

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships

2011/0060(CNS) - 16/03/2011 - Legislative proposal

PURPOSE: to establish a clear legal framework in the European Union for determining jurisdiction and the law applicable to the property consequences of registered partnerships, and to facilitate the movement of decisions and instruments among the Member States.

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 registered partnerships and marriage, 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: the aim of this proposal is to establish a comprehensive set of rules of international private law applicable to the property consequences of **registered partnerships**. It therefore touches on matters of legal jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of a registered partnership. The rules proposed are concerned only with cross-border cases.

The Regulation covers matters arising from the property consequences of registered partnerships. 'Registered partnership' is defined here solely for the purposes of this Regulation. The actual substance of the concept is defined in the national laws of the Member States.

The scope of the Regulation should extend to all civil matters in relation to the property consequences of registered partnerships, both the daily management of the partners' property and its liquidation, in particular as a result of the couple's separation or the death of one of the partners.

The main elements of the proposal are as follows:

Jurisdiction: the aim of this Regulation is to enable citizens to have the related procedures handled by the courts of the same Member State. To do this, the Regulation is designed to ensure that the rules for determining the jurisdiction of the courts called on to deal with the property aspects of registered partnerships are in line with the existing or proposed rules in other European legislation. The courts of a Member State with territorial jurisdiction to deal with the liquidation of the succession of a partner who has died should have their jurisdiction extended to include the liquidation of the property relationship of the registered partnership as a result of the opening of the succession.

Similarly, to ensure that if the partners separate a court seised in a Member State can deal with all aspects of this separation without forcing the partners to undertake different proceedings in different States, the jurisdiction of the court of a Member State dealing with the dissolution or annulment of a registered partnership may, if the partners agree, be extended to the property consequences of the registered partnership arising from the dissolution or annulment of the partnership.

Applicable law: the harmonisation of conflict-of-law rules will considerably simplify procedures by establishing which law is applicable.

In view of the differences between the national laws of those Member States that make provision for registered partnerships, the principle adopted in the Regulation is that the property consequences of registered partnerships should be governed by the law of the State of registration.

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.