Non-marital unions in european law

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Lecture

Non-Marital Unions in European Laws

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I. Introduction

Ladies and gentlemen, let me first fulfil the pleasant duty of expressing my gratitude to Professor Okuda for giving me the precious opportunity to enjoy a three-week research stay in Japan, a country of which I had heard a lot of wonderful things but which I had never visited before. A lunch I shared with Mr. Okuda in summer 2004, almost three years ago, while he was in Switzerland on a short visit, and the ensuing intense conversation on international family law topics, is what triggered the process which ultimately brought me here today. This shows how unexpectedly fruitful a haphazard encounter may sometimes prove to be. I also gratefully acknowledge the Institute of Comparative Law in Japan of the prestigious Chuo University for accepting my application for a scholarship. Last but not least, I owe many

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thanks to Mr. Trevor Ryan, who kindly introduced me to the fascinating Japanese lifestyle and whose fluency in Japanese – which I do admire and envy – will ensure that we will understand each other this evening.

A few words should suffice to introduce myself. I studied law in Italy, at the University of Milan, my home town, and, as part of a six-month exchange program, in Germany, at the University of Tübingen. After graduation, I worked as a trainee lawyer at three different European locations: Milan, a city often associated with fashion and football, in Brussels, which is, as you may know, the capital city of the European Union and institutions, and in London, one of the world's top financial centres. I qualified as a lawyer four years ago. I then moved to the Swiss Institute of Comparative Law, based in French-speaking Lausanne, where the International Olympic Committee is headquartered. I have been serving at the Swiss Institute for four years now as an advisor on Italian law and private international law. In April 2005, exactly two years ago, I was awarded a double doctoral degree in private international law by the University of Paris II (Panthéon-Assas) and the University of Padua. In sum, I believe I have had the chance of living, studying and practising law in no less than six different European countries – Italy, Germany, Belgium, England, Switzerland and France. This has enabled me to form a fairly broad, although inevitably still largely incomplete, idea of European legal thinking and reasoning.

The organisers of this conference have invited me to lecture on European family law. I chose to talk on “non-marital unions”. The term “non-marital unions” is intended to cover all types of unions between two persons other than marriage. The topic has been
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fashionable one in Europe for more than 15 years now. Arguably, the availability of non-marital yet legally regulated unions represents the most significant innovation in European family law over the last two decades. Napoleon is reported to have once said: "les concubins ignorent la loi, la loi les ignore", i.e. "just as cohabiting partners ignore the law, the law ignores them". Well, two hundred years later, this is no longer true.

The subject also provides an excellent illustration of how different the legal systems of the European countries, notably those of Western Europe, may still be, notwithstanding the pace of the ever-growing European integration process. Divergences, which are already noticeable with respect to marriage law, become even more acute when it comes to non-marital unions. Some European countries – like Italy, my home country – do not make any family law institutions available to couples other than marriage. The number of those European countries which have diversified the choice of family-law patterns is nonetheless constantly increasing. The extent of the rights and obligations to which each of them gives rise varies from one country to another. These differences do not amount to a collection of curiosities – as comparative law is sometimes said, or accused, to be – but they are of practical relevance internationally. As I have attempted to demonstrate in a recent publication which appeared in a French legal periodical, what some American scholars have termed the "market for legal products" extends, whether we like it or not, to family-law relationships and statuses. The differences between the legal systems then results in the availability for international couples of several "products", i.e. several types of family-law patterns from which they may choose to best suit their needs.
Theoretically, non-marital unions seem to have been causing a sort of "quiet revolution" in the way internationalists approach conflict of laws, at least in family law.

Here is the proposed plan of my lecture. I have divided it into four parts. I will first venture to suggest a classification of non-marital unions in European laws (II). I will then focus on the creation of such unions (III), then on their effects (IV), and finally on their dissolution (V).

II. Classification of Non-Marital Unions

A number of criteria have been proposed by European scholars to classify non-marital unions. Three of them seem to be worthy of interest for the purposes of this presentation.

A) According to a first criterion, non-marital unions may be registered with a public authority or not registered at all. In some European countries, notably in Portugal and in former socialist countries like Croatia or Slovakia, a simple cohabitation, particularly if protracted for a minimum duration, two years in Portugal, is sufficient to give rise to a number of legal effects. More often than not, the courts have played a major role in this process. Other countries have gone a step further in that they have introduced an institution which, like marriage, entails some form of solemnisation, i.e. the participation of a public authority. The denomination varies from one country to another: "registered partnership" is the official one in the Netherlands (geregistreerde partnerschap), Switzerland (registrierte Partnerschaft, partenariat enregistré), Slovenia, Sweden, Norway, Denmark, Finland and Iceland; "civil partnership" is the U.K. counterpart; Germans...
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talk of *Lebenspartnerschaft*, i.e. "life partnership"; the Luxembourg institution is termed simply "partnership" (*partenariat*); in France, the name is somewhat more ambitious: "PACS", *pacte civil de solidarité*, a "civil solidarity arrangement"; in Belgium, *cohabitation légale*, i.e. "legal cohabitation". The focus of my lecture will be placed on this second type of institution.

B) According to a second criterion, the non-marital union may be accessible both to heterosexual and to homosexual couples. The French PACS, the Belgian legal cohabitation, the Dutch and the Luxembourg partnership are open to both same-sex and different-sex couples. The legislatures of these countries wished to avoid any "reverse discrimination" in favour of same-sex couples. The U.K. civil partnership, the German *Partnerschaften* and the Swiss and Scandinavian registered partnerships are instead reserved to homosexual couples only.

C) According to a third classification, the procedure for creation or dissolution of the union and, what is more, its legal effects may be more or less similar to those of marriage. With respect to this criterion, the institutions covered by this presentation may be divided into three "families" or "models".

1° The first is what I propose to call the "French-Belgian" model, which includes the French PACS, the Belgian legal cohabitation and the Luxembourg partnership, the latter being a mixture of the French and Belgian institution, as is often the case in Luxembourg. According to the predominant view, these non-marital unions have a hybrid character: even though they belong to
family law, they present nonetheless some distinctive contractual elements, notably with regard to dissolution – the term "contract" is used by the French Civil Code to characterise this institution. They are open to any couple regardless of the sex of the parties and do not affect the civil status – l'état civil – of the parties.

2° The second is what one may call the "German" model, which, while reproducing the rules of marriage on some points, differentiates itself from marriage on other points. These unions are accessible to same-sex couples only. They include the German Lebenspartnerschaft and the Swiss registrierte Partnerschaft, which draws heavily on the German model. It should be stressed that, in Germany, the enactment of the Lebenspartnerschaftsgesetz of 2000 triggered a lively constitutional debate. The legislature had been for a while obsessed with Abstandsgebot, i.e. the belief that the Grundgesetz (fundamental law), commands a "special protection" of marriage (besonderer Eheschutzgebot), and compels the legislature to refrain from pushing too far the assimilation between the Lebenspartnerschaft and the marriage. In 2001, the Constitutional Court ruled that this kind of "security distance" is not constitutionally required. A reform occurred in 2005 which has dropped some differences perceived as artificial.

3° The third model is what one may term the "Anglo-Scandinavian" model: the creation, effects and dissolution are very similar to marriage on all or nearly all points, so much so that, though the union is non-marital, it is "marriage-like". Like the German model, only homosexual couples may have access to
these unions. This model includes the civil partnership in the United Kingdom, and the registered partnerships in the Nordic countries, which were pioneers in the field: Denmark, which was the first country in the world, in 1989, then Sweden, Norway, Iceland and then Finland. The Dutch registered partnership falls within this category although, contrary to the others, is also open to heterosexual couples.

A self-standing category is represented by same-sex marriage. As you may know, same-sex marriage is allowed in three European countries only: The Netherlands, Belgium and Spain. Same-sex marriage is identical to marriage. Technically, the implementation of the Dutch, Belgian and Spanish relevant statutes has indeed been quite straightforward: all references to “husband” and “wife” have been re-placed by “spouse”, and that was it! On the other hand, the constitutional debate that such acts stirred up, notably in Belgium and in Spain, but also in other countries having categorically refused to go that far, like France and, as mentioned, Germany, has been, and continues to be, of great interest. Same-sex marriage is, however, of little significance from a comparative perspective. This is why I will disregard it today. Let us return to partnerships and see how they may arise.

III. Creation of a Partnership

If the activity giving rise to the marital union is traditionally referred to as “celebration”, one tends to avoid this term when it comes to non-marital partnerships and to replace it with “registration” or “conclusion”. Nuances in language speak of the highly
sensitive nature of the issues at stake here. In the Anglo-Scandinavian model, as well as in the German one, the procedure for entering into a partnership is analogous to that of marriage, with the exception of some details mainly of a symbolic character. For example, in Finland, the presence of witnesses is neither required nor possible, and the procedure is wholly by document. Vows of mutual fidelity are not exchanged by the parties in Norway. In the United Kingdom, partners have the possibility to choose the place of celebration and procedure is mainly by document, although the authorities may offer ceremonies including oral statements. The authority having the power to solemnise partnership is, in Germany, diversified according to the Länder (state): intended partners have to go, in Munich, to a notary public, in Stuttgart, to the Gemeinde (the Municipality), in Hamburg to the Standesbeamte (the civil officer).

The conclusion of a French PACS is entirely different. The PACS consists of a private arrangement which is presented to the clerk of the first-instance tribunal for it to be filed with the “register of PACS”. The authority is judicial and not administrative. The purpose of this was to stress the gap between PACS and marriage. It is not clear whether the declaration has to be presented personally by the parties. This is the case in practice. The PACS enjoys un petit rite, a small-scale rite! The contents of this private arrangement remain quasi-confidential, access to the “register of PACS” being strictly limited. In Belgium and in Luxembourg the procedure is similar, except that the competent authority is the civil officer.

As regards the impediments to entering into a partnership, they are in all models very similar to those relating to marriage.
Belgian cohabitation provides the only exception: *the cohabitation légale* is also offered to two persons having blood parentage (consanguinity), whether lineal (e.g. father and son) or collateral (e.g. brother and sister). It appears that brothers and sisters living together are encouraged to enter into such a relationship to benefit from fiscal advantages. In some countries, such as the Netherlands and the United Kingdom, people not yet of age but above 16 may be exceptionally authorised to enter into a partnership, just as they may be authorised to celebrate marriage. In other countries, such as France and Germany, no such possibility exists. In Switzerland, neither spouses nor partners may get a "dispense" (exemption) if they are only 16.

A common feature of all unions is their "exclusivity": the "poly-pacsie", as some French authors have termed the conclusion by the same person of more than one "PACS", is prohibited. In German, this is called the *Einpaarigkeit* principle. An interesting question is whether a person having entered into a partnership is prevented from getting married. This is definitely so in the Anglo-Scandinavian model. In this regard, the two types of unions, marriage, on the one hand, and partnership, on the other, are placed on an equal footing. This is also the case in Germany, at least as of 2005, whereas the original wording of the statute of 1999 was ambiguous. The opposite solution has been adopted in France, Belgium and Luxembourg. In these countries, the marriage of one of the partners automatically terminates the partnership ("noces PACS effacent"). This is an important testament to the supremacy of the marital connection. Let us move to the arguably more complex question of the effects attaching to a validly constituted partnership.
IV. Effects of the Partnership

Effects generated by partnerships may be split into two broad categories, depending on whether they concern the relationship between the partners (A) or that between partners and children (B).

A. Relationship Between Partners

According to a well-established distinction in European civil-law systems, the effects *inter partes* generated by a non-marital union may be divided into personal effects (1) and patrimonial effects (2). Consequences *mortis causa* will be addressed as a self-standing category (3).

1. Personal Effects

Partners are generally under an obligation to support and assist each other. The phraseology describing such a duty varies little from one country to another: they owe each other “respect and assistance” in the Netherlands, “support and assistance” in Germany, “mutual respect”, in Sweden, “material and mutual assistance” in France, and so on.

As to the duties of fidelity and of living together, the relevant rules are, in the Anglo-Scandinavian model, the same ones as for marriage. In the United Kingdom, however, adultery is not included among the grounds for dissolution, although some authors anticipate that courts may so determine. More complex is the case of Germany: some scholars wonder whether the *gemeinsame Lebensgestaltung*, literally the “common organisation of life”, to which the law obliges the partners, has a different
meaning to the *eheliche Gemeinschaft*, the “marital community”, under which the spouses are supposed to live. In France, the Constitutional Court (*Conseil constitutionnel*) stated that the “common life” (*vie commune*) which is set forth by the law involves “living as a couple” (*vie en couple*), i.e. a duty to cohabit. The Constitutional Court has been said to have effected a “matri­monialisation” of the PACS, which was originally conceived as a contract-like institution.

Another consequence affecting the personal identity of the partners regards their name. In France, Belgium and Luxembourg, the conclusion of a partnership does not affect each partner’s name. Yet, in the second and third model, this is often the case. Germany has laid down the most comprehensive rules on this point. Partners are allowed to select as “name of the partnership” (*Lebenspartnerschaftsname*) the family name of either of them. The partner whose name has not been chosen may place his or her partner’s name before or after his own. It should be stressed that this is no obligation, contrary to what occurs in marriage. In the Scandinavian countries similar rules are in force, with the notable exception of Finland, where the possibility for the partners to bear a common name is excluded, the need for this having been regarded by the legislature as less acute than for spouses. Switzerland has also adopted a restrictive stance, although this is rather due to the dissatisfaction with the provisions on the name of the spouses currently in force, which are suspected of being discriminatory.

2. Patrimonial Effects

We now touch upon one of the key aspects of the institutions
under scrutiny. Obligation to contribute to the financial burden of living together is proper to all unions. Such an obligation and the legislative phraseology used to describe it, vary little from one country to another. We may notice that, in France, the partners are free to determine themselves the extent to which each of them has to contribute to the costs of the ménage, although a wholesale exclusion will be contrary to *ordre public*.

In all countries concerned, it is possible for the partners to freely organise their financial relationships to a very large extent by means of what are referred to as “partnership contracts or agreements” (*Lebenspartnerschaftsverträge, contrats de partenariat*). Such arrangements have to be made, more often than not, in a particular form, a notarial deed, for example. In the Netherlands, they are even filed with a specific register for “partnership contracts”. A dispositive regime, i.e. a regime that applies in case the parties do not determine otherwise, is of course laid down in all relevant laws. This dispositive regime is more often than not identical to that of marriage. This is the case in the Anglo-Scandinavian model, including the Netherlands, and, as of the 2005 reform, in Germany as well. I have no time to explore these regimes into detail. Suffice it to say that the system of the universal community of assets postponed to the time of the dissolution is the one adopted in Scandinavian countries as well as in the Netherlands, although the law is, if I am not mistaken, in the process of being amended, whereas the system of the “participation to the gains” prevails in Germany and Switzerland (*Errungenschaftsgemeinschaft* in Germany and *communauté réduite aux acquêts* in Switzerland).

The French PACS deserves special mention in this respect.
The cornerstone of the legal regime for this type of union, which is also the point where the “solidarity” or “mutual support” becomes visible, is the “presumption of shared ownership” (présumption d'indivision). The PACS ultimately results in a community of assets (communauté de patrimoine) with respect to all assets which have been acquired by one of the partners after the conclusion of the PACS. Of course, the parties may determine otherwise. But how may they do this? It seems that, as regards the meubles meublants, that is the housing equipment and furniture, they can exclude joint ownership once and for all, but, with respect to all other assets, they have to expressly declare this at the date of each acquisition. In other words, the “presumption of shared ownership” is, apart from this, a non-rebuttable one, because it applies even though one of the partners may prove that the asset has been paid for out of his or her money. This mechanism has been described as a “dangerous trap” for partners. In the Belgian legal cohabitation, the shared ownership only covers assets over which neither of the partners can show he or she is the exclusive owner.

3. Effects mortis causa

In the Anglo-Scandinavian model, as well as in the German one, inheritance rights of the surviving partner are modelled on those resulting from the marital connection. Particularly in the United Kingdom, the desire to confer succession rights upon the surviving partner on a non-discriminatory basis provided a major stimulus to enact the Civil Partnership Act. Virtually all is identical, both as regards testamentary succession, in which case the surviving partner is entitled to “what may be reasonably claimed
by a civil partner”, and non-testamentary succession. Some authors have pointed out that the criteria to calculate “what is reasonable” should be the same as for spouses and that the rights of the surviving partner should thus not be restricted to maintenance. The conclusion by the testator of a partnership automatically revokes his previous will. In Germany, the position of the surviving partner is also identical to that of a surviving spouse, except for two points: the Eintrittsrecht, i.e. the right to continue the house lease, is shared between the surviving partner and the children, if any, of the deceased partner, whereas the surviving spouse has priority over them; the share to which the surviving partner is entitled is, for tax purposes, treated as that of a non-member of the family, i.e. less favourably. In addition to inheritance rights, other benefits mortis causa usually accrue to the surviving partner: suffice it to think of the right to receive a monthly payment from the Swedish Health Insurance Service for one year or until his or her death if the surviving spouse enjoyed maintenance from the deceased partner or if the latter’s death occurred as a result of a professional accident.

In France, Belgium and Luxembourg, no inheritance rights are awarded to the surviving partner. This is no doubt one of the major differences between partnerships and marriage in these countries. Partners are of course free to mutually assign assets by way of donation. It should be mentioned that donations between partners are treated more favourably taxwise than those between simple cohabitants. Another way of granting the other partner some financial benefits is, at least in France, to take advantage of the “presumption of shared ownership”. One of the partners buys an asset, which then becomes jointly owned, i.e.
half of it is taken by the surviving partner. The heirs of the buyer may attempt to challenge the acquisition of an interest by his or her partner by claiming that this manoeuvring amounts to an "indirect donation". But it remains to be seen whether such a challenge would be successful.

B. Relationship Between Partners and Children

Arguably the most sensitive issues raised by non-marital unions concern the relationship between partners and children, notably between the non-parent partner – who is sometimes called the "social parent" – and the child or children of the parent partner. It is with respect to this area of law that the various systems under scrutiny exhibit the most conspicuous differences. The unions belonging to the French-Belgian model are completely silent when it comes to children. But the approaches of the remaining countries, including those belonging to the same model, also differ widely. Two separate questions shall be dealt with: custody (1) and adoption (2).

1. Custody

In the United Kingdom, the possibility for the partners to be awarded joint custody over a child of which one of them is the biological parent is permitted. This should come as no surprise, because, as we will see in a moment, joint adoption by the civil partners is, since 2002, permitted too. Other than through adoption, joint custody may be established by a so-called "parental responsibility agreement". This agreement is entered into between the non-parent partner, on the one hand, and the parent partner having sole parental responsibility, or both parents if they
share it, on the other. The parental responsibility agreement is then filed with the court and can only be terminated by a judicial order. In the absence of such an agreement, joint custody may be created by a judicial order, issued at the non-parent partner’s request. In Germany, the non-parent partner is automatically vested with a kleines Sorgerecht, a “restricted custody right”, over the children of the other partner. This Sorgerecht includes the power to take part in decisions concerning the daily life of the child (Mitentscheidungsbefugnis). Interestingly enough, partners may confer the Partnerschaftsname to the child, even if such name is ultimately that of the non-parent partner. The country where custody rights are the most far-reaching is arguably the Netherlands, where custody matters have triggered considerable legislative action over the last decade, which has ultimately resulted in a “legislative labyrinth”: in addition to the right to bear the name of the partners, the child enjoys a fiscal advantage in that he or she holds inheritance rights with respect to the non-parent partner’s assets as well as maintenance rights.

The Scandinavian countries do not offer a unitary approach when it comes to children. In Sweden, until 2003 no custody rights were granted to the non-parent partner, even in the case of the death of the parent partner. As of 2003, not only may custody rights be claimed by the non-parent partner, but two partners who have no biological link with the child may be appointed as “special custodians”. In Denmark, although the non-parent partner may adopt the child of the partner – the so-called “stepchild adoption” which we will come to in a moment – he or she has no custody right over the child. This seems to have little coherence. In Norway, joint custody is excluded. Iceland is more liberal in
that joint custody is permissible provided that the parent partner has exclusive custody at the time of registration of the partnership. Moreover, the surviving non-parent partner may claim exclusive custody rights following the death of the parent partner, although custody may still be conferred upon the biological parent if this is in the interests of the child. Finland has gone a step further: joint custody may be obtained even if the parent other than the parent partner retains custody rights – in which case the non-parent partner is called a “third custodian”. Also, both partners may become “specially appointed custodians”. In a controversial decision of 2003, a Finnish court preferred to grant custody to the partner of the deceased mother rather than to the biological father.

2. Adoption

With respect to the highly sensitive issue of adoption, a variety of attitudes is also observable. The Netherlands is the first country to have authorised joint adoption by same-sex partners. This took place in April 2001. The law then enacted has been reported to have changed fundamentally the nature of the institution. Two peculiarities should be stressed: first, joint adoption by same-sex partners is possible only with regard to domestic adoptions, not international adoptions; second, a condition which must be fulfilled, in addition to those applicable to adoption by spouses, is that the child should have “nothing more to expect from his or her biological parents”. The vagueness of this wording is arguably intended to provide the judge with all discretion needed to issue or not issue the adoption order.

Through its major reform of adoption in 2002, the United
Kingdom has made the “joint adoption” available to “two persons, of same or different sex, who live as partners in a long-lasting family relationship”. As a result, two civil partners, like two different-sex cohabitants, are entitled to adopt jointly. The adoption by a single person is allowed, regardless of his or her sex and sexual orientation. However, a civil partner cannot adopt alone, except for a stepchild adoption.

Sweden was the third European country to make joint adoption available to same-sex partners. The legislative process was laborious. Various prestigious institutions, including the University of Uppsala, had delivered a non-favourable opinion. The Swedish government took no account of this opposition, maintaining that “adoption generates larger financial, social and legal security”. Other Nordic countries have failed to go this far. In Denmark, only stepchild adoption is permitted. In Norway and in Finland, adoption by registered partners, including stepchild adoption, is prohibited. In Germany, only Stiefkindadoption – stepchild adoption – is accessible. Neither the gemeinschaftliche Adoption, i.e. joint adoption, nor Kettenadoption, i.e. adoption by a partner of the adopted child of the other partner, is possible.

V. Termination of the Partnership

We shall turn finally to the dissolution of the partnership. One should distinguish between judicial dissolution and non-judicial dissolution, which is also called “termination”. The term “divorce” tends to be avoided. In Germany, legislators speak of Aufhebung, “annulment”, which is inaccurate language. German authors have forged a specific term, the Entpartnerung, i.e. “departnerization”. It should be noted that Germany, Switzerland
and the United Kingdom, unlike, for instance, the Netherlands, further contemplate, in addition to the dissolution, the "separation" of the partners (Getrenntleben, séparation de corps). In the United Kingdom, as well as in Switzerland, a distinction is drawn between "nullity" and "dissolution", just as it is for marriage.

Judicial dissolution is proper to both the Anglo-Scandinavian and the German models. In the United Kingdom, conditions for dissolution of a partnership are identical to those for divorce. Indeed, the principle according to which the union must "have irretrievably broken down" has indeed been extended to civil partnership. In Scandinavia, grounds and procedure for dissolution are identical to those for divorce, except for the non-availability of mediation by a clergyman, mediation which is, oddly enough, undertaken in Iceland by... a police inspector! On the contrary, in Germany and the Netherlands, the conditions for dissolution are less demanding than those for divorce: the Zerrüttungsprinzip, that is, the irretrievable breaking down of the union, has been abandoned with respect to partners. In Germany, the mere declaration of the partners is sufficient, coupled with one year's Getrenntleben in the case of mutual consent and three years if the request is unilateral. In the Netherlands, in the case of mutual consent, the procedure may take place before a notary public or a solicitor. This is a more expeditious and less expensive procedure than the judicial one, which continues to be inescapable in the case of disagreement. The arrangement concerning the consequences of the dissolution remains confidential and need not be filed with a notary public or solicitor. Interestingly enough, the Dutch legislature has granted spouses the possibility to convert their marriage into a partnership. This conversion has been
extensively used, and abused, in order to get divorced through a fast-track, non-judicial procedure (so-called “lightning divorces”).

More often than not, as a consequence of the dissolution, the wealthier partner has to pay maintenance to the other. This is the case in Germany as of 2005 – the original version of the text adopted the principle of Selbstverantwortlichkeit, i.e. self-responsibility –, the Netherlands and the United Kingdom. This is less frequently so in the Scandinavian countries, where the conditions for being awarded maintenance are more restrictive. One should hasten to add that the principle of “self-responsibility” of the spouses after divorce is also gaining momentum.

In the Franco-Belgian model, two ways of non-judicial dissolution are worthy of interest: a written declaration of termination and the celebration of marriage by one of the partners. The declaration of termination may take the form of a joint declaration by the partners, in which case it is filed with the clerk of the first-instance tribunal and is effective as of the day of filing. The declaration, however, may also be unilateral. In such a case, it has to be notified to the other party and filed with the tribunal. The partnership terminates three months after the notification. Neither grounds nor notice are required. As a consequence, this kind of termination has been said to “oscillate between a repudiation and the termination of a contract (without notice).” Another cause of dissolution is the marriage of one of the partners. The other partner shall be notified in writing of the marriage, but the termination takes effect as of the date of the marriage. The consequences of the termination may be determined by the parties themselves and by a court in the case of dispute. No maintenance obligation as such arises as a result of the termination. However, scholars
do wonder whether it would not be possible for the other partner to claim compensation for damages depending on the circumstances of the termination. All these elements confer on the partnerships of these countries a distinctive contractual dimension.

VI. Concluding remarks

The purpose of my lecture was to give you an idea of the different approaches adopted by the European countries regarding non-marital unions. To be sure, differences are significant between countries which have not legislated in the field and countries which have done so. But differences are also considerable among countries belonging to this second category: the wide range of diversified effects they attach to the institution speaks a lot of this variety of approaches and policies.

Such differences are creating huge problems on the international level. Let me give just two examples. A French and an Italian who live in France wish to enter into a French partnership. Are they allowed to do so? If one sticks to the nationality principle, which is used both by French and Italian conflict systems with respect to family issues, Italian law should apply to the substantial requirements of the Italian partner. Italian law does not contemplate any family-law institution other than marriage. What should the French authorities do in such a case? Theoretically, they have three options. The first is to apply Italian marriage law, arguing that marriage is the closest Italian institution to French PACS. The second is to refuse registration on the grounds that Italian law prohibits such a union. The third is to simply disregard Italian law and to resort to French substantive law. The latter option, which is the one that most overtly drifts from classical
conflicts law, has been expressly or implicitly adopted by all European systems. This may lead to a review of the traditional conceptual tools and way of thinking of conflict of laws.

The second example is the following. After living in France for some years, our French-Italian partners move to Switzerland. One of them dies. What is the law applicable to the distribution of his movable assets? In Switzerland and France, succession with respect to movables is governed by the law of the last domicile of the prepositus, i.e. Swiss law. Swiss law grants inheritance rights to the surviving partner. French law, the one under which the partnership was created, does not. It may seem unfair to allow the surviving partner to take a portion of the deceased’s assets under Swiss law. Indeed, one may argue that both partners, in that they entered a PACS – and not a Swiss “registered partnership” – wished to avoid any inheritance effects or, in any event, could not expect that such effects will have attached to their union. The alternative is to apply the law under which the partnership was created, i.e. French law. Again, this would represent a spectacular innovation in the conflicts methodology relating to family law.

Ladies and gentlemen, I will stop here. I would of course be delighted to answer any questions you may have. Thank you for listening.