

Enhanced cooperation in the area of the law applicable to divorce and legal separation.

Council Decision

2010/0066(NLE) - 12/07/2010 - Final act

PURPOSE: to authorise enhanced cooperation between several Member States in the law regarding divorce and legal separation.

LEGISLATIVE ACT: Council Decision 2010/405/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

CONTENT: on 17 July 2006, the Commission adopted a [proposal for a Council Regulation](#) amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

In 2008 the Council adopted political guidelines which recorded that there was no unanimity to go ahead with the proposed Regulation and insurmountable difficulties existed, making unanimity impossible at the time and in the foreseeable future. It established that the objectives of the proposed Regulation could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

In these circumstances, Greece, Spain, Italy, Luxembourg, Hungary, Austria, Romania and Slovenia addressed a request to the Commission by letters dated 28 July 2008 indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters and that the Commission should submit a proposal to the Council to that end. Bulgaria addressed an identical request to the Commission by letter dated 12 August 2008. France joined the request by a letter dated 12 January 2009, Germany by a letter dated 15 April 2010, Belgium by a letter dated 22 April 2010, Latvia by a letter dated 17 May 2010, Malta by a letter dated 31 May 2010 and Portugal during the Council meeting of 4 June 2010. On 3 March 2010, Greece withdrew its request. In total, **fourteen Member States** have requested enhanced cooperation.

Enhanced cooperation in the area of the law applicable to divorce and legal separation aims to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments, and to ensure the compatibility of the rules applicable in the Member States concerning conflict of laws. Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process as required by Article 20(1) of the Treaty on European Union. Furthermore, enhanced cooperation in this area does not undermine the internal market or economic, social and territorial cohesion, nor constitute a barrier to or discrimination in trade between Member States and does not distort competition between them. It respects the competences, rights and obligations of those Member States that do not participate in it. The common conflict-of-law rules in the participating Member States do not affect the rules of the non-participating Member States. The courts of the non-participating Member States continue to apply their existing domestic conflict-of-law rules to determine the law applicable to divorce or legal separation. Enhanced cooperation in the area of the law applicable to divorce and legal separation is open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union,

Accordingly, Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia are authorised to establish enhanced cooperation between themselves in the area of the law applicable to divorce and legal separation by applying the relevant provisions of the Treaties.

The enhanced cooperation should provide a clear and comprehensive legal framework in the area of divorce and legal separation in the participating Member States and ensure adequate solutions for citizens in terms of legal certainty, predictability and flexibility and prevent a "rush to court". It aims to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments, and to ensure the compatibility of the rules applicable in the Member States concerning conflict of laws.

Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process as required by the Treaty on European Union.

This Decision respects the rights, principles and freedoms recognised in the Charter of Fundamental Rights of the European Union.

ENTRY INTO FORCE: 12/07/2010.