Co-funded by the
Justice Programme
of the European Union
(2014-2020)

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Family Property and Succession in EU Member States

National Reports on the Collected Data

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Italy

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1. Social perspective

1.1. Provide the list of different types of living lifestyles/family formations (multi-generational families, nucleus families, couples without children, single-person household, families with one or more members are living separately such as in case of economic migrants, common household of two or more persons without *affectio maritalis*).

When considering the evolution of the family in Italy in the last decades, it must be kept in mind some typical trends concerning both its formation and its dissolution.
The first element that we have to consider is the sharp decline in the birth rate. Another essential factor concerns the extension of the stay of younger people in their families. Series of consequences derive out of these well established trends, including: the rise of the age of marriage and the increase of the number of unmarried people. The number of young adults living alone is growing; the number of cohabitations also increases, both the stable, and the premarital ones.
New elements of complexity considering the family are represented by the growing number of transnational families and the new forms of socially recognized affective and personal relationships, such as the same sex relationships.
Another new characteristic of the family we must consider is the conjugal instability. It determines the increase of the number of separations and divorces. As further consequence, it encourages the formation of unipersonal families and the single-parent families, as well as the reconstructed families, characterized by permeable boundaries and commuting of the children.
The typical model of family in Italy is still the nuclear one, but its concrete declination is now varied and complex.
According with the structure, we can classify families as follows: unipersonal families, couple families, nuclear families and complex families.
– The unipersonal family is characterized by the improper denomination of "family": it is constituted, indeed, by a single member. It is a growing reality, as the effect of the evolution of contemporary society. It affects subjects with disparate personal situations. Its diffusion is linked to the lengthening of lifetime: many people, after the death of the spouse, start living alone. A single-member family can be constituted also by young subjects who leave their families because of work or for needs of independence, and start living in accordance with a model of single life. Another option can relate to people previously taking part in emotional relationships of family life or marriage, but ended up alone because of the crisis of that relationship.
– The couple family includes different types of cohabitations: both those constituted by elders, and those formed by young people without children; unmarried couples for necessity or for choice, and couples who experience a period of life in common before marriage.

union comes the mutual obligation of moral and material assistance, of cohabitation and of contribution to the common needs.
There is no duty of marital fidelity. By a declaration to the registrar of civil status, parties may agree to assume, for the entire duration of the civil union, a common surname, choosing among their surnames. The parties may precede or postpone their surnames to the common surname, only if they are different, with express declaration to the public register officer.
The civil union property regime, in the absence of property conventions, is made up of community property state.
The existence of a cause of impediments for the constitution of the civil union (a previous valid marriage or a previous valid civil union; a prohibition for mental infirmity of one of the parties, the existence of a family link, condemns for murder or attempted murder against the spouse or the subject civilly united with the other party) entails the cancellation of the civil union itself.
In order to ensure the effectiveness of civil unions' protection and the fulfilment of obligations under the civil unions, the provisions set out for marriage and all the other provisions containing the words "spouse" must be applied to each of the civil union parties, including rules on succession (indignity, rights of heirs, legitimate succession). It is not applied the provisions of Act No. 184 of 5 May 1983, on adoption.
The registered partnership, a "recognized" cohabitation *de facto* (*convivenza di fatto "riconosciuta"*) between heterosexual or homosexual persons is established without any formal requirements and is characterized by bond of affection and mutual moral and material assistance. The parties of the registered partnership have the same rights as the spouse in cases provided for penitentiary regulations. Parties of the registered partnership are granted with reciprocal visitation rights in case of illness or hospitalization, right to assistance, access to personal information, the decisions in case of incapacity of discernment, the decision for organ donation in case of death, the right of taking over rent contracts, dwelling rights for a limited period of time, the right to compensation in case of death of the partner resulting from unlawful acts of third persons. The partner that works permanently in the company of the other party is entitled to share the profits of the company and the increases.
The unregistered partnership (convivenza di fatto "non riconosciuta") between heterosexual or homosexual persons identifies a union that is not formalized. It has a general recognition in Article 2 of the Italian Constitution, that recognizes and guarantees the inviolable rights of the person as an individual, and in social groups where he expresses his personality, requiring at the same time the fulfilment of the mandatory duties of political, economic and social solidarity.

2.1.7. Have there been proposals to reform the present legislation in the context of marriage and formal/registered or informal/de facto family formations? Explain briefly.

There are currently no proposals for reform.

2.3. Property relations.

2.2.1. List different family property regimes in your country.

Within the Italian Civil Code (article 143, paragraph 3, of the Civil Code) there is the presence of the so called "duty to contribute", which is considered to be the primary and inderogable property regime. Its function is to realize the principle of equality between the spouses (also from an economic point of view) that derives from marriage. The duty to contribute is applied within any other property regime, of a secondary nature, towards which the choice has fallen; therefore, in the hypotheses of the patrimonial regimes deriving from the "comunione legale" ("legal community of assets") as well as from the entrance into typical and atypical matrimonial agreements. On this point, it should be noted that the "matrimonial agreements" provided for by the Civil Code are the

"comunione convenzionale", which constitutes an integration of the legal community (articles 210 et seq. of the Civil Code), the "separazione dei beni", which represents an exception to the regime of legal community (articles 215 et seq.) and the "fondo patrimoniale", a fund made up of assets destined for the needs of the family (article 167 of the Civil Code). In relation to the "atypical matrimonial agreements", it is necessary to note that their making is possible provided that the inderogability of the rights and duties arising from marriage is not prejudiced (article 160 of the Civil Code).

2.2.2. Define briefly the (default) legal regime under in your country. Which categories of assets are regulated under the legal regime (e.g. community of assets, community of accrued gains, deferred community and personal assets)? What property is included in community of assets, and what property is included in personal assets?

The legal property regime is the so called "legal community", namely the community of assets acquired by spouses after marriage. The Civil Code contains a general list of assets that are the subject of legal community (article 177 of the Civil Code); moreover, the Civil Code specifies the assets that, in particular situations – business operation (article 178 of the Civil Code) and peculiar events of the personal property of the spouse (article 179 of the Civil Code) – may be part of the legal community. Precisely, pursuant to article 177, paragraph 1, of the Civil Code, entitled "object of community", fall within the community "the purchases made by the two spouses together or separately during the marriage, excluding those relating to personal assets, the fruits of the property of each of the spouses, received and not consummated at the dissolution of the community" (article 177, paragraph 1, letter *b*, of the Civil Code), "the proceeds of the separate activity of each spouse if, at the dissolution of the community, they have not been consummated" (article 177, paragraph 1, letter *c*, of the Civil Code), "companies managed by both spouses and established after marriage" (article 177, paragraph 1, letter *d*, of the Civil Code). Finally, according to the same article, "In the case of companies belonging to one of the spouses prior to marriage but managed by both, the community only concerns profits and increases" (article 177, paragraph 2, of the Civil Code). In addition, in accordance with the provisions of article 178 of the Civil Code – "Assets for the business of the company" – "Assets destined for the business of one of the spouses established after the marriage and the increases of the formerly established enterprise are considered to be the object of the community, only if they exist at the time of the dissolution of the community".
Pursuant to article 179 of the Civil Code "Personal property" are not the object of community and are personal property of the spouse: "the assets of which, before marriage, the spouse was the owner or with respect to which he was the holder of a real right of enjoyment" (article 179 , paragraph 1, letter *a*, of the Civil Code); "assets acquired after marriage as a result of donation or succession, when in the deed of liberality or in the will it is not specified that they are attributed to the community" (article 179, paragraph 1, letter *b*, of the Civil Code); "the personal property of each spouse and their accessories" (article 179, paragraph 1, letter *c*, of the Civil Code); "the assets that serve the exercise of the profession of the spouse, except those intended for the management of a company forming part of the community" (article 179, paragraph 1, letter *d*, of the Civil Code); "the assets obtained by way of compensation for damages as well as the pension relating to the partial or total loss of work capacity" (article 179, paragraph 1, letter *e*, of the Civil Code); "the assets acquired with the price of the transfer of the personal assets listed above or with their exchange, provided this is expressly declared at the time of purchase" (article 179, paragraph 1, letter *f*, of the Civil Code).
According to the following paragraph of the same article: "The purchase of real estate, or movable property listed in article 2683, made after marriage, is excluded from the community, pursuant to letters *c), d)* and *f)* of the previous paragraph, when this exclusion results from the deed of purchase if the other spouse has also been part of it" (article 179, paragraph 2, of the Civil Code).

2.2.3. Is it permissible to conclude a matrimonial/partnership property agreement or agreement related to property within another type of family formation? What are the conditions and permissible contents of these agreements? In particular, may the spouses only choose among offered matrimonial property regimes or can they create a "new regime just for them"?

Yes, it is permissible to conclude agreements relating to property regimes deriving from legal community as well as agreements relating to property regimes deriving from other matrimonial agreements (typical or atypical already listed and defined in point 2.2.1.), also in the case of civil unions and the registered partnerships between persons of different sex. This opportunity is provided for by article 1, paragraph 13, of the Act No. 76 of 20 May 2016.

2.2.4. Explain briefly the rules on the administration of family property and compare if there are difference for different property regimes.

As part of the regulation of the administration of the assets of the legal community, the acts of ordinary administration as well as the representation in court in relation to the same are up to both spouses (article 180, paragraph 1, of the Civil Code); on the other hand, acts of extraordinary administration must be performed jointly (article 180, paragraph 2, of the Civil Code). In this regard, it is necessary to clarify that the act concerning the joint administration can be carried out by only one of the spouses, provided that there has been the prior consent of the other spouse (article 182, paragraph 1, of the Civil Code). In this context, in the event of refusal of consent by the other spouse and the simultaneous need to complete the act, the judge, pursuant to article 181 of the Civil Code, can authorize the fulfillment itself. In case of patrimonial regimes deriving from the choice of marriage agreements, we observe the following: in cases of "comunione convenzionale" (article 210, paragraph 3, of the Civil Code) and "fondo patrimoniale" (article 168, paragraph 3, of the Civil Code), it is not permitted to derogate from rules on the administration of assets belonging to the legal community that must, therefore, be respected. This conclusion must also be reached in the circumstance of atypical marriage agreements, as article 160 of the Civil Code requires the inderogability of the rights and duties arising from the marriage. On the other hand, in relation to the property regime deriving from the separation of assets, the administration of the assets acquired after marriage is up to of the spouse who is the owner of the asset, according to articles 215 and 217, paragraph 1, of the Civil Code. There are no further property regimes; therefore, it is not possible to find any difference.

2.2.5. Is there a (public) register of such agreements established in your country? If yes, describe briefly the proceedings for registration and legal effects of registration.

No, there is no specific register for agreements concerning property regimes. The agreements should be noted in the margin of the marriage act (article 162, paragraph 3, of the Civil Code). The annotation (which concerns all types of assets) aims at informing third parties about the chosen regime and, therefore, the exclusion of legal community. Furthermore, article 2647 of the Civil Code provides for the transcription of the matrimonial agreement in the real estate registers, when the matrimonial agreement concerns real estate assets and with the sole function of advertising, not implying the possibility of being opposed to third parties.

2.2.6. What are the third party rights in relation to the matrimonial property regime, in particular if there is no public register? Which debts are considered community debts and which are considered personal debts?

The rights of third parties are guaranteed by the fact that the same rights are knowable by means of the aforementioned article 162, paragraph 3, of the Civil Code, which provides for the annotation

(point 2.2.5.). The following are considered debts weighing on the legal community of assets ("comunione legale dei beni"), pursuant to article 186 of the Civil Code ("Obligations weighing on the assets of the community"): all weights and burdens bearing on the assets at the time of purchase (article 186, paragraph 1, letter *a*, of the Civil Code), all the burdens of the administration (article 186, paragraph 1, letter *b*, of the Civil Code); the expenses for the maintenance of the family, for the education and for the upbringing of the children as well as any obligation contracted by the spouses, even separately, in the interest of the family (article 186, paragraph 1, letter *c*, of the Civil Code); any obligation contracted jointly by the spouses (article 186, paragraph 1, letter *d*, of the Civil Code).
Pursuant to article 187 of the Civil Code ("Obligations contracted by spouses before marriage"), debts relating to obligations, contracted by one of the spouses prior to marriage, are not considered debts bearing on the legal community of assets, without prejudice to the provisions of article 189 of the Civil Code. By virtue of article 188 of the Civil Code ("Obligations deriving from gifts or inheritances"), debts relating to obligations "from which the donations and the successions achieved by spouses during marriage and not attributed to community are burdened" are not considered as debts bearing on the legal community of assets, except for the provisions of article 189 of the Civil Code. According to what established by article 189 ("Obligations contracted separately by the spouses"), the debts related to "obligations contracted, after marriage, by one of the spouses for the accomplishment of acts exceeding the ordinary administration without the necessary consent of the other" are considered debts bearing on the legal community of assets, "up to the value corresponding to the share of assets of the obligated spouse" and "when creditors cannot be satisfied with personal assets" (article 189, paragraph 1, of the Civil Code). In compliance with article 189, paragraph 2, of the Civil Code, "The particular creditors of one of the spouses, even if the credit arose before the marriage, can be satisfied in a subsidiary manner on the assets of the community, up to the value corresponding to the share of assets of the obligated spouse. To them, if unsecured, the creditors of community are preferred". Lastly, article 190 of the Civil Code ("Subsidiary liability of personal assets") states that "Creditors may act on a subsidiary basis on the personal property of each spouse, to the extent of half the claim, when the assets of the community are not sufficient to satisfy the debts bearing on the legal community".

2.2.7. Describe allocation and division of property in case of divorce, separation or dissolution of the union.

The separation ("*separazione personale dei coniugi*"), the divorce, the dissolution of the civil union and the dissolution of the registered partnership entail the dissolution of the "*comunione legale dei beni*", namely the dissolution of the "legal community of assets" (article 191, paragraph 1, of the Civil Code) and, consequently, the dissolution of the "*comunione convenzionale*", since the latter is an integration of the legal community of assets. The divorce, the dissolution of the civil union and the dissolution of the registered partnership (but not the separation) imply the termination of the "*fondo patrimoniale*" (article 171, paragraph 1, of the Civil Code). With regard to the "*fondo patrimoniale*", reference should be made to article 171, paragraph 2, according to which "If there are minor children the fund lasts until the age of majority of the last child"; the same paragraph continues, stating that "in this case the judge can dictate, on the request of those who have an interest, rules for the administration of the fund". In addition, in accordance with the following paragraph, "Considering the economic conditions of parents and children and any other circumstances, the judge can also attribute to the children, in enjoyment or property, a portion of the assets of the fund" (article 171, paragraph 3, of the Civil Code). Lastly, article 171 of the Civil Code ends by stating that "If there are no children, the provisions on the dissolution of the legal community shall apply" (article 171, paragraph 3, of the Civil Code). The dissolution of the legal community does not automatically involve the division of the assets, but it entails the inapplicability, in the future, of the rules governing the legal regime. The dissolution implies the distribution of the assets by the spouses (or their heirs), by dividing, pursuant to article 194, paragraph 1, of the Civil Code, in equal parts, assets and liabilities, upon prior repayments and refunds (in compliance with article 192 of the Civil Code) as

well as upon prior removal of personal movable assets (article 195 of the Civil Code) or upon prior their cash value (article 196 of the Civil Code).
In any case, following the dissolution of the marriage, the judge issues a decision, by virtue of Act No. 898 of December 1, 1970, with reference to the assignment of the house to the economically weaker spouse or, in the presence of children, to the spouse to whom the child custody has been entrusted or with whom they cohabit beyond the age of majority (article 6, paragraph 6); in addition, in relation to the maintenance allowance due to the same spouse by the other (article 5, paragraph 6). The payment of the latter can generally take place periodically; alternatively, pursuant to article 5, paragraph 7, as a lump sum payment, upon agreement of the parties and if considered fair by the judge. It is believed that, by virtue of this last provision, the transfer of a real estate property might be the subject of the obligation arising out of an agreement between the spouses[1]. As established by article 1, paragraph 25, of the Act No. 76 of 20 May 2016, the aforementioned articles apply, insofar as they are compatible, also in the cases of the dissolution of the civil union and of the dissolution of the registered partnership.
In case of separation, the provision relating to the maintenance allowance is adopted in compliance with article 156, paragraph 1, of the Civil Code, when the provision is in favor of the weaker spouse; as established by article 337-*ter*, paragraph 4, of the Civil Code, if the provision is in favor of the child or children cohabiting, minors or adults who are not economically self-sufficient. The assignment of the house, on the other hand, takes place pursuant to article 337-*sexies*, to the economically weaker spouse, provided that there is a child or children cohabiting, minors or adults who are not economically self-sufficient.

2.2.8. Are there special rules or limitations concerning property relationship between spouses or partners with reference to their culture, tradition, religion or other characteristics? For instance, is dowry regulated under your legislation?

No, there are no special rules or limitations regarding the property regimes between spouses or partners in reference to their culture, tradition, religion or other characteristics. No, the dowry is neither provided nor regulated within the Italian legislation.

2.3. Cross-border issues.

2.3.1. Is your country participating in the enhance cooperation with regard to the two Regulations (1103/2016 and 1104/2016)? If not, what is the reason? Is there a likelihood that your country will join in the future?

Italy participates in enhanced cooperation (Council Decision EU 2016/954 of 9 June 2016) with regard to the two Regulations: 1103/2016 and 1104/2016. Enhanced cooperation in the area of jurisdiction, recognition and enforcement of decisions on matrimonial property regimes for international couples, focusing both on matrimonial property regimes and on property consequences of registered partnerships, aims to develop judicial cooperation in the civil field. Cross-border implications are considered on the basis of the principle of recognition of mutual judgments, and are directed to ensure the compatibility of the applicable rules of the Member States in case of conflict of laws. This enhanced cooperation will promote the EU's objectives, protecting the interests and strengthen the integration process.
Competences, rights and obligations of the Member States not participating in the enhanced cooperation are, however, respected. The Courts of the non-participating Member States will continue to apply their internal rules for determining the jurisdiction and the applicable law, when they are sitting in a case of recognition and enforcement of decisions on matrimonial property

[1] Corte di Cassazione, 3.12.2015, No. 2462.