

Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

2006/0135(CNS) - 24/07/2008

The Council notes that the aim of the proposal, referred to as Rome III, is to enable spouses, in the context of proceedings for divorce or legal separation, to choose by agreement the place of jurisdiction and to designate the applicable law in respect of such disputes. Where no law is chosen by the spouses, the text would introduce conflict-of-law rules. The proposal provides for a number of connecting factors: divorce to be governed by the law of the country of habitual residence of the two spouses; failing that, by that of the country of habitual residence of the spouses if one of them still resides there; failing that, by that of the country of common nationality of the spouses; or, failing that, by the law of the forum. The conflict-of-law rules provided for in the proposal are intended to ensure that, wherever the spouses petition for divorce, the courts of a Member State normally apply the same substantive law (avoiding "forum shopping").

At its meeting on 5 and 6 June 2008, the Council noted that there was no unanimity on taking the Rome III Regulation forward and that insurmountable difficulties precluded such unanimity in the foreseeable future.

On 24 and 25 July 2008 the Council discussed the state of play on an instrument on jurisdiction and the law applicable in matrimonial matters (Rome III), particularly in the case of divorce. It noted that at least eight Member States intended to ask the Commission to submit a proposal for enhanced cooperation and that others were likely to join in that cooperation following a Commission proposal.

Any request to the Commission by these Member States would be without prejudice to the rest of the procedure and, in particular, to the authorisation which the Council would subsequently be asked to grant.

Some Member States expressed doubt as to whether enhanced cooperation was appropriate in this case. A few Member States stated that they did not intend to participate in the instrument but had no reservations regarding enhanced cooperation.

The Commission was ready to consider a formal request from at least eight Member States to submit a proposal for enhanced cooperation but did not wish to indicate beforehand what the content of that proposal might be. It stressed that it would consider the request in the light of the political, legal and practical aspects of a proposal of this nature.