New EU moves to improve legal certainty in cross-border divorce proceedings

The European Commission adopted today two initiatives to establish clear rules that will facilitate life for couples in the European Union. One consequence of the increasing mobility of citizens is a growing number of couples of different nationalities and couples who live in a Member State other than their State of origin. The Commission has put forward two initiatives to tackle the obstacles that these couples currently face when they have to divorce and divide their property. The first initiative aims at making it easier for citizens to predict which law will apply to their divorce and at ensuring access to court in divorce proceedings. The second initiative launches a public consultation on applicable law, jurisdiction and recognition in matters of property rights of married and unmarried couples. Both initiatives are part of the European Union’s on-going work to create a common judicial area.

"These initiatives will simplify life for couples in the EU" said Vice-President Franco Frattini, Commissioner for Justice, Liberty and Security. "They will increase legal certainty and enable couples to know which law will apply to their matrimonial property regime and their divorce. The aim is not to harmonise the national laws on divorce, which are very diverse, but to ensure legal certainty, flexibility and access to court", Vice-President Frattini said.

The first initiative is a legislative proposal on applicable law and jurisdiction in divorce matters. The proposal, which revises existing Council Regulation (EC) no. 2201/2003 of 27 November 2003, does not harmonise the national laws on divorce, but seeks to make it easier for couples to know which divorce law that will apply to their divorce. This proposal gives the spouses a limited possibility to choose the applicable law and the competent court in divorce proceeding. This may be particularly useful in cases of divorce by mutual consent. In the absence of choice, the proposal sets out clear rules which ensure that the divorce will be governed by a law with which the spouses have a close connection to guarantee legal certainty and prevent “forum shopping”. Finally, the proposal revises the existing jurisdiction rules to ensure access to court for EU citizens. The public consultation that paved the way to this proposal revealed that an estimated 170,000 "international" divorce proceedings take place each year, representing around 16 % of all divorces.
The second initiative launches a wide public consultation on conflict-of-law rules, jurisdiction and recognition in matters of matrimonial property regimes. The Green Paper is based on the results of a study ordered by a Commission which revealed that practical and legal difficulties frequently arise as regards the division of property at the time of separation when the spouses are of different nationalities, live in different Member States or own property in another Member State. **An estimated 2.5 million properties in the EU are owned by spouses who live in another Member State.** To take account of the social reality in the European Union, where an increasing number of couples live together without being married, the Green Paper deals not only with property effects of married couples, but also with property effects of unmarried couples.