

Asset Planning without Borders

Dr Marco Rizzuti

Researcher at the University of Florence, Italy
Habilitation Professor of Private Law

*The content of this document represents the views of the author only and it is his/her sole responsibility.
The European Commission does not accept any responsibility for use that may be made of the information it contains.*

Il progetto e' realizzato da



Co-beneficiari



ELTE LAW
FACULTY OF LAW



Foreign legal forms of cohabitation

(presentation of your own system from the perspective of your own country)

- The Italian legal system recognizes different forms of cohabitation: marriage (only different-sex couples), civil union (only same-sex couples), registered cohabitation and *de facto* cohabitation (both different-sex and same-sex couples).
- Not all foreign forms of cohabitation can be recognized as such in the Italian legal order: in particular, a foreign same-sex marriage will be legally converted into a civil union.

Foreign registers in the field of property law (from the perspective of your own country)

- Matrimonial property agreements are registered at the city hall and a register for cohabitation contracts has been introduced too. Moreover, when immovables are concerned we have to consider the land register.
- In the most part of Italian Regions a French-like land register is in force, so that registration has a declarative effect while property is transferred and acquired by mere consent (at least at the level of law-in-books), while in some North-Eastern Regions an Austrian-like system is in force, so that registration has a constitutive effect of the property transfer.
- Anyhow, with regard to foreign registers we can say that, in accordance with the ECJ *Kubicka* judgment, the applicable law will govern the ways of acquisition of rights, notwithstanding the different internal provisions about their public registration.

How your country defines property law systems if there is no property agreement between the spouses / partners

- Among spouses and among partners of a civil union the default regime is community property, while separation of property can be (and often is) stipulated in a matrimonial property agreement.
- Among the partners of a cohabitation the default regime is separation of property, while community property can be (but rarely is) stipulated in a registered cohabitation contract.

Furthermore, does your country have a bilateral agreement with someone in such a subject?

How does the existence of a property agreement affect the law applicable to property relations in countries that apply the regulations and also in those that do not?

- Italy participates to the enhanced cooperation and Regulations 1103 and 1104 of 2016 have universal application (see the respective articles 20), so that there is no substantial place left for other international private law provisions, such as bilateral agreements, in the concerned matters, also with regard to the relations with non-participating countries.
- Choice of law is possible under the Regulations' provisions (see the respective article 22).

**In the light of the above,
can the matrimonial property situation be better planned in countries that
are party to the agreement than in those that are not?**

- It is quite early for an evaluation of the implementation of Regulations 1103 and 1104 of 2016 (there is no case-law), but we can focus on some possible problems related to their application in the Italian legal context.
- E.g., a same-sex marriage contracted abroad but converted into civil union in Italy will fall under reg. 1103 as a marriage or under reg. 1104 as a registered partnership?

THANK YOU VERY MUCH FOR YOUR KIND ATTENTION



INTEGRATION, MIGRATION,
TRANSNATIONAL RELATIONSHIPS,
GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATIONS.

GoInEU *plus*



This Project is funded
by the European Union's
Justice Programme 2014-2020