Basic information

2016/0060(CNS) CNS - Consultation procedure Regulation	Procedure completed
Jurisdiction, applicable law and the recognition and enforcement of decisions in matters of property consequences of registered partnerships **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	CAVADA Jean-Marie (ALDE)	15/03/2016
	Shadow rapporteur VOSS Axel (PPE) GEBHARDT Evelyne (S&D) DZHAMBAZKI Angel (ECR) MAŠTÁLKA Jiří (GUE/NGL) HAUTALA Heidi (Verts/ALE)	

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
FEMM Women's Rights and Gender Equality	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3478	2016-06-24
Justice and Home Affairs (JHA)	3473	2016-06-10

European Commission

Commission DG	Commissioner
Justice and Consumers	JOUROVÁ Věra

Key events

Date	Event	Reference	Summary
02/03/2016	Legislative proposal published	COM(2016)0107	Summary
11/04/2016	Committee referral announced in Parliament		
10/06/2016	Debate in Council		
14/06/2016	Vote in committee		
16/06/2016	Committee report tabled for plenary, 1st reading/single reading	A8-0208/2016	Summary
22/06/2016	Debate in Parliament		
23/06/2016	Decision by Parliament	T8-0289/2016	Summary
23/06/2016	Results of vote in Parliament		
24/06/2016	Act adopted by Council after consultation of Parliament		
24/06/2016	End of procedure in Parliament		
08/07/2016	Final act published in Official Journal		

Technical information

Procedure reference	2016/0060(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 completed
Committee dossier	JURI/8/05947

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE580.493	30/03/2016	
Amendments tabled in committee		PE582.312	09/05/2016	
Committee report tabled for plenary, 1st reading/single reading		A8-0208/2016	16/06/2016	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0289/2016	23/06/2016	Summary

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2016)0107	02/03/2016	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_PARLIAMENT	COM(2016)0107	09/05/2016	
Contribution	RO_SENATE	COM(2016)0107	10/05/2016	
Contribution	FR_ASSEMBLY	COM(2016)0107	13/05/2016	
Contribution	IT_CHAMBER	COM(2016)0107	17/05/2016	
Contribution	IT_SENATE	COM(2016)0107	23/05/2016	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32016R1104R(01)
OJ L 113 29.04.2017, p. 0062

Regulation 2016/1104
OJ L 183 08.07.2016, p. 0030 Summary

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

2016/0060(CNS) - 23/06/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 490 votes to 68, with 34 abstentions, in the framework of a special legislative procedure (Parliament's consultations), a legislative resolution on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

Parliament **approved the Commission proposal** without amendment.

To recall, the aim of the proposal is to establish a clear, legal framework in the European Union for determining jurisdiction and the law applicable to the property consequences of registered partnerships. It therefore deals with matters of jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of a registered partnership. The rules proposed are concerned only with cross-border cases.

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

2016/0060(CNS) - 16/06/2016 - 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 Jean-Marie CAVADA (ADLE, FR) on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

The committee approved the Commission proposal subject to the introduction of a new definition of '**Member State**' so as to cover only Member States participating in the Registered Partnerships Regulation, in line with the definition included in Article 3(1) of Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III).

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

2016/0060(CNS) - 24/06/2016 - Final act

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.

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

2016/0060(CNS) - 02/03/2016 - Legislative proposal

PURPOSE: to establish a clear legal framework in the European Union for determining jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: the increasing mobility of persons within an area without internal frontiers leads to a **significant increase in the number of couples formed by nationals of different Member States** who live in a Member State other than their own or acquire property in more than one Member State.

These transnational couples face **practical and legal difficulties**, both in the daily management of their property and in its division if the couple separate or one of its members dies.

While marriage is the most common form of couple, new forms of union have emerged, including the **registered partnership**, by which two people in a stable relationship formally register their union with a public authority. The difficulties encountered by couples in a registered partnership often result from the **great disparities between the applicable rules** governing the property effects of such unions, both in substantive law and in private international law.

The European 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.

In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010, the Commission announced that it would adopt in 2011 a proposal for legislation to make it easier for international couples (either married or registered partners) to know which courts had jurisdiction to deal with their property rights and which law applied to their property rights

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. At its meeting of 3 December 2015, the Council concluded that **no unanimity could be reached for the adoption of the proposals for regulations** on matrimonial property regimes and the property consequences of registered partnerships and that therefore the objectives of cooperation in this area could not be attained within a reasonable period by the Union as a whole.

17 Member States addressed a request to the Commission indicating that they wished to establish enhanced cooperation.

The proposal for a Council Decision authorising 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.

This proposal for a **Council Regulation on the property consequences of registered partnerships**, and the parallel proposal for a Council Regulation on matrimonial property regimes both of which implement the enhanced cooperation and were adopted by the Commission at the same time, are the Commission's response to the request by 17 Member States.

IMPACT ASSESSMENT: before the 2011 Commission proposal was drawn up, a broad consultation exercise took place with the Member States, other Union institutions and the public. The Commission conducted a joint impact study on the proposals for regulations on matrimonial property regimes and the property consequences of registered partnerships.

The two new proposals regarding matrimonial property regimes and the property consequences of registered partnerships contain solutions similar to those presented in the 2011 proposals taking into account the discussions in the Council and the European Parliament up to the end of 2015.

CONTENT: the aim of the proposal is to establish a **clear, legal framework in the European Union for determining jurisdiction and the law applicable to the property consequences of registered partnerships.** It therefore deals with matters of jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of a registered partnership. The rules proposed are concerned only with cross-border cases.

Scope and definitions: according to the proposal, the notion of 'the property consequences of registered partnerships' must be given an autonomous interpretation and embrace **considerations relating to both the partners' daily management** of their property and the liquidation of the property as a result of the couple's separation or the death of one of the partners.

Matters already covered by existing EU regulations, such as maintenance obligations, especially between partners, and matters arising from the law of succession, are excluded from the scope of the Regulation.

The Regulation does not affect the existence or validity of a registered partnership under national law or the recognition in one Member State of a partnership registered in another Member State. It also does not affect matters of social security or the entitlement to rights to pension in case of dissolution or annulment of the registered partnership.

The property consequences of registered partnerships, which are the sole subject matter of this Regulation, are given a **specific definition** limiting them to existing property relationships between the partners and between the partners and third parties arising from the institutionalised relationship created by the registration of the partnership.

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 this end, the proposal is designed to ensure that the rules to determine the jurisdiction of the courts called on to deal with the property aspects of registered partnerships are in line with existing rules in other Union instruments and, in particular, to concentrate jurisdiction over the property regime in the Member State whose courts are handling the succession of a partner or the dissolution or annulment of the registered partnership.

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 regime, this article provides that the court having jurisdiction for the succession according to the rules laid down in Regulation (EU) No 650/2012 should also have jurisdiction to rule on the liquidation of the property regime of the registered partnership linked to the succession.

Applicable law: the option proposed in the Regulation is that of a single scheme: all the property of the partners, regardless of its nature (moveable or immoveable) and location, would be subject to the same law, namely the law applicable to the property regime of the registered partnership.

The partners or future partners may agree to **designate or to change the law applicable** to the property consequences of their registered partnership, provided that that law attaches property consequences to the institution of the registered partnership and that it is one of the following:

- the law of the State where the partners or future partners, or one of them, is habitually resident at the time the agreement is concluded,
- the law of a State of nationality of either partner or future partner at the time the agreement is concluded, or
- the law of the State under whose law the registered partnership was created.

In the absence of any 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. However, **exceptionally**, one of the partners can ask a court that the law applicable should be the law of the State where the partners had their last common habitual residence

The Regulation lists some of the **matters that would be governed by the law applicable** to the matrimonial property regime. Such matters include the liquidation of the property and also the effects of the matrimonial property regime on the relationships between a spouse and a third party.

To protect the family home, a Member State where the family home is located may apply its own rules for the protection of the family home. Exceptionally, this Member State may apply its **own law** to all persons living on its territory in 'preference' to the law normally applicable or that of a marriage agreement concluded in another Member State.

Recognition, enforceability and enforcement: the proposal provides for the free circulation 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 Union.

This free circulation 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. The **grounds for non-recognition** or refusal to enforce are also harmonised at Union level or reduced to the absolute minimum.