Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions in matters of matrimonial property regimes

2011/0059(CNS) - 16/03/2011 - Legislative proposal

PURPOSE: to establish a comprehensive set of rules of international private law applicable to matrimonial property regimes.

PROPOSED ACT: Council Regulation.

BACKGROUND: the increased mobility of persons within an area without internal frontiers leads to a marked increase in the number of couples formed by nationals of different Member States who may live in a Member State of which they do not have the nationality and acquire property in more than one Union country.

A study carried out in 2003 showed the **large number of transnational couples within the Union** and the practical and legal difficulties such couples face, both in the daily management of their property and in its division if the couple separate or one of its members dies. These difficulties often arise from the great disparities between the applicable rules of substantive law and private international law governing the property effects of marriage.

Because of the distinctive features of marriage and registered partnerships, and of the different legal consequences resulting from these forms of union, the Commission is presenting **two separate Regulations**: one on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, and the other on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

These proposals are part of the Commission's efforts to dismantle the obstacles faced by EU citizens in their daily lives when they try to exercise the rights the EU confers on them, as outlined in the 2010 EU Citizenship Report.

IMPACT ASSESSEMENT: on 17 July 2006, the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available.

The Commission has also conducted a joint impact study on the proposals for Regulations on matrimonial property regimes and the property consequences of registered partnerships. It is attached to this proposal.

LEGAL BASIS: **Article 81(3)** of the Treaty on the Functioning of the European Union (TFEU), which confers on the Council the power to adopt measures concerning family law having cross-border implications after consulting the European Parliament.

CONTENT: to provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.

In order to achieve the desired objectives, this proposal aims to **establish a clear legal framework** in the European Union for determining jurisdiction and the law applicable to matrimonial property regimes and facilitating the movement of decisions and instruments among the Member States. The rules proposed are concerned only with cross-border cases.

This Regulation covers issues in connection with matrimonial property regimes. It does not define 'marriage', which is defined by the national laws of the Member States.

The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses.

The main elements of the proposal are as follows:

Jurisdiction: the aim of this Regulation is to enable citizens to have the various related procedures handled by the courts of the same Member State. To ensure that in the event of the death of one of the spouses the competent court can handle both the succession of the deceased spouse and the liquidation of the matrimonial property, this proposal provides that the court having jurisdiction for wills and successions according to the rules laid down in the proposed Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, should have its jurisdiction enlarged to include the liquidation of the matrimonial property resulting from the succession or will in question.

Similarly, the court with jurisdiction for divorce proceedings, legal separation or marriage annulment may, if the spouses agree, extend its jurisdiction to the liquidation of the matrimonial property following the separation procedure and to other matters concerning the matrimonial property arising from this procedure.

Applicable law: the harmonisation of the rules on jurisdiction will greatly simplify procedures by making it possible to establish the court with jurisdiction over a matrimonial property case on the basis of common rules. If courts seised with divorce proceedings, legal separations, annulments of marriage and succession cases in application of existing or future EU legislation have their jurisdiction extended to any related matrimonial property regime proceedings, citizens will be able to have the same court deal with all aspects of their situation.

The option proposed in the Regulation is that of a **single scheme**: all the property of the spouses would be subject to the same law, the law applicable to the matrimonial property regime.

The Regulation therefore provides that the law applicable to matrimonial property, whether chosen by the spouses or, in the absence of any such choice, determined under other provisions, will apply to all the couple's property, movable or immovable, irrespective of their location.

Recognition, enforceability and enforcement: the proposed Regulation provides for the free movement of decisions, authentic instruments and court settlements concerning matrimonial property regimes. It would thus introduce mutual recognition based on the mutual trust arising out of the integration of the Member States within the European Union.

This free movement would take the form of a **uniform procedure** for the recognition and enforcement of decisions, authentic acts and legal transactions originating in another Member State.

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.