

## Necessity of Recognition of Same-Sex Marriages and Civil Partnerships Concluded Abroad from Civil Status Registry Point of View

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**Abstract :** Recent problems with adopting the EU Regulation on matrimonial property regimes have clearly proven that Member States are unable to agree on the scope of the Regulation and, therefore, on the definitions of matrimonial property and marriage itself. Taking into account that the Regulation on the law applicable to divorce and legal separation, as well as the Regulation on matrimonial property regimes, were adopted in the framework of enhanced cooperation, it is evident that lack of a unified definition of marriage has very wide-ranging consequences. The main problem with the unified definition of marriage is that the EU is not entitled to adopt measures in the domain of material family law, as this area remains under the exclusive competence of the Member States. Because of that, the legislation on marriage in domestic legal orders of the various Member States is very different. These differences concern not only issues such as form of marriage or capacity to enter into marriage, but also the most basic matter, namely the core of the institution of marriage itself. Within the 28 Member States, we have those that allow both different-sex and same-sex marriages, those that have adopted special, separate institutions for same-sex couples, and those that allow only marriage between a man and a woman (e.g. Hungary, Latvia, Lithuania, Poland, Slovakia). Because of the freedom of movement within the European Union, it seems necessary to somehow recognize the civil effects of a marriage that was concluded in another Member State. The most crucial issue is how far that recognition should go. The thesis presented in the presentation is that, at an absolute minimum, the authorities of all Member States must recognize the civil status of the persons who enter into marriage in another Member State. Lack of such recognition might cause serious problems, both for the spouses and for other individuals. The authorities of some Member States may treat the marriage as if it does not exist because it was concluded under foreign law that defines marriage differently. Because of that, it is possible for the spouse to obtain a certificate of civil status stating that he or she is single and thus eligible to enter into marriage - despite being legally married under the law of another Member State. Such certificate can then be used in another country to serve as a proof of civil status. Eventually the lack of recognition can lead to so-called "international bigamy". The biggest obstacle to recognition of marriages concluded under the law of another Member State that defines marriage differently is the impossibility of transcription of a foreign civil certificate in the case of such a marriage. That is caused by the rule requiring that a civil certificate issued (or transcribed) under one country's law can contain only records of legal institutions recognized by that country's legal order. The presentation is going to provide possible solutions to this problem.

**Keywords :** civil status, recognition of marriage, conflict of laws, private international law

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