Basic information

2006/0135(CNS) CNS - Consultation procedure Regulation	Procedure lapsed or withdrawn
Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility **Subject** 4.10.02 Family policy, family law, parental leave 4.10.03 Child protection, children's rights 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	GEBHARDT Evelyne (PSE)	13/09/2006

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs (Associated committee)	CASINI Carlo (PPE-DE)	02/10/2006
FEMM Women's Rights and Gender Equality	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2783	2008-06-05
Justice and Home Affairs (JHA)	2794	2007-04-19
Justice and Home Affairs (JHA)	2887	2008-07-24

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
17/07/2006	Legislative proposal published	COM(2006)0399	Summary

28/09/2006	Committee referral announced in Parliament		
15/02/2007	Referral to associated committees announced in Parliament		
19/04/2007	Debate in Council		Summary
05/06/2008	Debate in Council		Summary
24/07/2008	Debate in Council		Summary
15/09/2008	Vote in committee		Summary
19/09/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0361/2008	
20/10/2008	Debate in Parliament		
21/10/2008	Decision by Parliament	T6-0502/2008	Summary
21/10/2008	Results of vote in Parliament		
16/04/2013	Proposal withdrawn by Commission		Summary

Technical information

Procedure reference	2006/0135(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 081-p3-a1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/6/39639

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE400.282	09/01/2008	
Amendments tabled in committee		PE402.523	13/02/2008	
Committee opinion	JURI	PE398.467	11/09/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0361/2008	19/09/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0502/2008	21/10/2008	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2006)0399	17/07/2006	Summary
	SEC(2006)0949		

Document attached to the procedure		17/07/2006	
Document attached to the procedure	SEC(2006)0950	17/07/2006	
Commission response to text adopted in plenary	SP(2008)6664	12/11/2008	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1579/2006	13/12/2006	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

2006/0135(CNS) - 24/07/2008

The Council notes that the aim of the proposal, referred to as Rome III, is to enable spouses, in the context of proceedings for divorce or legal separation, to choose by agreement the place of jurisdiction and to designate the applicable law in respect of such disputes. Where no law is chosen by the spouses, the text would introduce conflict-of-law rules. The proposal provides for a number of connecting factors: divorce to be governed by the law of the country of habitual residence of the two spouses; failing that, by that of the country of habitual residence of the spouses if one of them still resides there; failing that, by that of the country of common nationality of the spouses; or, failing that, by the law of the forum. The conflict-of-law rules provided for in the proposal are intended to ensure that, wherever the spouses petition for divorce, the courts of a Member State normally apply the same substantive law (avoiding "forum shopping").

At its meeting on 5 and 6 June 2008, the Council noted that there was no unanimity on taking the Rome III Regulation forward and that insurmountable difficulties precluded such unanimity in the foreseeable future.

On 24 and 25 July 2008 the Council discussed the state of play on an instrument on jurisdiction and the law applicable in matrimonial matters (Rome III), particularly in the case of divorce. It noted that at least eight Member States intended to ask the Commission to submit a proposal for enhanced cooperation and that others were likely to join in that cooperation following a Commission proposal.

Any request to the Commission by these Member States would be without prejudice to the rest of the procedure and, in particular, to the authorisation which the Council would subsequently be asked to grant.

Some Member States expressed doubt as to whether enhanced cooperation was appropriate in this case. A few Member States stated that they did not intend to participate in the instrument but had no reservations regarding enhanced cooperation.

The Commission was ready to consider a formal request from at least eight Member States to submit a proposal for enhanced cooperation but did not wish to indicate beforehand what the content of that proposal might be. It stressed that it would consider the request in the light of the political, legal and practical aspects of a proposal of this nature.

Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

2006/0135(CNS) - 05/06/2008

The Council had a debate on a proposal for a Council Regulation on rules concerning applicable law in matrimonial matters (Rome III).

A large majority of Member States supported the objectives of this proposal for a Council

Regulation. Therefore, and owing to the fact that the unanimity required to adopt the regulation could not be obtained, the Council established that the **objectives of Rome III could not be attained within a reasonable period** by applying the relevant provisions of the Treaties. Work should continue with a view to examining the conditions and implications of possibly establishing **enhanced cooperation between Member States**.

To recall, the purpose of this Regulation is to provide a clear and comprehensive legal framework, covering both jurisdiction as well as applicable law rules in matrimonial matters, and allowing the parties a certain degree of autonomy in choosing the competent court and applicable law in case of divorce and legal separation.

Spouses would be allowed to choose a competent court or the law applicable to divorce. In the absence of a choice of law by the spouses, the text would introduce conflict-of-law rules. According to the proposal, there is a cascade of connecting factors: the divorce is governed by the law of the country of habitual residence of both spouses, failing that, by the law of the last habitual residence of the spouses if one of them still resides there; failing that, the law of the common nationality of the spouses or, failing that, by the law of the forum. The conflict-of-law rules of the proposal aim at ensuring that, wherever the spouses lodge their request for divorce, the courts of any Member State would normally apply the same substantive law, (therefore avoiding "forum shopping").

Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

2006/0135(CNS) - 21/10/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 522 votes to 89 with 35 abstentions, a legislative resolution approving, subject to amendments, the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

The report had been tabled for consideration in plenary by Evelyne **GEBHARDT** (PES, DE) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

The main amendments – made in the framework of the consultation procedure – are as follows:

Title of the Regulation: Parliament proposes to amend the title of the Regulation. The title should concern jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, as well as the law applicable to divorce and legal separation.

Definition of the term "habitual residence": a definition of the term has been provided to mean a person's place of ordinary abode. This definition is deemed necessary so as to avoid as much as possible arbitrary interpretations. The term should be interpreted in accordance with the purposes of this Regulation. Its meaning should be determined by the judge in each individual case and on the basis of facts. The term does not refer to a concept of national law but, rather, to a separate concept established in Community law.

Choice of jurisdiction: the proposal introduces the possibility for spouses to designate by common agreement the competent jurisdiction in their divorce procedure. MEPs propose to introduce a new article which stipulates that when the competent jurisdiction under this Regulation is situated in a Member State whose law makes no provision for divorce or does not recognise the existence or validity of the marriage in question, jurisdiction shall be allocated: i) to the Member State of the nationality of one of the spouses; or ii) to the Member State in which the marriage was celebrated.

Choice of applicable law: the proposal introduces the possibility for the spouses to designate by common agreement the law applicable in their divorce procedure. MEPs also deem it necessary to allow the possibility of choosing: a) the law of the State in which the spouses have their habitual residence at the time when the agreement is concluded; b) the law of the State in which the marriage took place at the time when the agreement is concluded; c) the law of the State in which the spouses have had their habitual residence for a minimum period of three years. The adopted text also stipulates, following an oral amendment by the EPP-ED Group, that the spouses may agree to designate the law applicable to divorce and legal separation provided that such law is in conformity with the fundamental rights defined in the Treaties and in the Charter of Fundamental Rights of the European Union and the principle of public policy. MEPs stress that the possibility of choosing the law applicable to divorce and to legal separation should not harm the interests of the child.

Lex fori: should the law indicated pursuant to the Regulation not recognise separation or divorce or do so in a form that is discriminatory as regards one of the spouses, the lex fori shall apply. This amendment is intended to deal with the problems encountered by certain women from third countries who wish to obtain a separation or divorce in a Member State. Another amendment clarifies situations in which the law of a Member State or the marriage contract stipulates stricter requirements than those laid down in the Regulation.

Informed choice: MEPs consider that the informed agreement of the two spouses is a basic principle of this Regulation. Each partner in the couple should know exactly what legal and social implications follow from the choice of jurisdiction and of applicable law. They recall that the possibility of choosing by common agreement the jurisdiction and the applicable law should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the Member States should be aware of the importance of an enlightened choice on the part of the two spouses concerning the legal implications of the agreement concluded.

Information from the Member States: MEPs propose that 3 months after the date upon which this Regulation comes into force at the latest, the Member States shall notify the Commission of their national rules concerning the formal requirements applying to agreements relating to the choice of competent jurisdiction and of the law applicable to marriage contracts. The Member States shall notify the Commission of any subsequent change to

those rules. The Commission is invited to make available to the public the information which has been notified to it by means of appropriate measures, in particular the European Judicial Network in civil and commercial matters.

Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

2006/0135(CNS) - 19/04/2007

The Council discussed certain important issues concerning this proposal, in particular the rules regarding the choice of court by the parties, the choice of applicable law, the rules applicable in the absence of choice of law, the respect for the laws and traditions in the area of family law and the question of multiple nationality.

A very large majority of delegations agreed on the guidelines proposed by the Presidency according to which the Regulation should contain a rule on a limited choice of court for divorce and legal separation by the spouses and on conflict-of-law rules. In this regard, the Regulation should contain, firstly, a rule giving spouses a limited possibility of choice of law for divorce and legal separation and, secondly, a rule applicable in the absence of choice.

The Council took note of the position of two delegations that recalled that, in the absence of choice of law by the parties, the court seized should apply lex fori. However, such delegations underlined that they are prepared to continue the negotiations on this instrument.

The Council recognised that the draft Regulation should not imply modifications of the substantive family law of the Member States with respect to divorce or legal separation. One delegation underlined however that the respect of the national legal order should not jeopardise the coherent application of Community law.

The Council gave a mandate to continue work on the draft Regulation on the basis of the following guidelines:

Choice of court by the parties (Article 3a): Regulation No 2201/2003 ("Brussels IIa-Regulation") provides for a number of alternative grounds for jurisdiction, but does not give spouses the possibility to conclude a choice of court agreement. According to the Commission proposal, such choice of court agreement should be possible for divorce and legal separation. However, spouses may only choose a court of a Member State with which they have a close connection. Most delegations supported in principle the possibility for such limited choice of court by the spouses. In this context, the Presidency suggests that the spouses should be able to choose any court which has jurisdiction already under the general rules of the Brussels IIa Regulation as well as the courts of a Member State of which one of them is a national, or where the spouses had their last habitual residence within a certain time period before the court is seised. Questions such as the moment in time when these conditions must be satisfied need further discussion. The Presidency believes that the rule on choice of court by the parties has also to take into account the interests of a weaker spouse.

Choice of the applicable law by the parties (Article 20a): according to the Commission proposal, spouses may, to a limited extent, designate the law applicable to divorce or legal separation by agreement. During the negotiations, most delegations could in principle support the idea of giving the spouses a limited possibility to choose the applicable law to their divorce or legal separation. However, spouses may only choose a law of a State with which they have a close connection. In this context, the Presidency suggests that the spouses should be able to choose the law of the State where they have their habitual residence, or where they had their last habitual residence insofar as one of them still resides there, or the law of the State of which one of the spouses is a national or the law of the forum. Questions such as until what moment in time the choice can be made need further discussion. Such a rule on the choice of the applicable law should take into account the interests of both spouses and ensure the protection of a weaker spouse.

Rules applicable in the absence of choice of law (Article 20b): during the negotiations, many delegations supported the idea of harmonising the conflict-of- law rules in the absence of a choice of law. However, some delegations expressed doubts or opposition to this idea. The Presidency considers that, with a view to reaching the proposed objective, it is necessary to provide for a conflict-of-laws rule applicable in the absence of a choice of law by the parties. Several proposals are on the table on this issue none of which is yet acceptable to all delegations. The Presidency believes that it is necessary to find a balanced overall solution on this issue. Future work will examine whether it would not be necessary to expressly indicate that lex fori shall apply where the foreign divorce law would discriminate against one of the spouses or where the foreign law does not provide for divorce.

Respect for the laws and traditions of the Member State in the area of family law: the proposal does not establish the legal institution of divorce in a Member State which does not have such an institution nor does it oblige a Member State to introduce divorce in its national law. Moreover, nothing in the proposal obliges the courts of a Member State whose law does not provide for divorce to pronounce a divorce by the application of the conflict-of-laws rules of the proposal. Therefore, the Presidency suggests that this should be clearly stated in the text of this instrument. The Presidency suggests that it should be stated clearly in the text that the proposal does not determine the law applicable to a marriage. The definition of marriage and the conditions of the validity of a marriage are matters of substantive law and are therefore left to national law.

Multiple nationality: one of the connecting factors used in the proposal is the nationality of the spouses. However, the proposal does not take any position as to the question how to deal with the fact that a spouse may have more than one nationality. The Presidency considers that this question should be addressed and suggests that work be continued to draft an appropriate recital on cases of multiple nationality.

Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

2006/0135(CNS) - 17/07/2006 - Legislative proposal

PURPOSE : to amend Regulation 2201/2003/EC as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters

PROPOSED ACT : Council Regulation.

CONTEXT : the European Union has set itself the objective of maintaining and developing the European Union as an area of freedom, security and justice in which the movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market. There are currently no Community rules in the field of applicable law in matrimonial matters. Council Regulation 2201/2003/EC sets out rules on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, but does not include rules on applicable law. The European Council held in Vienna on 11 and 12 December 1998 invited the Commission to consider the possibility of drawing up a legal instrument on the law applicable to divorce. In November 2004, the European Council invited the Commission to present a Green Paper on conflict-of-law rules in divorce matters. In line with its political mandate, the Commission presented a Green Paper on applicable law and jurisdiction in divorce matters on 14 March 2005. The Green Paper launched a wide public consultation on possible solutions to the problems that may arise under the current situation.

CONTENT : the overall objective of this Proposal is to provide a clear and comprehensive legal framework in matrimonial matters in the European Union and ensure adequate solutions to the citizens in terms of legal certainty, predictability, flexibility and access to court. The current situation may give rise to a number of problems in matrimonial proceedings of an international nature. The fact that national laws are very different both with regard to the substantive law and the conflict-of-law rules leads to legal uncertainty. The great differences between and complexity of the national conflict-of-law rules make it very difficult for international couples to predict which law will apply to their matrimonial proceeding. The large majority of Member States do not provide any possibility for the spouses to choose applicable law in matrimonial proceedings. This may lead to the application of a law with which the spouses are only tenuously connected and to a result that does not correspond to the legitimate expectations of the citizens. In addition, the current rules may induce a spouse to "rush to court", i.e. to seise a court before the other spouse has done so to ensure that the proceeding is governed by a particular law in order to safeguard his or her interests.

Finally, the current rules do not guarantee sufficient access to court. The Proposal amends Council Regulation 2201/2003/EC as regards jurisdiction and applicable law in matrimonial matters to attain the following objectives:

• *Strengthening legal certainty and predictability :* the Proposal introduces harmonised conflict-of-law rules in matters of divorce and legal separation to enable spouses to easily predict which law that will apply to their matrimonial proceeding. The proposed rule is based in the first place on the choice of the spouses. The choice is confined to laws with which the marriage has a close connection to avoid the application of "exotic" laws with which the spouses have little or no connection. In the absence of choice, the applicable law is determined on the basis of a scale of connecting factors which will ensure that the matrimonial proceeding is governed by a legal order with which the marriage has a close connection. This will greatly enhance legal certainty and predictability for the spouses concerned as well as for practitioners.

• *Increasing flexibility by introducing limited party autonomy :* there is currently very limited place for party autonomy in matrimonial matters. The national conflict-of-law rules foresee in principle only one solution in a given situation, e.g. the application of the law of the common nationality of the spouses or the application of the law of the forum. The proposal renders the legal framework more flexible by introducing a limited possibility for the spouses to choose (a) applicable law and (b) the competent court in proceedings concerning divorce and legal separation. To allow spouses to come to an agreement on these matters could be particularly useful in cases of divorce by mutual consent. Special safeguards are introduced to ensure that the spouses are aware of the consequences of their choice.

• *Ensuring access to court :* the proposal seeks also to improve access to court in matrimonial proceedings. The possibility to choose the competent court in proceedings relating to divorce and legal separation ("prorogation") will enhance access to court for spouses who are of different nationalities. The rule on prorogation applies regardless of whether the couple lives in a Member State or in a third State. In addition, the proposal specifically addresses the need to ensure access to court for spouses of different nationalities who live in a third State. The proposal introduces a uniform and exhaustive rule on residual jurisdiction in order to enhance legal certainty and ensure access to court in matrimonial matters for spouses who live in a third State but would like to bring proceedings in a Member State with which they have a close connection.

• *Preventing "rush to court" by one spouse :* finally, the Proposal addresses the problem of "rush to court" by one spouse, i.e. where one spouse applies for divorce before the other spouse has done so to ensure that the proceeding is governed by a law to safeguard his or her own interests. This may lead to the application of a law with which the defendant does not feel closely connected or which fails to take into account his or her interests. It further renders reconciliation efforts difficult and leaves little time for mediation. The introduction of harmonised conflict-of-law rules are likely to greatly reduce the risk of "rush to court", since any court seized within the Community would apply the law designated on the basis of common rules.