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

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PURPOSE: to provide for a set of rules applicable to the property consequences of registered partnerships in order to provide unmarried couples with legal certainty as to their property and offer them a degree of predictability.

LEGISLATIVE ACT: Council Decision (EU) 2016/1104 implementing **enhanced cooperation** in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

CONTENT : the Regulation applies to those Member States participating 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, by virtue of Council Decision (EU) 2016/954.

This Regulation is closely linked to another Regulation concerning jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial regimes.

Scope: the Regulation brings together provisions on jurisdiction, applicable law, recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements.

‘Registered partnership’ may be understood as the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation. The specific meaning of the term remains defined by the national law of Member States.

The scope of the Regulation includes all civil-law aspects of the property consequences of registered partnerships, both the daily management of the partner's property and its liquidation, in particular as a result of the couple's separation or the death of one of the partners.

However, **excluded from the scope of the Regulation** are questions concerning the legal capacity of spouses, the existence, validity or recognition of a marriage, maintenance obligations and the succession to the estate of a deceased spouse.

The Regulation does not affect the competence of the authorities of the Member States to deal with matters of the property consequences of registered partnerships

Jurisdiction: to reflect the increasing mobility of couples, the rules on jurisdiction set out in in the Regulation enable citizens to have their various related procedures handled by the courts of the same Member State. The Regulation provides the following:

- where a court of a Member State is seised in matters of the **succession of a registered partner** under Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matters of the property consequences of the registered partnership arising in connection with that succession case;

- where a court of a Member State is seised to rule on the **dissolution or annulment of a registered partnership**, the courts of that State shall have jurisdiction to rule on the property consequences of the registered partnership arising in connection with that case of dissolution or annulment, where the partners so agree.

In order to increase legal certainty, predictability and the autonomy of the parties, the Regulation enables the parties, under certain circumstances, to **conclude a choice of court agreement** in favour of the courts of the Member State of the applicable law or of the courts of the Member State under whose law the registered partnership was created. Where a Member State holds that the registered partnership in question cannot be recognised, the courts must act swiftly and **the party concerned may submit the case in any other Member State** that has a connecting factor. The Regulation does not prevent the parties from **settling the case amicably out of court**, for instance before a notary, in a Member State of their choice.

Applicable law: following the **principle of unity** of the applicable law, the Regulation stipulates that the law applicable to the property consequences of registered partnerships applies to all assets falling under those consequences, regardless of where the assets are located. The law designated as applicable by the Regulation shall be applied whether or not it is the law of a Member State.

The spouses **may agree to designate, or to change, the law applicable** to the property consequences of their registered partnership, provided that that law is one of the following:

- the law of the State where the spouses or future spouses, or one of them, is habitually resident at the time the agreement is concluded; or

- the law of a State of **nationality** of either spouse or future spouse at the time the agreement is concluded;

- the law of the State under whose law the registered partnership was created.

In the absence of a choice-of-law 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**.

By way of exception, one partner may ask for a decision that the law of a State other than the State whose law is applicable if that applicant can demonstrate that the partners had their last common habitual residence in that other State for a significantly long period of time.

The Regulation sets out the **issues governed by the law applicable** to the property consequences of registered partnerships, particularly the liquidation of assets and the effects of the property consequences of the registered partnership on a legal relationship between a partner and third parties.

Recognition, enforceability and enforcement of decisions: the Regulation lays down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters. Grounds for non-recognition of a decision include circumstances where such recognition is manifestly contrary to public policy in the Member State in which recognition is sought.

The Regulation also allows for the acceptance and enforceability in all Member States of **authentic instruments** in matters related to the property consequences of registered partnerships, in certain circumstances.

Information made available to the public: Member States shall provide the Commission with a short summary of their national legislation and procedures relating to the property consequences of registered partnerships, including information on the type of authority that has competence in the matter.

ENTRY INTO FORCE: 28.7.2016. The Regulation is applicable in the Member States that participate in enhanced, as authorised by Decision (EU) 2016/954.

APPLICATION: from 29.1.2019, except with respect to certain provisions that apply from 29.4.2018, and others that apply from 29.7.2016.