Enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on property regimes of international couples, covering both matters of matrimonial property regimes and property consequences of registered partnerships

2016/0061(NLE) - 02/03/2016 - Preparatory document

PURPOSE: to authorise 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.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the 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. Currently citizens face different practical problems with asset planning when they are in an international marriage or partnership. The problem is that it is very **difficult for people to know which courts have jurisdiction and which laws are applicable** to their personal situation and the situation of their property. As a result, they face unintended, and disadvantageous, consequences not only in the daily management of their assets but also when the couple separates or a member of the couple dies.

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.

The European Parliament delivered its favourable opinion and comments on the two proposals on 10 September 2013.

However, the Council concluded at its meeting of 3 December 2015 that it would **not be possible to reach an EU-wide agreement** in relation to both regulations within a reasonable period of time.

To date, the Commission has received requests from **17 Member States indicating their wish to establish enhanced cooperation**: Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria and Finland.

The Commission concluded that all the legal conditions set by the Treaties for the authorisation of the establishment of enhanced cooperation are fulfilled. It considered that the benefits of establishing enhanced cooperation are numerous compared to the option of keeping the status quo and that the advantages of establishing enhanced cooperation in this area outweigh any possible disadvantage.

CONTENT: the draft Council Decision – based on Article 329(1), of the Treaty on the Functioning of the European Union (TFEU) – seeks to **authorise enhanced cooperation** between 17 requesting Member States 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.

Proposals for specific measures implementing the enhanced cooperation are submitted together with this proposal.

According to the Commission, enhanced cooperation would bring citizens the following benefits:

- treating the property regimes of couples coherently under a **single applicable law** and by one single authority;
- enabling international couples to **choose the law** to be applied to their property;
- increasing legal certainty for international couples by applying - as a general rule - the law of the State with which the couple has the closest connection;
- enabling citizens to have **various procedures handled by the same court** and thereby avoid parallel proceedings and conflicting judicial decisions;
- improving predictability for international couples by **simplifying procedures for the recognition and enforcement of decisions** and the circulation of authentic instruments throughout the EU.

Enhanced cooperation shall be open at any time to all Member States, in accordance with Article 328 of the TFEU.