



Planning the Future of Cross-Border Families: a
Path Through Coordination
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The role of party autonomy in pursuing coordination

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Party autonomy and coordination-1

- Party autonomy- freedom of the parties to choose the applicable law

Rome III- art. 5

Hague Maintenance Protocol-art. 8

Matrimonial Property Regulation- art. 22

- Limited party autonomy- the laws that can be chosen are limited



Party autonomy and coordination-2

- Is party autonomy intended to facilitate coordination? What is the rationale for allowing party autonomy?
 - Recital 15 Rome III
 - Increasing the mobility of citizens calls for more flexibility or legal certainty?*
 - Para 125 Bonomi Report
 - to secure a measure of stability and foreseeability*
 - Recital 45 MPR
 - To facilitate to spouses the management of their property*



Party autonomy and coordination-3

- Rationale of party autonomy:
 - to allow parties to **anticipate** the outcome of their (possible) legal dispute.

-coordination is a **necessity** because the most common scenario is one in which the different matters are interrelated.



Can party autonomy be used in order to achieve coordination?

- The test case:
- Giacomo, of Italian nationality, is married to Carmen, a Spanish citizen. They have two children, aged 8 and 10, and live in Brussels. After 12 years of marriage they decide to divorce.



Can party autonomy be used in order to achieve coordination?

- They can choose the law applicable to the divorce- Choice between Spanish, Italian or Belgian law. Belgian law would apply in the absence of choice.
- The law applicable to the divorce can be designated as the law applicable to maintenance between the spouses.
- The law of the habitual residence or the nationality of either spouse can be chosen as the law applicable to matrimonial property.



Limitations

- There is no party autonomy in parental responsibility matters or as regards maintenance obligations towards children.
 - Belgian law applies.
- The choices will be upheld only if the divorce case is Heard by a Court in a MS bound by Rome III, The Maintenance Protocol or the MPR.
- Brussels II a does not admit prorogation of jurisdiction.
- MPR- The choice of applicable law has only prospective effect unless otherwise provided. And if so, it cannot adversely affect the rights of third parties.



Evaluation

- Difference between coordination at the PIL level and substantive law coordination and concerns.
- Agreements made for the prospect of a future divorce and agreements after the couple has decided to divorce.
- Where do spouses get the right information?

