat. Art. 18	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily common <i>lex domicilii</i> • ultimately <i>lex fori</i> [a renvoi will be accepted : P.I.L. Stat. Art. 4]
Portugal Código civil Artt. 55, 52	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily common <i>lex domicilii</i> (hab. residence) • ultimately law of closest connection with family life [a renvoi will be accepted : C. C. Art. 18]
Rumania P.I.L. Statute of 1992 Art. 22, 20	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily common <i>lex domicilii</i> (hab. residence) • ultimately law of former common <i>lex domicilii</i> or of common closest connection [a renvoi will be accepted : P.I.L. Statute Art. 4]
Spain Código civil Artt. 197, 9 (2)	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily common <i>lex domicilii</i> (hab. residence) • <i>lex fori</i> of Spanish courts having jurisdiction [a renvoi to spanish law will be accepted : CC Art. 12 (2)]
Sweden	<ul style="list-style-type: none"> • <i>lex fori</i> of Swedish court having jurisdiction if <ul style="list-style-type: none"> – both spouses are Swedish citizens – respondent is domiciled in Sweden – petitioner is either <ul style="list-style-type: none"> a Swedish citizen and is domiciled in Sweden or has previously been domiciled in Sweden or a foreign subject and domiciled in Sweden since at least one year
Switzerland P.I.L. Statute Artt. 59-61	<ul style="list-style-type: none"> • <i>lex fori</i> of Swiss courts having jurisdiction if <ul style="list-style-type: none"> – respondent is habitually resident in Switzerland – petitioner is habitually resident in Switzerland since at least one year or is a Swiss citizen – at least one spouse is a Swiss citizen and if it is impossible or highly impractical to bring a petition abroad (Art. 60) • common foreign nationality of spouses if only one of them is domiciled in Switzerland unless foreign law does not permit any divorce or does it under unusually strict conditions • <i>lex fori</i> in cases of Art. 60 IPRG [a renvoi will be accepted : P.I.L. Statute Art. 24(2)]
Turkey P.I.L. Statute of 1982, Art. 13	<ul style="list-style-type: none"> • common <i>lex patriae</i> • subsidiarily common <i>lex domicilii</i> • ultimately : Turkish law [a renvoi will be accepted : Article 2 (3)]
United Kingdom a) England and Wales	<ul style="list-style-type: none"> • <i>lex fori</i> of English Court having jurisdiction if <ul style="list-style-type: none"> – either spouse is domiciled in England and Wales at the beginning of proceedings or

Domestic and Matrimonial Proceedings Act 1973, sect. 5	– either spouse is habitually resident in England and Wales for one year before the beginning of proceedings
b) Scotland Domestic and Matrimonial Proceedings Act 1973, sect. 7	<ul style="list-style-type: none"> • <i>lex fori</i> of Scottish courts having jurisdiction if <ul style="list-style-type: none"> – either spouse is domiciled in Scotland at the beginning of action or – either spouse is habitually resident in Scotland for one year before beginning the action.

Appendix 2 : Registered Partnerships

country	creation	effects	dissolution
Denmark Statute No. 372 of 7 June 1989	<ul style="list-style-type: none"> • same sex • majority • at least one of them must be a Danish citizen • registration 	the same effects as if married except <ul style="list-style-type: none"> – adoption – joint custody of a child 	<ul style="list-style-type: none"> • death • divorce by a court
France 1. Statute No. 99-944 of 15 November 1999 on PACS	<ul style="list-style-type: none"> • same or different sex • majority of partners • no obstacles (close family relations ; still married ; already registered with somebody else) • registration of contract at Tribunal d'instance 	<ul style="list-style-type: none"> • maintenance obligations • some effects on household property • protection in landlord & tenant law • special status in labour law and • law of aliens 	<ul style="list-style-type: none"> • death • written contract to be deposited with court • unilateral declaration towards partner and copy to court • marriage and notice to partner and court
2. Cohabitation Art. 515-8 Code civil	cohabitation	« union de fait »	
Germany Statute of 16 February 2001 (LPartG)	<ul style="list-style-type: none"> • same sex • majority • no close family relation (e. g. sisters) • declaration about property regime • creation before competent public authority 	<ul style="list-style-type: none"> • determination of common name • maintenance obligations • declaration about <ul style="list-style-type: none"> – “Ausgleichsgemeinschaft” (similar to “Zugewinngemeinschaft” of the statutory property regime) or – partnership contracts about community property • special protection with respect <ul style="list-style-type: none"> – to household goods – to common residence inheritance rights and forced share	<ul style="list-style-type: none"> • death • “divorce” by court
Netherlands Statute of 5 July 1997 (Artt. 1 :80abis 1- 80e BW) and Statute of 21 December 2000	<ul style="list-style-type: none"> • same or different sex • majority • Dutch citizenship or holder of Dutch residence permit • no obstacles (close family relations, still married, already registered) • ceremony in town-hall 	the same effects as if married except <ul style="list-style-type: none"> • no affiliation with partner's child 	<ul style="list-style-type: none"> • death • contractual termination and registration • marriage by one of them • dissolution by court order
Norway Statute of 13 April 1993	<ul style="list-style-type: none"> • same sex • at least one of them Norwegian citizen and domiciled in Norway 	the same effect as if married except <ul style="list-style-type: none"> • adoption 	<ul style="list-style-type: none"> • death • decision by the court of divorce

	<ul style="list-style-type: none"> • no obstacle (still married or registered) • registration 		
Sweden 1. Statute No. 1117 of 23 June 1994 on registered partnership and amended by Statute Nr 374 of 1 July 2000	<ul style="list-style-type: none"> • same sex • 18 years of age • at least one of them Swedish citizen and domiciled in Sweden • no obstacle (close family relationship ; still married or registered) • registration 	<p>the same effects as if married except</p> <ul style="list-style-type: none"> • adoption of children • artificial creation of children 	<ul style="list-style-type: none"> • death • decision by court of divorce
2. Statute No. 232 of 14 May 1987 on marital cohabitation	no registration	<p>special regimes for :</p> <ul style="list-style-type: none"> • common home • movable property in case of dissolution 	unilateral de facto termination or contractual termination