

PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PROPERTY
RELATIONS BETWEEN SPOUSES

EUROPEAN FAMILY LAW SERIES

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Principles of European Family Law Regarding Property Relations between Spouses
Katharina Boele-Woelki, Frédérique Ferrand, Cristina González Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny and Walter Pintens

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PREFACE

The Commission on European Family Law and its Principles of European Family Law

The Commission on European Family Law (CEFL), which was established in September 2001, drafts common principles that are thought to be the most suitable for the harmonisation of family law in Europe. The Principles of European Family Law regarding Divorce and Maintenance between Former Spouses were published in 2004¹ and the Principles regarding Parental Responsibilities in 2007.² This book contains the Principles regarding the Property Relations between Spouses.

Organisation

The CEFL comprises of the *Organising Committee* (Katharina Boele-Woelki (chair), Frédérique Ferrand, Cristina González Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny and Walter Pintens) and the *Expert Group*, which at present has 26 members. The Organising Committee prepares and co-ordinates the work of the CEFL as a whole. The members of the Organising Committee are also members of the Expert Group. The Expert Group comprises specialists in the field of family and comparative law from most of the Member States of the European Union with the involvement of experts from other European countries, such as Norway, Russia and Switzerland.

The CEFL is a Foundation according to Dutch law. It has its seat at Utrecht University's Molengraaff Institute for Private Law, Janskerkhof 12, NL – 3512 BL Utrecht, www.ceflonline.nl. Dr. Bente Braat, legal counsel at the International Commission on Civil Status, heads CEFL's secretariat. Dr. Pia Lokin, university lecturer at the University of Nijmegen, acted as deputy secretary in 2009–2011 and Dr. Ian Curry-Sumner of Utrecht University held the position of webmaster until April 2012. He has been succeeded by Roderic ter Rele, student assistant of the Utrecht Centre for European Research into Family Law (UCERF) of the Molengraaff Institute for Private Law at Utrecht University's School of Law.

¹ European Family Law Series No. 7.

² European Family Law Series No. 16.

Aims and objectives

The CEFL's activities are intended to produce results that may be used for specific practical and academic purposes. First and foremost, the Principles are addressed to national legislators in their quest to modernise their national family law. They also function as a source of inspiration for both the European and international legislatures. The Principles are spelt out in provisions but these must be read in conjunction with comments, which elucidate the rules and offer comparative information. These comments are part and parcel of the Principles. The Principles could considerably facilitate the task of legislators because, on the one hand, CEFL's in-depth and comprehensive comparative research is easily accessible and, on the other hand, many of the rules have been drafted in a manner that legislators often consider to be appropriate. Some, but not all, of the Principles have been drafted so that they could be implemented in a national system. Second, research into the effectiveness of national solutions in the field of family law can largely profit from the CEFL's results. The drafting of the Principles is based on an evaluation of the legal institutions, legal solutions and norms of the various legal orders, which express the hierarchy of values inherent in every legal order, although to different degrees. It is to be expected that future scientific research in the field of the harmonisation of family law in Europe to be carried out by individual researchers or eventually research teams will necessarily refer to and compare national solutions with the CEFL Principles. Third, the CEFL's comparative material contains comprehensive information about twenty-six family law systems in Europe and it has been regularly consulted by practitioners. Specific information about, for instance, the divorce grounds in GREECE or the position of the new partner of the parent who holds parental responsibilities in respect of the child under FINNISH law or the administration of community property in THE NETHERLANDS is easily accessible and may help in those cases where lawyers seek information about the precise content of foreign family law. In addition, all national reports are written in English, which in most cases facilitates access to those national systems where the official language is not English, French or German. The often difficult legal translations have thus already been done by national experts.

Experts

The following persons contributed to the drafting of the Principles regarding Property Relations between Spouses through the writing of a national report and/or taking part in the discussions at the CEFL meetings. Several experts wrote their national reports together with co-authors. Their names are both mentioned on the CEFL's website and listed in the integrated version of all national reports.³

³ BOELE-WOELKI/BRAAT/CURRY-SUMNER, *European Family Law in Action, Volume IV: Property Relations Between Spouses*, European Family Law series No. 24, 2009, pp. vii-x.

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| SWEDEN | <i>Prof. Maarit Jänterä-Jareborg</i> Uppsala University |
| SWITZERLAND | <i>Prof. Ingeborg Schwenzer</i> University of Basel |

Meetings

The meetings of the Organising Committee during which the Principles regarding Property Relations between Spouses were prepared and drafted took place in:

| | |
|----------------|---------------------|
| BARCELONA | 3–6 May 2007 |
| OSLO | 7 and 10 June 2007 |
| CARDIFF | 25–28 October 2007 |
| BRUSSELS | 3–5 October 2008 |
| FRANKFURT/ODER | 11–14 December 2008 |
| SAARBRÜCKEN | 28–31 May 2009 |
| LYON | 15–18 October 2009 |
| BARCELONA | 4–7 March 2010 |
| UPPSALA | 2–4 September 2010 |
| UTRECHT | 9–12 December 2010 |
| HAMBURG | 7–10 April 2011 |
| LEUVEN | 16–19 June 2011 |
| SIGTUNA | 4 September 2011 |
| CARDIFF | 1–4 December 2011 |
| LYON | 23–26 February 2012 |
| UTRECHT | 17–20 May 2012 |
| LYON | 11–14 October 2012 |

At the meetings in FRANKFURT/ODER (2008) and HAMBURG (2011) the members of the Organising Committee presented work-in progress reports at conferences, which were attended by legal scholars and practitioners. Initial results were also reported at the 4th CEFL conference in CAMBRIDGE in April 2010.

The meeting of the *Expert Group* during which the draft of the Principles regarding Property Relations between Spouses was discussed took place in:

| | |
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| SIGTUNA | 1–3 September 2011 |
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Conferences

The essence of the work carried out by the CEFL is such that it needs constant backing in a broader academic forum. For this purpose, the CEFL organises family law conferences on a regular basis. All conference proceedings were published in the European Family Law series. To date the following conferences took place:

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|-----------|---------------------|
| UTRECHT | 11–14 December 2002 |
| UTRECHT | 9–11 December 2004 |
| OSLO | 7–9 June 2007 |
| CAMBRIDGE | 8–10 April 2010 |
| BONN | 29–31 August 2013 |

European Family Law series

The CEFL's Organising Committee established the *European Family Law* series which includes comparative legal studies and materials as well as studies on the effects of international and European law-making within the national legal systems in Europe. The books in this series are published by the Belgian publisher Intersentia (Antwerp-Cambridge-New York) in cooperation with the Swiss publisher Stämpfli (Bern). Since March 2003, thirty-two volumes have been published in the series. Further information is available at CEFL's website.

Financial support

Financial support has been received from the Netherlands Organisation for Scientific Research (NWO), the Deutsche Forschungsgemeinschaft (DFG), the Ius Commune Research School, and the publishers Intersentia (Antwerp/Cambridge) and Stämpfli (Bern). The Universities of Barcelona, Cardiff, Frankfurt/Oder, Leuven, Lyon, Uppsala and Utrecht finally met a significant part of the expenses incurred by the CEFL meetings. In addition the following institutions should be mentioned. The *Europa Institut* of Saarland University and the Max Planck Institute for comparative and international private law in Hamburg contributed to the expenses of the CEFL meetings which took place in 2009 and 2011 respectively. As a member of the *Institut Universitaire de France* Frédérique Ferrand received funding for attending and organizing CEFL meetings. Finally, the bulk of the costs of the expert meeting, which took place in Sigtuna, Sweden, in September 2011, was made possible due to the Huselius Donation to the Faculty of Law, Uppsala University.

The CEFL is very grateful to all these sponsors for their substantial contributions.

Katharina Boele-Woelki

Utrecht, April 2013

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