Basic information

2011/0059(CNS) CNS - Consultation procedure Regulation	Procedure lapsed or withdrawn
Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions in matters of matrimonial property regimes **Subject** 1.20 Citizen's rights 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs		
FEMM Women's Rights and Gender Equality		

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3354	2014-12-04
Justice and Home Affairs (JHA)	3244	2013-06-06

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
16/03/2011	Legislative proposal published	COM(2011)0126	Summary
10/05/2011	Committee referral announced in Parliament		
06/06/2013	Debate in Council		

20/06/2013	Vote in committee		
21/08/2013	Committee report tabled for plenary, 1st reading/single reading	A7-0253/2013	Summary
09/09/2013	Debate in Parliament		
10/09/2013	Decision by Parliament	T7-0338/2013	Summary
10/09/2013	Results of vote in Parliament		
04/12/2014	Debate in Council		
20/05/2017	Proposal withdrawn by Commission		

Technical information

Procedure reference	2011/0059(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Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/7/05680

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	FEMM	PE478.403	07/05/2012	
Committee draft report		PE494.578	25/07/2012	
Committee opinion	LIBE	PE473.957	06/09/2012	
Amendments tabled in committee		PE496.496	24/09/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0253/2013	21/08/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0338/2013	10/09/2013	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0126	16/03/2011	Summary
Document attached to the procedure	SEC(2011)0327	16/03/2011	
	SEC(2011)0328		

Document attached to the procedure		16/03/2011	
Commission response to text adopted in plenary	SP(2013)774	06/12/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0126	23/05/2011	
Contribution	BG_PARLIAMENT	COM(2011)0126	26/05/2011	
Contribution	RO_CHAMBER	COM(2011)0126	06/06/2011	
Contribution	RO_SENATE	COM(2011)0126	06/06/2011	
Contribution	AT_NATIONALRAT	COM(2011)0126	18/08/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions in matters of matrimonial property regimes

2011/0059(CNS) - 16/03/2011 - Legislative proposal

PURPOSE: to establish a comprehensive set of rules of international private law applicable to matrimonial property regimes.

PROPOSED ACT: Council Regulation.

BACKGROUND: the increased mobility of persons within an area without internal frontiers leads to a marked increase in the number of couples formed by nationals of different Member States who may live in a Member State of which they do not have the nationality and acquire property in more than one Union country.

A study carried out in 2003 showed the **large number of transnational couples within the Union** and the practical and legal difficulties such couples face, both in the daily management of their property and in its division if the couple separate or one of its members dies. These difficulties often arise from the great disparities between the applicable rules of substantive law and private international law governing the property effects of marriage.

Because of the distinctive features of marriage and registered partnerships, and of the different legal consequences resulting from these forms of union, the Commission is presenting **two separate Regulations**: one on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, and the other on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

These proposals are part of the Commission's efforts to dismantle the obstacles faced by EU citizens in their daily lives when they try to exercise the rights the EU confers on them, as outlined in the 2010 EU Citizenship Report.

IMPACT ASSESSEMENT: on 17 July 2006, the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available.

The Commission has also conducted a joint impact study on the proposals for Regulations on matrimonial property regimes and the property consequences of registered partnerships. It is attached to this proposal.

LEGAL BASIS: **Article 81(3)** of the Treaty on the Functioning of the European Union (TFEU), which confers on the Council the power to adopt measures concerning family law having cross-border implications after consulting the European Parliament.

CONTENT: to provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.

In order to achieve the desired objectives, this proposal aims to **establish a clear legal framework** in the European Union for determining jurisdiction and the law applicable to matrimonial property regimes and facilitating the movement of decisions and instruments among the Member States. The rules proposed are concerned only with cross-border cases.

This Regulation covers issues in connection with matrimonial property regimes. It does not define 'marriage', which is defined by the national laws of the Member States.

The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses.

The main elements of the proposal are as follows:

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 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, this proposal provides that the court having jurisdiction for wills and successions according to the rules laid down in the proposed Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, should have its jurisdiction enlarged to include the liquidation of the matrimonial property resulting from the succession or will in question.

Similarly, the court with jurisdiction for divorce proceedings, legal separation or marriage annulment may, if the spouses agree, extend its jurisdiction to the liquidation of the matrimonial property following the separation procedure and to other matters concerning the matrimonial property arising from this procedure.

Applicable law: the harmonisation of the rules on jurisdiction will greatly simplify procedures by making it possible to establish the court with jurisdiction over a matrimonial property case on the basis of common rules. If courts seised with divorce proceedings, legal separations, annulments of marriage and succession cases in application of existing or future EU legislation have their jurisdiction extended to any related matrimonial property regime proceedings, citizens will be able to have the same court deal with all aspects of their situation.

The option proposed in the Regulation is that of a **single scheme**: all the property of the spouses would be subject to the same law, the law applicable to the matrimonial property regime.

The Regulation therefore provides that the law applicable to matrimonial property, whether chosen by the spouses or, in the absence of any such choice, determined under other provisions, will apply to all the couple's property, movable or immovable, irrespective of their location.

Recognition, enforceability and enforcement: the proposed Regulation provides for the free movement 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 European Union.

This free movement 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.

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions in matters of matrimonial property regimes

2011/0059(CNS) - 21/08/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted, in the framework of a special legislative procedure (Parliament’s consultation), the report by Alexandra THEIN (ADLE, DE) on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

The committee approves the Commission proposal subject to the following amendments:

Scope and definitions: Members stipulate that the Regulation is neutral in its definition of ‘marriage’ and that it does not affect the definition of the concept of marriage in the national law of the Member States.

Members propose that the following should be excluded from the Regulation : (i) the existence, validity or recognition of a marriage; (ii) issues relating to succession due to death with reference to the surviving spouse; (iii) questions governed by the law of companies and other bodies, corporate or unincorporated; (iv) any recording in a register of rights in movable or immovable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register, and; (v) the system of maintenance settlements under German law and other similar arrangements in other Member States.

On the other hand, Members consider that gifts between spouses should not be excluded from the scope of the Regulation.

Concept of "court": the report suggests adopting the definition of "court" as defined in Regulation (EU) No 650/2012 on matters of succession in order to take into account the different models of organisation in the Member States in property matters as well.

Jurisdiction in matters of matrimonial property regimes within the Member States: it is states that this Regulation shall not affect domestic jurisdiction over matrimonial property cases in the Member States.

Jurisdiction in case of divorce: in divorce cases, it seems sensible not to provide for an automatic concentration of jurisdiction, including for associated issues of property rights, in order to preserve the interests of the parties concerned more effectively and to ensure that they accept the jurisdiction of the divorce court.

Choice-of-court agreement: Members propose that the spouses may agree that the courts of the Member State whose law they have chosen as the law applicable to their matrimonial property regime are to have jurisdiction to rule on matters of their matrimonial property regime. Members also state that the spouses may also agree that, if no court has been chosen, the courts of the Member State whose law is applicable are to have jurisdiction.

Jurisdiction based on the appearance of the defendant: it is proposed to add a new article on jurisdiction based on appearance.

In order to protect less well advised spouses against tacit consent to a jurisdiction unfavourable to them, which they therefore would not wish, it seems desirable at the same time to provide for instruction concerning jurisdiction based on appearance and its consequences in law.

A clearer formulation is proposed for the alternative jurisdiction rule in Article 6.

With regard to the rule on *forum necessitatis*, the text makes it clear that this is intended only to cater for extreme exceptions.

Applicable law: Members are supportive of the principles of 'unity of the applicable law' and universal application, which are proposed by the Commission.

For the purpose of determining the scope of the applicable law, she proposes a positive list, which enumerates by way of example issues which are subject to the law applicable, such as:

(i) the division of the spouses' property into different categories before and after the marriage; (ii) the transfer of property from one category to another; (iii) liability for the other spouse's debts, where necessary; (iv) the spouses' rights of disposal during the marriage.

Choice of applicable law: the amendments concerning agreements on the applicable law are intended to combine Articles 16 (choice of applicable law) and 18 (change of applicable law) in order to eliminate the structural and systematic weaknesses in the Commission proposal.

The text states that unless the spouses indicate otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.

If the spouses choose to make that change of applicable law retroactive, its retroactive effect shall not affect the validity of previous transactions entered into under the law hitherto applicable or the rights of third parties deriving from the law previously applicable.

Establishing the applicable law in the event of no choice: the provision governing the applicable law in the event of no choice having been made has been revised.

The agreement on the choice of applicable law shall be expressed in writing, dated and signed by both spouses. That agreement shall comply with the formal requirements of the law applicable to the matrimonial property regime or of the law of the State in which the agreement was concluded.

Adaptation of rights in rem: this Regulation – like Regulation (EU) No 650/2012 – should not affect the limited number ('numerus clausus') of rights in rem known in the national law of some Member States. A new article states that where a person invokes a right in rem to which he or she is entitled under the law applicable to the matrimonial property regime and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.

Recognition, enforceability and enforcement: the report proposes, in view of the complexity of the procedures, to retain the exequatur procedure and hence to incorporate the corresponding provisions of the Regulation on succession.

Overriding mandatory provisions: this Regulation shall not restrict the application of the overriding mandatory provisions of the law of the forum, without prejudice to the transaction protection provisions applicable.

A recital makes it clear that protection of the family home and assignment of rights of use in relations between the spouses are an important instance where overriding mandatory provisions should be applied.

Parallel amendments are proposed in the committee report on the proposed Council Regulation as regards jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships.

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions in matters of matrimonial property regimes

2011/0059(CNS) - 10/09/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 563 votes 21, with 58 abstentions, in the framework of a special legislative procedure (Parliament's consultation), a legislative resolution on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

Parliament approves the Commission proposal subject to the following amendments:

Scope and definitions: Parliament stipulates that the Regulation is neutral in its definition of 'marriage' and that it does not affect the definition of the concept of marriage in the national law of the Member States.

Members propose that the following should be excluded from the Regulation : (i) the existence, validity or recognition of a marriage; (ii) issues relating to succession due to death with reference to the surviving spouse; (iii) questions governed by the law of companies and other bodies, corporate or unincorporated; (iv) any recording in a register of rights in movable or immovable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register, and; (v) the system of maintenance settlements under German law and other similar arrangements in other Member States.

On the other hand, Members consider that gifts between spouses should not be excluded from the scope of the Regulation.

Concept of "court": Parliament suggests adopting the definition of "court" as defined in Regulation (EU) No 650/2012 on matters of succession. The term shall mean any judicial authority and all other authorities and legal professionals with competence in matters of property regimes in registered partnerships which exercise judicial functions or have a similar force and effect as a decision of a judicial authority on the same matter.

Jurisdiction in matters of matrimonial property regimes within the Member States: this Regulation shall not affect domestic jurisdiction over matrimonial property cases in the Member States.

Jurisdiction in case of divorce: in divorce cases, it seems sensible not to provide for an automatic concentration of jurisdiction, including for associated issues of property rights, in order to preserve the interests of the parties concerned more effectively and to ensure that they accept the jurisdiction of the divorce court.

Choice-of-court agreement: spouses may agree that the courts of the Member State whose law they have chosen as the law applicable to their matrimonial property regime are to have jurisdiction to rule on matters of their matrimonial property regime. Parliament also states that the spouses may also agree that, if no court has been chosen, the courts of the Member State whose law is applicable are to have jurisdiction.

Jurisdiction based on the appearance of the defendant: it is proposed to add a new article on jurisdiction based on appearance.

In order to protect less well advised spouses against tacit consent to a jurisdiction unfavourable to them, which they therefore would not wish, it seems desirable at the same time to provide for instruction concerning jurisdiction based on appearance and its consequences in law.

A clearer formulation is proposed for the alternative jurisdiction rule in Article 6.

With regard to the rule on *forum necessitatis*, the amended text makes it clear that this is intended only to cater for extreme exceptions. Jurisdiction based on forum necessitatis should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.

Provision of information to spouses: the competent authority shall be obliged to inform the spouse(s), within a reasonable time, of any matrimonial property regime proceedings which are initiated against them.

Applicable law: Parliament is supportive of the principles of 'unity of the applicable law' and universal application, which are proposed by the Commission.

For the purpose of determining the scope of the applicable law, Members propose a positive list, which enumerates by way of example issues which are subject to the law applicable, such as: (i) the division of the spouses' property into different categories before and after the marriage; (ii) the transfer of property from one category to another; (iii) liability for the other spouse's debts, where necessary; (iv) the spouses' rights of disposal during the marriage.

Choice of applicable law: the amendments concerning agreements on the applicable law are intended to combine Articles 16 (choice of applicable law) and 18 (change of applicable law) in order to eliminate the structural and systematic weaknesses in the Commission proposal.

The text states that unless the spouses indicate otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.

If the spouses choose to make that change of applicable law retroactive, its retroactive effect shall not affect the validity of previous transactions entered into under the law hitherto applicable or the rights of third parties deriving from the law previously applicable.

Establishing the applicable law in the event of no choice: the provision governing the applicable law in the event of no choice having been made has been revised.

The agreement on the choice of applicable law shall be expressed in writing, dated and signed by both spouses. That agreement shall comply with the formal requirements of the law applicable to the matrimonial property regime or of the law of the State in which the agreement was concluded.

Adaptation of rights in rem: this Regulation – like Regulation (EU) No 650/2012 – should not affect the limited number ('numerus clausus') of rights in rem known in the national law of some Member States. A new article states that where a person invokes a right in rem to which he or she is entitled under the law applicable to the matrimonial property regime and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.

Recognition, enforceability and enforcement: the report proposes, in view of the complexity of the procedures, to retain the exequatur procedure and hence to incorporate the corresponding provisions of the Regulation on succession.

Overriding mandatory provisions: this Regulation shall not restrict the application of the overriding mandatory provisions of the law of the forum, without prejudice to the transaction protection provisions applicable.

A recital makes it clear that protection of the family home and assignment of rights of use in relations between the spouses are an important instance where overriding mandatory provisions should be applied.

Parallel amendments are proposed in the legislative resolution on the proposed Council Regulation as regards jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships.