



**COUNCIL OF
THE EUROPEAN UNION**

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JUSTCIV 344

NOTE

from : Presidency

to : Council

No prev. doc.: 16614/12 JUSTCIV 341

No. Cion prop. : 8160/11 JUSTCIV 64 and 8163/11 JUSTCIV 65

Subject : Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships
- Orientation debate

I. INTRODUCTION

1. By letter of 16 March 2011 the Commission transmitted to the Council 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.

2. Under the Commission proposal the future regulations should be comprehensive instruments covering matters of matrimonial property regimes and property consequences of registered partnerships in cross-border situations.
3. The United Kingdom and Ireland have made no notification under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.
4. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of the proposed Regulations and will not be bound by them or subject to their application.
5. The Working Party on Civil Law Matters (Matrimonial Property Regimes and Registered Partnerships) has examined the proposed Regulations at regular meetings since the transmission of the Commission proposals. The Working Party has carried out a parallel examination of both proposals.
6. The proposed Regulations are subject to a special legislative procedure based on Article 81(3) TFEU.
7. The discussions have allowed progress to be made on the texts. In the light of the results of those discussions, the Presidency is of the opinion that the Council should approve certain political guidelines on a number of key issues relating to jurisdiction and recognition and enforcement in the Matrimonial Property Regime Regulation and in the Registered Partnership Regulation, in order to pave the way for substantial progress to be made on both regulations.

8. To that end, the Presidency wishes to submit to the Council the political guidelines set out in Part II.
9. These guidelines may be subject to modifications in order to take into account further negotiations. All other aspects of the two proposed regulations remain open and will be subject to further discussion.

II. GUIDELINES

A. Proposed guidelines for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

a) Jurisdiction

- i) Jurisdiction in the event of the death of one of the spouses

10. When a court of a Member State is seised in matters of the succession of a spouse under Regulation (EU) No 650/2012¹, the courts of that Member State should have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that succession case, without regard to whether the spouses had previously agreed otherwise.

- ii) Jurisdiction in cases of divorce, legal separation or marriage annulment

¹ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107).

11. When a court of a Member State is seised to rule on an application for a divorce, legal separation or marriage annulment under Regulation (EC) No 2201/2003¹, the courts of that Member State should have jurisdiction to rule on matters of the matrimonial property regime arising in connection with the application, provided that the spouses so agree.
- iii) Jurisdiction in other cases
12. In cases other than those described in paragraphs 10 and 11, jurisdiction to rule on the spouses' matrimonial property regime should be based on a cascade of connecting factors in the following order: (i) the spouses' habitual residence, (ii) the spouses' last habitual residence insofar as one of them still resides there, (iii) the respondent's habitual residence and (iv) the nationality of both spouses, all these criteria being examined at the time the court is seised.
- iv) Choice of court
13. In cases other than those described in paragraphs 10 and 11, choice-of-court agreements meeting certain specified parameters and conferring on the courts of a Member State exclusive jurisdiction to rule on matters of the matrimonial property regime should be permissible.

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ L 338, 23.12.2003, p. 1.)

b) Recognition, enforceability and enforcement of decisions, acceptance and enforceability of authentic instruments and enforceability of court settlements

14. Recognition, enforceability and enforcement of decisions, acceptance and enforceability of authentic instruments and enforceability of court settlements in matters of matrimonial property regimes, should be governed by the same principles as those provided for the recognition, enforceability and enforcement of decisions, acceptance and enforceability of authentic instruments and enforceability of court settlements in matters of succession under Regulation (EU) No 650/2012.

B. Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships

15. Discussion will continue on the proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships on the basis of Doc. 15724/12, JUSTCIV 320, the latest draft text submitted to the Working Party by the Cyprus Presidency.
16. More particularly, further work should be done in order to examine the extent to which the guidelines identified above for matrimonial property regimes should be followed in the proposed regulation on registered partnerships.

III. CONCLUSION

The Council is invited to approve the guidelines set out in part II as general guidelines for the continuation of the work on the proposed regulations.
