

PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING DIVORCE AND MAINTENANCE BETWEEN FORMER SPOUSES

PART I: DIVORCE

CHAPTER I: GENERAL PRINCIPLES

Principle 1:1 Permission of divorce

- (1) The law should permit divorce.
- (2) No duration of the marriage should be required.

Principle 1:2 Procedure by law and competent authority

- (1) The divorce procedure should be determined by law.
- (2) Divorce should be granted by the competent authority which can either be a judicial or an administrative body.

Principle 1:3 Types of divorce

The law should permit both divorce by mutual consent and divorce without consent of one of the spouses.

CHAPTER II: DIVORCE BY MUTUAL CONSENT

Principle 1:4 Mutual consent

- (1) Divorce should be permitted upon the basis of the spouses' mutual consent. No period of factual separation should be required.
- (2) Mutual consent is to be understood as an agreement between the spouses that their marriage should be dissolved.
- (3) This agreement may be expressed either by a joint application of the spouses or by an application by one spouse with the acceptance of the other spouse.

Principle 1:5 Reflection period

- (1) If, at the commencement of the divorce proceedings, the spouses have children under the age of sixteen years and they have agreed upon all the consequences of the divorce as defined by Principle 1:6, a three-month period of reflection shall be required. If they have not agreed upon all the consequences, then a six-month period shall be required.
- (2) If, at the commencement of the divorce proceedings, the spouses have no children under the age of sixteen years and they have agreed upon all the consequences of the divorce as defined by Principle 1:6(d) and (e), no period of reflection shall be required. If they have not agreed upon all the consequences, a three-month period of reflection shall be required.
- (3) No period of reflection shall be required, if, at the commencement of the divorce proceedings, the spouses have been factually separated for six months.

Principle 1:6 Content and form of the agreement

- (1) The consequences upon which the spouses should have reached an agreement are:
 - (a) their parental responsibility, where necessary, including the residence of and the contact arrangements for the children,
 - (b) child maintenance, where necessary,
 - (c) the division or reallocation of property, and
 - (d) spousal maintenance.
- (2) Such an agreement should be in writing.

Principle 1:7 Determination of the consequences

- (1) In all cases the competent authority should determine the consequences for the children as mentioned in Principle 1:6(a) and (b), but any admissible agreement of the spouses should be taken into account insofar as it is consistent with the best interests of the child.
- (2) The competent authority should at least scrutinise the validity of the agreement on the matters mentioned in Principle 1:6(c) and (d).
- (3) If the spouses have not made an agreement or reached only a partial agreement on the matters mentioned in Principle 1:6(c) and (d), the competent authority may determine these consequences.

CHAPTER III: DIVORCE WITHOUT THE CONSENT OF ONE OF THE SPOUSES

Principle 1:8 Factual separation

The divorce should be permitted without consent of one of the spouses if they have been factually separated for one year.

Principle 1:9 Exceptional hardship to the petitioner

In cases of exceptional hardship to the petitioner the competent authority may grant a divorce where the spouses have not been factually separated for one year.

Principle 1:10 Determination of the consequences

- (1) Where necessary, the competent authority should determine:
 - (a) parental responsibility, including residence and contact arrangements for the children, and
 - (b) child maintenance.

Any admissible agreement of the spouses should be taken into account insofar as it is consistent with the best interests of the child.

- (2) On or after granting the divorce the competent authority may determine the economic consequences for the spouses taking into account any admissible agreement made between them.

PART II: MAINTENANCE BETWEEN FORMER SPOUSES

CHAPTER I: GENERAL PRINCIPLES

Principle 2:1 Relationship between maintenance and divorce

Maintenance between former spouses should be subject to the same rules regardless of the type of divorce.

Principle 2:2 Self sufficiency

Subject to the following Principles, each spouse should provide for his or her own support after divorce.

CHAPTER II: CONDITIONS FOR THE ATTRIBUTION OF MAINTENANCE

Principle 2:3 Conditions for maintenance

Maintenance after divorce should be dependent upon the creditor spouse having insufficient resources to meet his or her needs and the debtor spouse's ability to satisfy those needs.

Principle 2:4 Determining claims for maintenance

In determining a claim for maintenance, account should be taken in particular of factors such as:
- the spouses' employment ability, age and health;

- the care of children;
- the division of duties during the marriage;
- the duration of the marriage;
- the standard of living during the marriage and
- any new marriage or long-term relationship.

Principle 2:5 Method of maintenance provision

- (1) Maintenance should be provided at regular intervals and in advance
- (2) The competent authority may order a lump sum payment upon request of either or both spouses taking into account the circumstances of the case.

Principle 2:6 Exceptional hardship

In cases of exceptional hardship to the debtor spouse the competent authority may deny, limit or terminate maintenance because of the creditor spouse's conduct.

CHAPTER III: SPECIFIC ISSUES

Principle 2:7 Multiplicity of maintenance claims

In determining the debtor spouse's ability to satisfy the needs of the creditor spouse, the competent authority should

- (a) give priority to any maintenance claim of a minor child of the debtor spouse;
- (b) take into account any obligation of the debtor spouse to maintain a new spouse.

Principle 2:8 Limitation in time

The competent authority should grant maintenance for a limited period, but exceptionally may do so without time limit.

Principle 2:9 Termination of the maintenance obligation

- (1) The maintenance obligation should cease if the creditor spouse remarries or establishes a long-term relationship.
- (2) After its cessation according to paragraph 1 the maintenance obligation does not revive if the new marriage or long-term relationship ends.
- (3) The maintenance obligation should cease upon the death of either the creditor or the debtor spouse.

Principle 2:10 Maintenance agreement

- (1) Spouses should be permitted to make an agreement about maintenance after divorce. The agreement may concern the extent, performance, duration and termination of the maintenance obligation and the possible renouncement of the claim to maintenance.
- (2) Such an agreement should be in writing.
- (3) Notwithstanding paragraph 1, the competent authority should at least scrutinise the validity of the maintenance agreement.