Basic information

2010/0067(CNS) CNS - Consultation procedure Regulation	Procedure completed
Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation **Subject** 4.10.02 Family policy, family law, parental leave 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	ZWIEFKA Tadeusz (PPE)	28/04/2010

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	GEBHARDT Evelyne (S&D)	10/05/2010
FEMM Women's Rights and Gender Equality	NIEBLER Angelika (PPE)	04/05/2010

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3034	2010-10-07
Justice and Home Affairs (JHA)	3051	2010-12-02
Justice and Home Affairs (JHA)	3018	2010-06-03
Agriculture and Fisheries	3026	2010-07-12
Environment	3061	2010-12-20

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
		COM(2010)0105	Summary

24/03/2010	Legislative proposal published		
12/07/2010	Debate in Council		
07/10/2010	Debate in Council		Summary
07/10/2010	Committee referral announced in Parliament		
02/12/2010	Vote in committee		Summary
07/12/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0360/2010	
15/12/2010	Decision by Parliament	T7-0477/2010	Summary
15/12/2010	Results of vote in Parliament		
20/12/2010	Act adopted by Council after consultation of Parliament		
20/12/2010	End of procedure in Parliament		
29/12/2010	Final act published in Official Journal		

Technical information

Procedure reference	2010/0067(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
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/02599

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE450.583	26/10/2010	
Amendments tabled in committee		PE452.610	15/11/2010	
Committee opinion	LIBE	PE452.553	29/11/2010	
Committee opinion	FEMM	PE448.858	30/11/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0360/2010	07/12/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0477/2010	15/12/2010	Summary

European Commission

Document type	Reference	Date	Summary
	COM(2010)0105		

Legislative proposal		24/03/2010	Summary
Commission response to text adopted in plenary	SP(2011)1477	23/02/2011	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2010)0105	21/06/2010	
Contribution	IT_SENATE	COM(2010)0105	23/06/2010	
Contribution	AT_BUNDESRAT	COM(2010)0105	14/09/2010	
Contribution	AT_NATIONALRAT	COM(2010)0105	22/11/2010	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0975/2010	14/07/2010	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2010/1259
OJ L 343 29.12.2010, p. 0010 Summary

Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation

2010/0067(CNS) - 03/06/2010

The Council reached a comfortable qualified majority agreement on authorising **the first enhanced cooperation1 in the history of the EU.** It concerns the law applicable to divorce and legal separation (Rome III). Ministers also decided to transmit the text to the European Parliament in order to obtain its consent to the enhanced cooperation.

On the content of the legislation, ministers agreed on a general approach on key elements (see *doc. 10153/10*) and requested further examination of outstanding issues.

Both files, the decision to authorize the enhanced cooperation and the regulation implementing it, were **debated in public.**

14 Member States will participate in the enhanced cooperation. Once they reach unanimous agreement, the regulation will set clear rules on how international couples can seek divorce or legal separation in these countries. Other EU Member States who are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

There are approximately 122 million marriages in the EU, about 16 million (13%) are assumed to be international. The regulation, once adopted, will have the following advantages:

- it allows international couples in the participating member states to know in advance which law will apply to their divorce;
- it increases flexibility and autonomy by giving the spouses the possibility to choose the applicable law; and
- where no applicable law is chosen, it introduces harmonised conflict-of-law rules on the basis of a scale of successive connecting factors.

Thereby enhanced cooperation in this field:

- improves legal certainty, predictability and flexibility for citizens;
- protects weaker partners during divorce disputes and prevents the so-called "rush to court", i.e. situations where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests; and
- lessens the burden on children in international divorce disputes.

In July 2006, the Commission adopted a proposal for a regulation amending Regulation (EC) 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters ('Rome III'). Its aim was to develop judicial cooperation in civil matters having crossborder implications, based on the principle of mutual recognition of judgments. The text was discussed during several presidencies but at its meeting in June 2008, the Council concluded that it was not possible - both then and in the near future - to reach unanimous agreement on the proposal as required by the Nice Treaty.

Given these circumstances, Greece, Spain, Italy, Hungary, Luxembourg, Austria, Romania and Slovenia addressed in July 2008 a request to the Commission indicating that they wished to establish enhanced cooperation between them in the area of applicable law in matrimonial matters and that they expected the Commission to submit a proposal to the Council to that end. Since then Greece has withdrawn from this request and a further six Member States have joined it: Bulgaria in August 2008, France in January 2009, Germany and Belgium in April 2010, Latvia and Malta in May 2010, Portugal in June 2010.

Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation

2010/0067(CNS) - 07/10/2010

The Council examined the state of play regarding a regulation on the law applicable to divorce and legal separation (Rome III).

The dossier constitutes the first instance of enhanced cooperation in the history of the EU. 14 member states are currently taking part (Spain, Italy, Hungary, Luxembourg, Austria, Romania, Slovenia, Bulgaria, France, Germany, Belgium, Latvia, Malta and Portugal).

In July 2010, after having received the consent of the European Parliament, the Council adopted a decision authorising this first enhanced cooperation.

The Belgian presidency aims to adopt the regulation by the end of the year, once the European Parliament has adopted its opinion. For the final adoption of the new rules, unanimity among the participating Member States is required.

Once adopted, the regulation will lay down clear rules on how international couples can seek divorce or legal separation in the participating countries. Other EU member states who are not yet ready but wish to join this pioneering group at a later stage will be able to do so.

Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation

2010/0067(CNS) - 20/12/2010 - Final act

PURPOSE: to implement enhanced cooperation in the area of the law applicable to divorce and legal separation.

LEGISLATIVE ACT: Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

CONTENT: this Regulation constitutes the implementation of the first enhanced cooperation in the history of the EU. It provides for a **comprehensive legal framework in matrimonial matters ensuring legal certainty and predictability in the field of divorce and legal separation in 14 participating Member States**:Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. Other EU Member States which are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

Scope: this Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation. It shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings: (a) the legal capacity of natural persons; (b) the existence, validity or recognition of a marriage; (c) the annulment of a marriage; (d) the name of the spouses; (e) the property consequences of the marriage; (f) parental responsibility; (g) maintenance obligations; (h) trusts or successions.

Choice of applicable law by the parties: the spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

- the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or
- the law of the State of nationality of either spouse at the time the agreement is concluded; or
- the law of the forum.

An **agreement** designating the applicable law may be concluded and modified at any time, but at the latest at the time the court is seized.

If the law of the forum so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the forum.

Applicable law in the absence of a choice by the parties: in the absence of a choice, divorce and legal separation shall be subject to the law of the State:

- where the spouses are habitually resident at the time the court is seized; or, failing that
- where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that
- of which both spouses are nationals at the time the court is seized; or, failing that
- where the court is seized.

Where the law applicable makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the forum shall apply.

Differences in national law: nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.

Measures are also laid down in the case where a State has two or more legal systems — territorial conflicts of laws and inter-personal conflicts of laws.

Where a State comprises several territorial units each of which has its own system of law or a set of rules concerning matters governed by this Regulation:

Review clause: by 31 December 2015, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation.

ENTRY INTO FORCE: 30/12/2010. The Regulation shall apply from 21/06/2012, with the exception of Article 17 (Information to be provided by participating Member States), which shall apply from 21/06/2011.

Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation

2010/0067(CNS) - 15/12/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 537 votes to 20, with 80 abstentions, a legislative resolution amending, under the special legislative procedure (consultation procedure), the proposal for a Council regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

The main amendments are as follows:

Exclusion from the scope: Parliament clarified that the Regulation shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings: (a) the legal capacity of natural persons; (b) the existence, validity or recognition of a marriage; (c) the annulment of a marriage; (d) the name of the spouses; (e) the property consequences of the marriage; (f) parental responsibility; (g) maintenance obligations; (h) trusts or successions.

Relationship with Regulation (EC) No 2201/2003: the Regulation shall not affect the application of Regulation (EC) No 2201/2003.

Definition of "court": the term "court" shall cover all authorities in the participating Member State shaving jurisdiction in the matters falling within the scope of the Regulation.

Universal application: the Regulation should be universal, in the sense that its uniform conflict-of-law rules may designate the law of a participating Member State, the law of a non-participating Member State or the law of a State which is not a member of the European Union.

Choice of law applicable by the parties: the spouses may agree to designate the law applicable to divorce and legal separation, provided that it is one of the laws prescribed in the text. A new recital notes that where the Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be determined in accordance with national law, in full observance of the general principles of the European Union.

If the law of the forum so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the forum.

Mediation: if the spouses are unable to agree on the applicable law, they should complete a mediation procedure including at least one consultation with an authorised mediator.

Consent and material validity: the amended text stipulates that the existence and validity of an agreement on choice of law or of any term thereof shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.

Nevertheless, a spouse, in order to establish that he or she did not consent, may rely on the law of the country in which he or she has his or her habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his or her conduct in accordance with the law specified in this Regulation.

Formal validity: Members introduce a new provision which provides for that the agreement as regards the law applicable shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing. If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States lay down different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for agreements of that type, those requirements shall apply.

Conversion of legal separation into divorce: where the court is seised of an application to convert a legal separation into divorce and the parties have not made any choice as to the law applicable, the law which applied to the legal separation should also apply to the divorce. Such continuity would promote predictability for the parties and increase legal certainty. If the law applied to the legal separation does not provide for the conversion of legal separation into divorce, the divorce should be governed by the conflict-of-law rules which apply in the absence of a choice by the parties. This should not prevent the spouses from seeking divorce on the basis of other rules laid down in this Regulation.

Differences in national law: according to the European Parliament, nothing in the Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce, or does not deem the marriage in question valid for the purposes of divorce proceedings, to pronounce a decree of divorce by virtue of the application of the Regulation.

States with two or more legal systems: in the absence of rules designating the applicable law, spouses choosing the law of the State of the nationality of one of them should at the same time indicate, where the State whose law is chosen comprises several territorial units each of which has its own system of law or a set of rules in respect of divorce, which territorial unit's law they have agreed upon.

Non-application of this Regulation to internal conflicts: a participating Member State in which different systems of law or sets of rules apply to matters governed by this Regulation shall not be required to apply this Regulation to conflicts of law arising solely between such different systems of law or sets of rules.

Report: by five years after the entry into force of this Regulation at the latest, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation. To that end, the participating Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.

Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation

2010/0067(CNS) - 24/03/2010 - Legislative proposal

PURPOSE: to implement enhanced cooperation in the area of the law applicable to divorce and legal separation.

PROPOSED ACT: Council Regulation.

BACKGROUND: for the progressive establishment of an area of freedom, security and justice, the Union is to adopt measures relating to judicial cooperation in civil matters with cross-border implications.

On 14 March 2005, the Commission adopted a Green paper on applicable law and jurisdiction in divorce matters. On 17 July 2006, the Commission adopted a proposal for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters. In June 2008, the Council adopted political guidelines which recorded that there was no unanimity to go ahead with the proposed Regulation and insurmountable difficulties existed, making unanimity impossible at the time and in the foreseeable future.

In 2008 and 2009, 10 Member States – Bulgaria, Greece, Spain, France, Italy, Luxembourg, Hungary, Austria, Romania and Slovenia - addressed a request to the Commission indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters and that the Commission should submit a proposal to the Council to that end. On 3 March 2010, Greece withdrew its request.

The proposal for a Council Decision would authorise enhanced cooperation in the area of the last applicable to divorce and legal separation, and the proposal for a Council Regulation implementing this enhanced cooperation, that the Commission adopted simultaneously, represent the Commission's response to the **nine Member States**.

IMPACT ASSESSMENT: the Commission carried out an impact assessment which it attached to its original July 2006 proposal which remains relevant to the question of the applicable law. The present Commission proposal implements enhanced cooperation – a procedure that may be used only as a last resort, according to the Treaty on European Union. Thus, the Commission may propose enhanced cooperation, and the Council may give its agreement, only on matters which the Council has already dealt with and on which it has concluded that no other solution can be found. Moreover, the content of the Commission's proposal implementing enhanced cooperation is limited by the scope specified in the participating Member States' requests for enhanced cooperation, i.e. applicable law in matrimonial matters. In the present case, a new impact assessment covering the same subject area does not therefore appear appropriate.

LEGAL BASE: **Article 81(3) of the Treaty on the Functioning of the European Union (TFEU)**. The objectives of the proposal can be met only at Union level by way of common rules governing applicable law, if necessary through enhanced cooperation. These conflict rules must be identical if the proposal's objective of increasing legal certainty, predictability and flexibility for citizens is to be attained. One-sided action by the Member States would therefore run counter to these objectives. There is no international convention in force between the Member States on the question of applicable law in matrimonial matters. Given the nature and the scale of the problem which concerns tens of thousands of citizens each year, the objectives can be achieved only at Union level.

CONTENT: the proposed Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

The main objectives of the proposal are as follows:

- **strengthening legal certainty and predictability:**the great differences between and the complexity of national conflict-of-law rules make it very difficult for international couples to predict which law will apply to their divorce or legal separation proceeding. Having due regard to the relevant parts of the explanatory memorandum to the Commission's proposal for a Regulation of 17 July 2006 (Rome III), the purpose of this proposal for a Regulation is to introduce a clear legal framework in the European Union, covering applicable law rules in the area of divorce and legal separation and allowing the parties a degree of freedom of choice of applicable law. The enhanced cooperation measure concerns only applicable law and not jurisdiction, unlike in the Commission's initial proposal;
- **increasing flexibility by introducing some party autonomy:** the proposal renders the legal framework more flexible by introducing a limited possibility for the spouses to choose another law as the law applicable to their divorce or legal separation proceeding. To avoid the application of laws with which they have little or no connection, the spouses' choice is confined to laws with which the marriage has a close link. Special safeguards are introduced to ensure that the spouses are aware of the consequences of their choice and to protect the weaker spouse;
- **preventing a 'rush to court' by one spouse:** the proposal addresses the problem of a 'rush to court' by one spouse, i.e. where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she regards as more favourable to his or her own interests. This may lead to the application of a law with which the other spouse has little connection or which fails to take into account his or her interests. The introduction of harmonised conflict-of-law rules should greatly reduce the risk of a rush to court, since any court seized in one of the participating Member States would apply the law designated on the basis of common rules. In the absence of choice, the applicable law would be determined on the basis of a scale of connecting factors giving priority to the law of the spouses' habitual residence, which will ensure that the divorce or legal separation proceeding is governed by a legal system with which the couple has a close connection.

The rule on the law applicable in the absence of choice is intended to protect the weaker spouse by giving priority to the application of the law of the family's habitual residence prior to separation, irrespective of the court seized by one or other spouse. It would therefore enable spouses easily to predict which law will apply to their divorce or legal separation proceeding.

BUDGETARY IMPACT: the proposal has no impact on the budget of the European Union.