

# NEW EUROPEAN RULES ON Matrimonial Property

Isn't it wonderful when you meet the love of your life? And when you then decide to make it official, by getting married?

By **Yolanda Bokhorst**

For a marriage to be valid, you have to enter into it in accordance with the formalities of the country in which it is being carried out. Of a different order than this romantic, festive day is the question of which rules actually apply to spouses.

What belongs to whom and who is liable for the debts? Does everything automatically belong to both of you – or is there a separation of assets? How are the assets and debts divided in case of divorce or death? And if you don't have the same nationality, or if you live in a country other than that of your joint nationality, which law is used to answer these questions?

## International Private Law

Each country has its own rules of international private law. These indicate which country's law will have to be applied. As I have noted in earlier articles, the outcome of these rules are often contradictory – making it hard to provide a clear answer to above questions. This creates legal uncertainty. Every expat should be aware of this and – and this is the good news – can take measures to avoid ending up in a legal labyrinth.

## European Regulation on Matrimonial Property

The European Union has a Regulation that aims to answer the question of which matrimonial property law is to be applied. It entered into force in 18 EU countries on January 29, 2019, and applies to all marriages that were entered into on or after this date.

## The Legislation's Rules

The legislation provides rules on the following:

- which court is competent to rule on a conflict regarding matrimonial property

- how (future) spouses can choose an applicable law
- which matrimonial property law applies when the spouses have not made above choice
- the recognition and implementation of court rulings and authentic instruments.

## Choosing an Applicable Law

The Regulation allows spouses to choose an applicable law themselves. This must be done explicitly in the (pre)nuptial agreement. Incidentally, this was already possible in the Netherlands before this Regulation entered into force.

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The options are:

- the law of the country in which the spouses, or one of them, live(s), or
- the law of the country of nationality of one of the spouses.

In both cases, the relevant moment for looking at these circumstances is the moment the (pre)nuptial agreement is signed. The choice can be made before or after the marriage, though it is preferable to do this before – as this makes it clear from the start which law applies. When the choice is made after the marriage has taken place, it first has to be determined which law applied until the moment the choice is made. As the choice may lead to the application of

a different national law, the question arises as to what the consequences are for the existing assets and debts.

The choice for the application of a national law may never be to the detriment of the debtors of (one of) the spouses. This has also been provided for in the Regulation.

'You are advised to choose an applicable law in your (pre)nup, but to also include detailed descriptions of what exactly you have agreed to and why'

## Which Law Applies if You Do Not Choose One?

If you do not choose an applicable law, the Regulation determines that the following national law applies:

- that of the first country of joint domicile of the spouses after marriage
- in the absence of such country; the country of which the spouses both have the nationality when getting married
- in the absence of such country; the country with which the spouses have the closest ties at the time of marriage.

## What If You Got Married Before January 29, 2019?

In that case, the Regulation does not apply to your marriage and it could be complicated to determine which national law *does* apply to it.

In the Netherlands, there is a whole set of rules that involve looking at the date on which the marriage took place and the nationalities of the spouses in order to determine exactly which national law applies. Depending on the date on which the spouses entered into marriage, these rules are sometimes provided by treaties and, in other cases, by court rulings on the matter. An additional complication is the fact that the applicable law is then determined from the perspective of Dutch law. The law of your country of nationality or of the country in which your assets are located could yield entirely different results.

In short, working through this issue can become quite a puzzle.

## Choosing an Applicable Law Later On

Even if you got married before January 29, 2019, you can still choose an applicable law. This will, at the very least, make clear which legal system you would like to see applied, while, at the same time, it will ensure that the Regulation applies to your marriage after all. Your choice will be respected by all 18 EU countries that have ratified the Regulation. Other countries, however, might not respect your choice. Which is why you are advised to not only include your choice for an applicable law when drawing up your (pre)nuptial agreement, but to also include detailed descriptions of what exactly you have agreed to and why. This will increase the chances that any countries involved will respect your conditions.

## Advice

(Future) spouses in marriages that have international aspects are advised to include a choice of applicable law in a (pre)nuptial agreement, in keeping with the rules that are contained in the Regulation. And, as this choice is not guaranteed to be respected by countries outside the 18 EU countries that have ratified the Regulation, you are advised to explicitly include what you and your spouse have agreed to in the (pre)nuptial agreement.

In the Netherlands, this type of (pre)nuptial agreement can only be drawn up by a civil law notary who is specialized in international matrimonial property law, in a notarial deed. ❖



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