



## **Marriage contract and cross-border marriage: Issues of legal regulation in the context of international family law and conflict of laws**

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### ***Article's History:***

Received: 10.11.2025  
Revised: 02.02.2026  
Accepted: 26.02.2026  
Published: 27.03.2026

### ***Abstract***

The relevance of aforementioned issue was due to the fact that in the context of numerous military conflicts, as well as the intensification of demographic phenomena related to migration processes, an effective mechanism for the legal regulation of cross-border marriage contracts is of great importance for the protection of the property rights of spouses. The aim of the scientific research was to conduct a comprehensive scientific and practical analysis of the peculiarities of recognising the validity of cross-border marriage contracts within different jurisdictions, as well as to draw conclusions and make recommendations of a scientific and practical nature. In the course of researching this topic, the comparative method, critical analysis method, interpretation method, abstraction method, logical-legal method, and legal modelling method were used. An analysis of approaches to understanding the essence and content of marriage contracts in common law and civil law countries was conducted. A definition and a system of characteristics of a cross-border marriage contract, which is the primary element of the

### ***Suggested Citation:***

Adamovych, O. (2026). Marriage contract and cross-border marriage: Issues of legal regulation in the context of international family law and conflict of laws. *Law. Human. Environment*, 17(1), 9-22. doi: 10.31548/law/1.2026.09.



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autonomous concept, are proposed. The significance of Council Regulation No. 2016/1103 for the implementation of the conflict-of-laws method of regulating these legal relations in the European legal space was considered. Particular attention was paid to the specifics of the approach to the recognition of marriage contracts in countries with a common law system. Based on the results of the study, a system of proposals was developed aimed at ensuring the effective functioning of cross-border marriage contracts, taking into account the challenges of globalisation. Attention was focused on the need to define the fundamental standards of validity of cross-border marriage contracts. The practical significance of this study lies in the fact that the results obtained can be applied in the process of improving the conflict of laws regulation of contractual marriage relations in general, as well as the development of international legal regulation of the concept of cross-border marriage contracts in particular

**Keywords:** marriage contract; cross-border marriage; common law; continental legal system; international family law; conflict of laws regulation

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## Introduction

The problematic issues concerning the legal nature, content, and the peculiarities of the execution and recognition of marriage contracts continue to be relevant due to global globalisation processes, which have led to an increase in the number of cross-border marriages. This issue is particularly acute in the context of active migration phenomena driven by socio-economic factors. This situation leads to a substantiated scientific and practical need for a re-evaluation of the legal regulation of specific aspects of the conclusion, execution, and recognition of marriage contracts in an international context.

The difficulties and conflicts arising during law enforcement regarding the concept of a cross-border marriage contract are related to the existence of different approaches to understanding the essence and legal nature of such agreements across various jurisdictions, and the absence of a unified system of standards for recognising their validity. Consequently, there is a clear necessity for the harmonisation of approaches to the legal regulation of marriage contracts within the European legal dimension, and the adaptation of national legislation to international standards.

The possibility for an individual to realise their personal proprietary rights within matrimonial relations is directly dependent on the level of effectiveness of the legal regulation of the marriage contract institution overall, as this raises the level of social and economic well-being of the population as a whole. In the context of the globalisation of social relations and Ukraine's European integration vector of development, it is especially pertinent to consider positive foreign experience in regulating family relations and to harmonise national legislation with international European standards to prevent difficulties during the recognition and execution of marriage contracts in cross-border matrimonial legal relations.

In general, the problematic issues of the legal nature, content, and the peculiarities of the conclusion, execution, and recognition of marriage contracts at the international level have been reflected in the research of a number of scholars. S. Kumar (2024) explored the development trends of the marriage contract institution, taking into account legal, social, and cultural factors, including globalisation, innovation, and technological development. The author stressed that

the legal regulation of marriage contracts in the territories of European Union member states is provided by national legislation, which features substantial differences. Some countries, such as Germany and France, have a thorough and developed legal framework for marriage contracts. At the same time, in the legal system of Italy, such a contract is recognised only to a limited extent. P. Bruno (2021) investigated the legal specifics, problematics, and difficulties encountered during the recognition and execution of marriage contracts in European Union law. The author emphasised that despite the European legislator focusing on forming a system of clear formal requirements for determining the validity of such contracts, international couples still face legal difficulties in the context of their recognition and execution abroad. In the context of an international comparative aspect, the scholarly work of O.O. Ikubanni *et al.* (2023) regarding the lack of a clear legal mechanism for the recognition and execution of marriage contracts in Nigeria. Attention was focused on the fact that the specificity of executing a marriage contract lies in the discretionary powers of the court, which recognises it at its own discretion, even if it is valid and complies with the requirements of the law.

O. Yavor and T. Kirichenko (2024) analysed the problematic issue of recognising a marriage and a marriage contract as fictitious and concluded that the legal consequence of establishing a fictitious marriage is the judicial declaration of the marriage contract as invalid. H. Lutska *et al.* (2020) focused on determining the peculiarities of the legal nature of a marriage contract by comparing it with the related family contract concerning the division of spousal property. The authors emphasised the proprietary nature of the marriage contract and the absence of a legal possibility to regulate personal relations within such a contractual structure. At the same time, S. Iasechko *et al.* (2022) conducted innovative research and noted that

the categorical approach, according to which the right to information as a personal non-proprietary right cannot be the subject of a marriage contract in Ukraine, is losing its relevance.

E. Xhuvani (2024) emphasises that all European jurisdictions provide spouses with the right to independently and at their own discretion regulate and structure their property interests through the legal construct of a marriage contract. However, the author points out that despite the existence of a number of common elements in this legal mechanism, there are significant differences in the legal regulation of the marriage contract institution within individual states. É. Török (2023) notes that this type of family agreement ensures a balance between the individual and joint interests of the spouses. M.J. Cazorla González *et al.* (2020) carried out a thorough study of spousal property relations in the cross-border dimension, including the specifics of the functioning of the marriage contract institution. Thus, the authors noted that private international law is becoming comprehensive in its scope and lays the foundations for private law relations across the European Union. G. Carobene (2023) remarked that lawyers view marriage contracts as legitimate acts of a personal nature that reflect the freedom of choice of the spouses. A practical analysis of the problematic issue of certifying marriage contracts in the context of private international law was conducted by Y. Fursa (2022), who highlighted the current issues of certifying marriage contracts by consuls in various countries around the world when one of the parties is a foreign citizen, and also determined the legal possibilities for the latter to apply foreign law.

The aim of this research was the scientific and practical analysis of the Issues of recognising the validity of cross-border marriage contracts across different jurisdictions, as well as the formulation of conclusions and recommendations of a scientific and practical nature.

To effectively achieve this aim, the following objectives were set:

- to analyse the approaches to understanding the essence and substantive content of a marriage contract in countries with Common Law and Continental legal systems;

- to investigate the significance of Regulation of the European Council No. 2016/1103 (2016) for the functioning of cross-border marriage contracts in the European legal area;

- to define the substantive content of the legal category “cross-border marriage contract” and to distinguish a system of its essential characteristics.

### **Materials and Methods**

The research was conducted within the framework of the conflict of laws theory of private international law, according to which the priority task is to determine the applicable law when qualifying legal relations with a foreign element. The foundational element is the conflict-of-laws rule, which is used to determine the specific jurisdiction for proper legal application. In this regard, the theoretical basis of the research is the doctrine of conflict-of-laws regulation, which is enshrined at the international level in Regulation of the European Council No. 2016/1103 (2016). Furthermore, the study utilises the concept of party autonomy as a fundamental basis for the legal regulation of marriage contracts in the doctrine of private law. Thus, this research is based on an approach that encompasses private international, family, and civil law. The concept of harmonisation of cross-border regulation of spouses' property relations is also of significant importance.

Considering the aim and objectives, a system of general scientific and special legal research methods was applied in the analysis of this subject matter, among which the following should be highlighted: the comparative method, the logical-legal method, and the legal modelling

method. The use of methods with different functional orientations formed the foundation for a comprehensive and thorough study of the outlined topic. The logic of the analytical study was to compare approaches to understanding the concept of a marriage contract, which directly affects the process of its recognition in the case of a cross-border marriage. Using the comparative method, the concepts of the marriage contract in Continental and Common Law countries were compared. Based on the results of using the critical analysis method, an original position was proposed regarding the current state of resolving conflict-of-laws issues in the context of the cross-border marriage contract, and attention was focused on the need to enhance the effectiveness of international cooperation in this area. An analysis was conducted of the content of regulatory provisions aimed at regulating the institution of the marriage contract within different jurisdictions. The scientific conclusions and practical recommendations of this research were formulated based on a thorough analysis of legislative provisions and judicial precedents: Civil Code of Germany (1896), Civil Code of Spain (1889), Family Code of Ukraine (2002), Civil Code of Catalonia (2005), Judgement of the UK Supreme Court in Case “Radmacher v. Granatino” (2010), and Civil Code of France (2025). The logical-legal method served as an instrument for applying formal logic to analyse the substantive content of concepts and categories relevant to formulating logical and consistent scientific and practical conclusions on the subject matter of the research. The legal modelling method formed the basis for distinguishing the autonomous concept of the cross-border marriage contract within the system of international family law.

### **Results**

Globalisation and demographic migration processes have led to a sharp increase in the number of cross-border marriages. Such marriages are

concluded between citizens of different countries or between persons permanently residing within different jurisdictions. This socio-cultural phenomenon leads to new difficulties and challenges in the international legal regulation of the recognition of marriage contracts, especially in light of the lack of a unified approach to understanding the content of marriage contracts in different countries. J. Moret *et al.* (2021) noted that within the European Union, cross-border marriages are subject to increased state control and are also an issue that requires thorough scientific research.

The study of this demographic phenomenon is also necessary in the context of the formation of a new concept of cross-border marriage contracts, which should be developed through the harmonisation of legislation within the European Union (hereinafter referred to as the EU) and the consolidation of the legal efforts of states to form an effective legal mechanism for regulating the property relations of persons in cross-border marriages. The free expression of will and disposal of property rights must be guaranteed to married persons, regardless of any territorial restrictions. In this context, it is important to focus on the existence of different approaches to understanding the legal nature and essence of a marriage contract in different countries. Moreover, within individual jurisdictions, there are also differences in the legal significance of such a contract for the court in the event of a dispute between spouses over the division of joint property. Thus, some countries do not fully recognise marriage contracts, which significantly complicates law enforcement and reduces the effectiveness of such contracts in a transnational context.

A comparative legal analysis of the national legislation of individual European Union countries reveals fundamental differences in the legal regulation of marriage contracts, which ultimately has a direct impact on their effectiveness in the context of cross-border recognition. Particular

attention should be paid to the legislation of France and Germany as examples of established models of legal regulation of marriage contracts within the continental law system. According to Article 1387 of the Civil Code of France (2025), spouses are granted the right, within the limits defined by law, to establish a regime of joint property that suits both parties. In turn, Article 1408 of the Civil Code of Germany (1896) states that spouses have the right to regulate property relations by concluding a marriage contract, according to which they can cancel or change the basic legal regime of joint property. Thus, French national legislation provides for the right of the parties to choose one of a number of standard property regimes provided for by law, with the legal possibility of modifying them within the limits established by law. The German model of legal regulation of marriage contracts, unlike the French model, is based on a broader application of the principle of autonomy of the parties' will, which allows not only to choose one of the statutory regimes, but also to form a special regime of property relations between spouses within the limits not prohibited by law. At the same time, both legal models of marriage contracts provide for requirements regarding notarial form and compliance with general requirements.

Based on a comparative analysis of these regulatory provisions, it can be concluded that the French model is characterised by a more static, standardised approach, while the German legal model provides for a dynamic approach in the context of the legal regulation of the institution of marriage contracts. This is of fundamental importance in the context of the recognition of marriage contracts in a cross-border legal dimension, since contracts concluded in Germany may not comply with the requirements of French law.

Moreover, French legislation, based on the provisions of Regulation of the European Council No. 2016/1103 (2016), recognises marriage

contracts concluded within other EU jurisdictions if the requirements for form, content and choice of law are clearly complied with. Germany, in turn, tends to recognise agreements that contain autonomously formulated terms, provided that the general requirements of relevance, good faith and legal certainty are met. In view of the above, it should be noted that a comparison of the French and German approaches to the regulation of marriage contracts provides an understanding of the conceptual differences regarding the limits of freedom of choice in private law, which is important to consider when concluding cross-border marriage contracts. In this regard, the fundamental vector of international cooperation in this area is the formation of a standardised general content of a cross-border marriage contract that would form the legal basis for its validity, regardless of jurisdiction.

When analysing the specifics of marriage contract regulation in countries with a continental legal system, it is also advisable to focus on the legal models provided for in Spain, Catalonia and Ukraine. The institution of marriage contracts in Spain (*capitulaciones matrimoniales*) has clear and thorough legal regulation, enshrined both in national legislation and in autonomous regions. The recognition of marriage contracts in the case of cross-border marriages is also carried out on the basis of conflict of laws rules provided for in the Regulation. The main regulatory provisions in this area are enshrined in the Civil Code of Spain (1889) and the Civil Code of Catalonia (2005). The principles of legal regulation of the content, form and peculiarities of concluding marriage contracts correspond to the general European doctrine and, at the same time, have their own peculiarities.

The Civil Code of Spain (1889) enshrines the institution of the marriage contract in Articles 1325-1335. According to these provisions, the parties have broad powers to choose the legal

regime of the spouses' property within the limits provided for by law. At the same time, Spanish law imposes a number of formal requirements on marriage contracts that directly affect their validity (e.g., mandatory notarisation and registration). It should be noted that the Spanish model of a marriage contract is characterised by the presumption of freedom of spouses in the contractual regulation of property rights, but within the limits of the fundamental principles of good faith and fairness.

A distinctive feature of Spanish law is the existence of autonomous entities. For example, an autonomous entity such as Catalonia is characterised by a local private law system and, accordingly, has a separate Civil Code of Catalonia (2005). The Catalan model of marriage contract is extremely flexible and provides for a high degree of autonomy for the parties in regulating the property relations of spouses. However, this does not exclude the existence of formal requirements that are consistent with the Spanish model. It is important to note that, compared to other countries of the continental legal system, Spain and Catalonia allow the regulation of non-property relations between spouses by a marriage contract, but in a limited form that does not contradict established public order.

Ukrainian family law also contains normative provisions devoted to the legal regulation of marriage contracts. The Family Code of Ukraine (2002) states that a marriage contract regulates property relations between spouses and determines their property rights and obligations. Similar to the generally accepted European legal doctrine, national legislation clearly limits the content of a marriage contract to property matters only. At the same time, according to the Ukrainian model of a marriage contract, spouses have significantly fewer legal opportunities to modify the legal regimes of property compared to the legislation of Germany and Spain. As a candidate country for EU membership, Ukraine must

implement an effective process of harmonisation and adaptation of its legislation to European standards, and therefore the experience of foreign countries is extremely important for the implementation of the harmonisation mechanism.

Thus, it can be concluded that the legal models of marriage contracts in Ukraine and France are more formalised. In turn, German and Spanish legislation in this area is characterised by greater dynamism and flexibility. Different approaches to the implementation of the principle of autonomy of the parties in a marriage contract lead to difficulties in the recognition of cross-border marriage contracts. It should be noted that conceptual differences in the legal regulation of marriage contracts can be observed between countries with common law and civil law systems.

Specific principles for regulating marriage contracts are found in the United Kingdom, which is a prominent representative of the common law system. Until 2010, marriage contracts had no legal force. The Supreme Court's decision in "Radmacher v. Granatino" (2010) introduced a presumption of validity for such contracts. According to the content of this decision, the court must recognise the validity of a marriage contract that is concluded on the basis of the free expression of the parties' will and full awareness of the consequences of its conclusion. Compliance with the principle of fairness and non-discrimination of the parties is also important in the recognition of marriage contracts by the courts. It should be noted that the doctrine of marriage contracts in continental law countries, in particular in the United Kingdom, differs significantly from the approaches to the legal regulation of such contracts in continental law countries. In the United Kingdom, a marriage contract does not have automatic binding status, as the court has broad discretionary powers to recognise a marriage contract as valid or to refuse to take its provisions into account in each specific case.

Given the different approaches to understanding the institution of marriage contracts within countries of the continental legal system and, in general, between countries of the continental and common law systems, it should be noted that the significance of Regulation of the European Council No. 2016/1103 (2016) for the development of the concept of cross-border marriage contracts cannot be overestimated. This legal instrument is precisely what governs matrimonial contractual legal relations in the European legal dimension. The Regulation has been applied since 29 January 2019 for resolving cross-border cases among a number of countries. The main provisions in the context of recognising cross-border marriage contracts, according to the Regulation, state that spouses have the possibility to choose the law of any country with which they have a close legal connection. Such a connection may be recognised as citizenship or permanent residence. If the law of a country is not chosen, the law of the spouses' place of residence at the time of marriage shall apply to the conclusion of marriage contracts. Marriage contracts must comply with the requirements of the legislation of the specific state whose law applies in a particular case. For example, in the case of a marriage contract between a German citizen and a Ukrainian citizen concluded in France, German civil law may be chosen for the contract. Accordingly, such a marriage contract will be recognised by both Germany and France.

To achieve the aim of this study, it is important to analyse the level of legal support for the recognition of marriage contracts in a cross-border context, which is formed by clearly establishing a mechanism for determining the applicable law in the context of conflict of laws regulation in this area of legal relations. According to the normative provisions of Article 22 of Regulation of the European Council No. 2016/1103 (2016), spouses are empowered to choose the applicable

law for determining the regime of their property from among: the law of the state of citizenship of one of the spouses; the law of the state of permanent residence of one of the spouses; the law of the state with which the spouses or one of the spouses has a close connection. However, if the parties do not exercise this right, it becomes necessary to apply conflict-of-law rules, which are characterised by a hierarchical principle from the place of permanent residence to a close legal connection.

A.P. Pashynskiy and V.Ya. Kalakura (2023) indicate that the system of conflict-of-law rules enshrined in the Regulation is based on the following principle:

1) the law of the state in which the spouses first took up permanent residence after marriage is the primary applicable law;

2) the secondary conflict of laws rule is the law of the state of joint citizenship of the spouses at the time of marriage;

3) the final conflict of laws rule is the law of the state with which each spouse had the closest legal connection at the time of marriage.

Considering the above, it can be concluded that Regulation of the European Council No. 2016/1103 (2016) establishes a fundamental and unified mechanism for determining the applicable law, which creates conditions for a single legal regime for marriage regardless of jurisdiction. Thus, the Regulation is an effective tool for determining the legal regime of matrimonial property in the case of a marriage with a foreign element by determining conflict of laws rules. This document contains algorithms for determining the applicable law, which, given the increase in the number of cross-border marriages, is a crucial task that goes beyond the jurisdiction of a single state. As of 2025, not all EU countries have acceded to this international document, which negatively affects the effectiveness of the legal regulation of cross-border marriage contracts. Thus, 18 EU Member States have acceded to the Regulation.

Poland, Hungary, Denmark, Estonia, Ireland, Latvia, Lithuania, Slovakia, and Romania have not yet joined, so they continue to apply local national conflict-of-law rules to determine the matrimonial property regime.

Particular attention should be paid to countries that are not members of the EU and have not acceded to this international document, such as the United Kingdom. The United Kingdom does not take into account the provisions of Regulation of the European Council No. 2016/1103 (2016) and uses national conflict-of-law rules to select the applicable law in the case of marriage contracts in cross-border marriages. A foreign marriage contract may be recognised in the United Kingdom, provided that it fully complies with the requirements of the country in which it was concluded and that the principles of fairness, voluntariness and financial transparency are observed. There is no single regulatory act in the United Kingdom that provides for the centralised legal regulation of the institution of marriage contracts. In addition, issues of determining the applicable law are resolved by applying the principles of common law, case law and international treaties. In this regard, it can be concluded that in the United Kingdom, a marriage contract is not automatically considered binding, as its validity is assessed by the court during the consideration of the case on its merits in each specific case based on the principles of good faith, fairness and full financial disclosure. In other words, the court has extremely broad discretionary powers to recognise the terms of a marriage contract as valid, which is a fundamentally different feature from the legal traditions of the continental law system.

Belonging to the common law system determines certain features in the legal regulation of the institution of marriage contracts, which consists in the precedent principle of determining the applicable law, which is formed in the course of the court's broad discretionary powers. Thus,

the fundamental requirements for the recognition of a marriage contract, as established in the decision in “Radmacher v. Granatino” (2010), are good faith, voluntariness and financial transparency.

This causes difficulties in the cross-border context of recognition of marriage contracts and necessitates the formation of a system of unified provisions for their validity. In order to overcome fundamental differences between various approaches and concepts of legal systems with a view to ensuring effective cross-border legal regulation of the institution of marriage contracts, it is advisable to form a system of primary standards, namely:

- 1) the principle of autonomy of the parties, which allows spouses to independently determine the applicable law, jurisdiction and choose the legal regime of property;

- 2) a clear list of formal requirements in the context of compliance with public policy (e.g., non-tarisation);

- 3) good faith of the parties' intentions; an important aspect is the formation of a common understanding of such legal categories as “fairness” and “good faith”;

- 4) the principle of full financial disclosure, which is characteristic of common law countries, should also be implemented at the international level, as it is a guarantee of fair conditions for the parties to the contract;

- 5) the principle of fairness of the parties to the marriage contract;

- 6) the formation of an additional international mechanism for the recognition of marriage contracts, which would take into account not only EU jurisdictions.

Considering the above, there is a need to develop a doctrinal unified approach to determining the substantive content of a cross-border marriage contract. In this regard, it is worth formulating a definition of a cross-border marriage contract, according to which it is a bilateral family contract between spouses or persons who have

officially confirmed their intention to marry, characterised by a foreign element (e.g. citizenship, place of residence, location of property) and aims to regulate property issues in the event of divorce by applying the conflict of laws method.

## Discussion

In the context of cross-border marriages, entering into a marriage contract is not just a legal option, but a practical necessity, given the potential difficulties that may arise when determining the property regime, taking into account the specific features of different jurisdictions. One of the important functions of a cross-border marriage contract is to provide legal protection of property in the event of divorce in order to accurately determine the applicable law, property regime, and ownership of property to avoid complex legal proceedings involving foreign elements.

In the context of studying the significance of Regulation of the European Council No. 2016/1103 (2016) for the formation of an effective mechanism for ensuring the recognition of cross-border marriage contracts, it is worth noting that there are well-founded positions of scholars on this issue. As M. Sánchez Moraleda (2019) rightly points out, the conflict-of-law rules in the Regulation are aimed at achieving an important result that meets the needs of international couples. Also, D. Damascelli (2024) notes that even in the absence of a choice of applicable law by the parties to the contract, the Regulation provides for the possibility of applying a clearly defined hierarchical structure of conflict-of-law rules. I. Viarengo and P. Franzina (2020) characterise the provisions of the Regulation as a basic resource for law enforcement.

However, it should be understood that quite often, despite the existence of Regulation of the European Council No. 2016/1103 (2016), questions arise in each individual case related to the recognition of a marriage contract during the

consideration of a divorce and property division case. This issue is particularly acute in cases where, in common law countries, it is necessary to recognise a marriage contract concluded in countries with a continental legal system in court. In this regard, a practical problem arises in the enforcement of the law on an individual basis for each cross-border marriage contract, based on the potential jurisdictions that may be legally relevant in the context of the specifics of property relations.

In this context, D. Eskenazi and M. Valentan (2025) rightly point out in this context that the issue of recognition of French marriage contracts is most difficult in countries with a common law system, since in these countries the approaches to the legal regulation of marriage contracts differ significantly from the principles applied in countries with a continental law system. In order to increase the likelihood of such marriage contracts being recognised in countries with a continental legal system, it is necessary for the relevant contract to take into account the standards that are key to marriage contracts in the United States, the United Kingdom and other common law countries. These standards include the following:

- the marriage contract must comply with the principle of fairness;
- the parties must obtain independent professional advice to understand the significance of their actions;
- when concluding a marriage contract, there must be full financial disclosure by each party to the contract.

J. Edelman (2024), researching the evolution of marriage contract legislation in Australia and the legal structure of marriage contracts in that country, also paid attention to the comparative context with the United Kingdom. The specific nature of approaches to the recognition of marriage contracts in the United Kingdom differs from most countries, as for a long time such contracts were not recognised by the courts, which in this

case had extremely broad discretionary powers. The decision in “Radmacher v. Granatino” (2010) played a revolutionary role in this context, resulting in a rethinking of the legal significance of marriage contracts. J. Edelman (2024) emphasised that, thanks to this decision, marriage contracts were no longer invalidated on the grounds of being contrary to public policy. This contributed to the formation of a new balance between the freedom of private contractual regulation and judicial control over the fairness of contract terms. A similar need to balance the interests of private initiative and the stability of legal regulation can also be seen in the study by X. Kadi and E. Qarri (2025), who emphasise that the harmonisation of family and commercial law in Albania requires consideration of constitutional economic freedom, creditors’ rights and the objectives of legal certainty.

However, although this decision changed the outdated approach, according to which the concept of a marriage contract was a priori contrary to the fundamental principles of general law, the court’s influence on the recognition or non-recognition of a marriage contract remained decisive. An official analytical study by the House of Commons of the United Kingdom on marriage contracts by C. Fairbairn (2023) states that following the Supreme Court’s decision in “Radmacher v. Granatino” (2010), the recognition of a marriage contract depends solely on whether the court recognises it as meeting the requirements of fairness. It is worth supporting the scientific position of D. Eskenazi (2021) that for cross-border couples, a clear choice of applicable law and first common place of residence may influence the formation of the applicable regime for their marital relations as a whole. At the same time, not signing a marriage contract can have unpredictable cross-border consequences.

In view of the above, it should be noted that the existence of Regulation of the European Council No. 2016/1103 (2016) within the jurisdiction

of the EU does not provide a complete solution to the problem in a global context, based on the following: 1) not all countries have acceded to the relevant Regulation, even within the European legal space; 2) common law countries have a special approach to understanding and recognising marriage contracts, which is due to historical traditions in the development of marital relations; 3) other countries around the world have their own unique legal systems and do not apply uniform standards for the legitimisation of marriage contracts. In this regard, it is worth emphasising that in the case of a cross-border marriage, the marriage contract must contain as much legal information as possible to enable its legalisation in another jurisdiction if the need arises. Thus, it is important, first of all, to clearly define the applicable law, as well as the specific jurisdiction within which the court has the authority to hear divorce cases and determine the legal regime of property.

### **Conclusions**

The subject of the current scientific research was the issues of recognition and legal regulation of cross-border marriage contracts through the prism of the application of conflict of laws in the field of private international law. The aim of the scientific article was to conduct a comprehensive scientific and practical analysis of legal models of marriage contracts in different jurisdictions, as well as the peculiarities of their recognition in a cross-border dimension. Taking into account the results obtained, it can be stated that the set goal has been fully achieved. Based on the results of this scientific research, a number of scientific and theoretical conclusions have been formed. It has been established that the specificity of a cross-border marriage contract lies in the comprehensive jurisdictional legal regulation of its provisions, which further affects the legal procedure for recognising its validity.

During the critical analysis, differences were found in the approaches to the legal regulation of the institution of marriage contracts not only within different jurisdictions of the continental law system, but also between two fundamental legal systems – continental and common law. It has been determined that these conceptual differences have a significant impact on the recognition of cross-border marriage contracts. The article provides a thorough comparative legal analysis of the legislation of Germany, France, Spain, Catalonia, Ukraine and the United Kingdom in order to identify the characteristics of local legal models of marriage contracts, which is directly relevant to the recognition of such contracts in a cross-border context. This analysis has led to the scientific conclusion that the principle of party autonomy varies across different jurisdictions. The study examined the provisions of Regulation No. 2016/1103 regarding the peculiarities of conflict of laws regulation in this area, which made it possible to highlight problematic issues of international legal regulation and identify a justified need to develop a unified mechanism for the recognition of cross-border marriage contracts. Based on the analysis of these regulatory provisions, conclusions were drawn regarding the hierarchical nature of the application of conflict of laws rules, and the issue of recognition of such contracts in the context of countries that have not acceded to the terms of this international document was highlighted.

The results obtained allow to assert the need to form a unified model for the recognition of marriage contracts, to create an additional international instrument that will take into account the peculiarities of both legal systems, as well as to ensure a common understanding of key concepts such as fairness, good faith, and full financial disclosure. It was found that Regulation No. 2016/1103 plays a fundamental role in the

formation of a mechanism for harmonising the legal regulation of the institution of marriage contracts in EU countries, but its narrow jurisdictional application creates an urgent need for broader mechanisms of an international nature.

These trends indicate that the issue of recognition of cross-border marriage contracts should be addressed not only within a number of EU jurisdictions, but also at the global level. The prospects for further development of the issue of cross-border marriage contracts include the creation of conditions for active international

cooperation and consideration of the legal possibility of regulating this issue through directives within the European legal space.

### **Acknowledgements**

None.

### **Funding**

The study was not funded.

### **Conflict of Interest**

None.

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## **Шлюбний договір та транскордонний шлюб: проблеми правового регулювання в розрізі міжнародного сімейного права та колізійного регулювання**

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### **Анотація**

Актуальність проблематики зумовлена тим, що в умовах численних воєнних конфліктів, а також активізації явищ демографічного характеру, пов'язаних з міграційними процесами, ефективний механізм полягає у тому, що ефективний механізм правового регулювання транскордонних шлюбних договорів має важливе значення для захисту майнових прав подружжя. Метою дослідження був комплексний науково-практичний аналіз особливостей визнання дійсності транскордонних шлюбних договорів в межах різних юрисдикцій, а також висновків та рекомендацій науково-практичного характеру. В процесі дослідження зазначеної теми використано порівняльний метод, метод критичного аналізу, метод тлумачення, метод абстрагування, логіко-юридичний метод, метод правового моделювання. Проведено аналіз підходів до розуміння сутності та змістовного наповнення шлюбного договору у країнах загального та континентального права. Запропоновано визначення та систему ознак транскордонного шлюбного договору, який є первинним елементом автономної концепції. Розглянуто значення Council Regulation No. 2016/1103 для реалізації колізійного методу регулювання вказаних правовідносин у європейському правовому просторі. Окрема увагу звернено на специфіку підходу до визнання шлюбних договорів у країнах загальної правової системи. За результатами здійсненого дослідження сформовано систему пропозицій, направлених на забезпечення ефективності функціонування транскордонних шлюбних контрактів із врахуванням глобалізаційних викликів. Зосереджено увагу на необхідності визначення основоположних стандартів дійсності транскордонних шлюбних договорів. Практичне значення зазначеного дослідження полягає у тому, що одержані результати можуть бути застосовані в процесі удосконалення колізійного регулювання шлюбних договірних відносин в цілому, а також розвитку міжнародно-правового регулювання концепції транскордонного шлюбного договору зокрема

**Ключові слова:** шлюбний договір; транскордонний шлюб; загальне право; континентальна система права; міжнародне сімейне право; колізійне регулювання