Jurisdiction, applicable law and the recognition and enforcement of decisions in matters of property consequences of registered partnerships

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PURPOSE: to establish a clear legal framework in the European Union for determining jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: the increasing mobility of persons within an area without internal frontiers leads to a **significant increase in the number of couples formed by nationals of different Member States** who live in a Member State other than their own or acquire property in more than one Member State.

These transnational couples face **practical and legal difficulties**, both in the daily management of their property and in its division if the couple separate or one of its members dies.

While marriage is the most common form of couple, new forms of union have emerged, including the **registered partnership**, by which two people in a stable relationship formally register their union with a public authority. The difficulties encountered by couples in a registered partnership often result from the **great disparities between the applicable rules** governing the property effects of such unions, both in substantive law and in private international law.

The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured.

In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010, the Commission announced that it would adopt in 2011 a proposal for legislation to make it easier for international couples (either married or registered partners) to know which courts had jurisdiction to deal with their property rights and which law applied to their property rights

On 16 March 2011, the Commission adopted a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships. At its meeting of 3 December 2015, the Council concluded that **no unanimity could be reached for the adoption of the proposals for regulations** on matrimonial property regimes and the property consequences of registered partnerships and that therefore the objectives of cooperation in this area could not be attained within a reasonable period by the Union as a whole.

17 Member States addressed a request to the Commission indicating that they wished to establish enhanced cooperation.

The proposal for a Council Decision authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships.

This proposal for a **Council Regulation on the property consequences of registered partnerships**, and the parallel proposal for a Council Regulation on matrimonial property regimes both of which implement the enhanced cooperation and were adopted by the Commission at the same time, are the Commission's response to the request by 17 Member States.

IMPACT ASSESSMENT: before the 2011 Commission proposal was drawn up, a broad consultation exercise took place with the Member States, other Union institutions and the public. The Commission conducted a joint impact study on the proposals for regulations on matrimonial property regimes and the property consequences of registered partnerships.

The two new proposals regarding matrimonial property regimes and the property consequences of registered partnerships contain solutions similar to those presented in the 2011 proposals taking into account the discussions in the Council and the European Parliament up to the end of 2015.

CONTENT: the aim of the proposal is to establish a **clear, legal framework in the European Union for determining jurisdiction and the law applicable to the property consequences of registered partnerships.** It therefore deals with matters of 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.

Scope and definitions: according to the proposal, the notion of 'the property consequences of registered partnerships' must be given an autonomous interpretation and embrace **considerations relating to both the partners' daily management** of their property and the liquidation of the property as a result of the couple's separation or the death of one of the partners.

Matters already covered by existing EU regulations, such as maintenance obligations, especially between partners, and matters arising from the law of succession, are excluded from the scope of the Regulation.

The Regulation does not affect the existence or validity of a registered partnership under national law or the recognition in one Member State of a partnership registered in another Member State. It also does not affect matters of social security or the entitlement to rights to pension in case of dissolution or annulment of the registered partnership.

The property consequences of registered partnerships, which are the sole subject matter of this Regulation, are given a **specific definition** limiting them to existing property relationships between the partners and between the partners and third parties arising from the institutionalised relationship created by the registration of the partnership.

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 this end, the proposal is designed to ensure that the rules to determine the jurisdiction of the courts called on to deal with the property aspects of registered partnerships are in line with existing rules in other Union instruments and, in particular, to concentrate jurisdiction over the property regime in the Member State whose courts are handling the succession of a partner or the dissolution or annulment of the registered partnership.

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 regime, this article

provides that the court having jurisdiction for the succession according to the rules laid down in Regulation (EU) No 650/2012 should also have jurisdiction to rule on the liquidation of the property regime of the registered partnership linked to the succession.

Applicable law: the option proposed in the Regulation is that of a single scheme: all the property of the partners, regardless of its nature (moveable or immoveable) and location, would be subject to the same law, namely the law applicable to the property regime of the registered partnership.

The partners or future partners may agree to **designate or to change the law applicable** to the property consequences of their registered partnership, provided that that law attaches property consequences to the institution of the registered partnership and that it is one of the following:

- the law of the State where the partners or future partners, or one of them, is habitually resident at the time the agreement is concluded,
- the law of a State of nationality of either partner or future partner at the time the agreement is concluded, or
- the law of the State under whose law the registered partnership was created.

In the absence of any agreement, the law applicable to the property consequences of registered partnerships shall be the law of the State under whose law the registered partnership was created. However, **exceptionally**, one of the partners can ask a court that the law applicable should be the law of the State where the partners had their last common habitual residence

The Regulation lists some of the **matters that would be governed by the law applicable** to the matrimonial property regime. Such matters include the liquidation of the property and also the effects of the matrimonial property regime on the relationships between a spouse and a third party.

To protect the family home, a Member State where the family home is located may apply its own rules for the protection of the family home. Exceptionally, this Member State may apply its **own law** to all persons living on its territory in 'preference' to the law normally applicable or that of a marriage agreement concluded in another Member State.

Recognition, enforceability and enforcement: the proposal provides for the free circulation 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 Union.

This free circulation 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. The **grounds for non-recognition** or refusal to enforce are also harmonised at Union level or reduced to the absolute minimum.