

ROADMAP

Title of the initiative: **Proposal for a Regulation on the conflicts of law in matters concerning property rights, including the question of jurisdiction and mutual recognition, and for Regulation on the property consequences of the separation of couples**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: DG JLS/E2

Expected date of adoption of the initiative (month/year): 9/2010

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Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

(i) The Programme of measures for the implementation of the principle of mutual recognition of decision in civil and commercial matters adopted at the end of 2000 provides for an instrument to be drafted on "rights of property arising out of a matrimonial property regimes and property of unmarried couples". The Hague Programme of 4-5 November 2004 called on the Commission to present a Green Paper on conflict of law in matters concerning matrimonial property regimes, covering the whole ranges of issues – applicable law, jurisdiction and mutual recognition (the Green Paper was presented in 2006. Finally, the Stockholm programme called for the principle of mutual recognition to "be extended to fields that are not yet covered but essential to every day life, e.g. ... matrimonial property rights and the property consequences of the separation of couples".

Much progress has been already been made towards the creation of a genuine European Area of Civil Justice, with common rules setting out which courts have jurisdiction in cross border civil and family law cases. In addition, European Union Regulations provides which law should apply to cross-border cases. However, the question of what happens when a couple separates, or when of the spouse died, is still governed by national laws.

What are the main problems identified?

The increasing mobility of citizens within the European Union has resulted in an increasing number of "international" married and unmarried couples whose members are of different nationalities or live in a Member State of which they are not nationals. The absence of Community rules on applicable law to the property rights of married and unmarried couples, such as the lack of a system of mutual recognition of patrimonial rights linked to these relationships, may lead to many practical problems. For the daily management of their assets, or at the moment of the liquidation of their property (by divorce, separation, death), couples need to know which court has jurisdiction to deal with their property regime, or which law will be applied [briefly present problems]. Given that the Regulation Brussels II does not cover the property aspects of separation, divorce and marriage annulment, the current situation may lead to results that do not correspond to the legitimate expectations of the citizens in terms of legal certainty.

Who is affected?

All international couples are affected by such problems (by international couples, are designated couples of (i) one national and one national of another EU country or a third country, (ii) two EU nationals from other EU countries, (iii) two national from their countries, (iv) one EU national from another EU Member State and one national from a third country). Could also be affected by problems met by "international couples", other couples which acquired or are owner of a property in a Member State other that their country of origin. Third parties (as creditors) are also concerned by these issues.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Problems identified cannot be properly dealt with a level of the individual Member States.

EU level action in the closely related to the field of divorce, parental responsibility and civil and commercial litigation have made a clear and significant contribution to helping citizens solve cross border legal problems related to their day to day lives. The Commission's proposal on wills and successions is another example of the added value of action at EU level in terms of solving problems due to incompatibilities of the Member States' legal systems. The Member States are unlikely to streamline their national rules to facilitate the liquidation of transnational property regimes without EU level action. If Member States may make changes to their national legal system on their own initiative, it is unlikely that these will be made in view to harmonise the country's rules with those of other EU Member States.

[Please complete]

B. Objectives of EU initiative

What are the main policy objectives?

The general objective is to remove the remaining restrictions on citizens exercising their rights in the European judicial area through the extension of mutual recognition to matrimonial property regimes and the property consequences of the separation of couples.

The specific objectives are notably the following:

- to make it sure that spouses and partners could know, if they have not chosen an applicable law, which law will be applicable in the management of their property and in the event of their liquidation,
- to make it possible for parties of a couple to bring all legal matters relating to a their case before the same court, and to determine common rules of jurisdiction,
- to facilitate the recognition and enforcement of judgments and other decision relating to international property regimes,
- to tackle the problem of the inadequate information on the existence of property regimes.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

These objectives are a part of the implementation of the principle of mutual recognition of decision in civil and commercial matters.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

(i), (ii) and (iii) the main policy options are the following:

-status quo

- non-legislative action to increase awareness of citizens on existing problems in the matter of property regimes

- legislative action which could concern applicable law, jurisdiction, recognition and enforcement of judicial decisions and other acts.

the proposed text takes the form of a regulation

There is no EU law on the matter of matrimonial property regime, and patrimonial aspects of unmarried couples.

a) Status quo

b) Extending the scope of the Regulation Brussels II to the property rights of married and unmarried couples c) Propose a comprehensive set of rules concerning the property aspects of married and unmarried couples including the harmonisation of conflict-of-law and jurisdictions rules, recognition and enforcement of acts, and legalisations.

On the basis of the impact assessment work carried out to date, the preferred option would be a Regulation.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

All the Commission Departments which could be interested were invited to join the steering group set up in September 2009.

Explain how the options respect the proportionality principle

The impact assessment considers the proportion of the existing problems, the number of couples concerned, and estimate the sum of money at stake, which legitimate an EU action in this matter.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

The main identified policy options are the following :

- status quo
- provision on targeted information provision to raise citizen's awareness that patrimonial property regimes may not be the same in other Member States
- harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments
- harmonisation of conflicts of laws rules
- Uniform optional European proforma for marriages contracts
- harmonisation of conflicts of laws rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments
- provisions of information on property regimes of married and unmarried couples.

The Commission assesses impacts when presenting concrete proposals following the publication of the Green Paper and having been able to take into account the contributions to the subsequent consultation

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

The options should not have an impact on the EU-budget (above 5Mio euro).

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

According to which option will be chosen, the option will have no impact, or a rather positive impact, on relations with third countries, by facilitating the understanding of the international private law system applied between Member States.

E. Planning of further impact assessment work

When will the impact assessment work start?

The IA work started in 2009.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The Green Paper is based on the "Etude sur les régimes matrimoniaux des couples mariés et sur le patrimoine des couples non mariés dans le Droit International Privé et le Droit interne des Etats membres de l'Union européenne" carried out in 2003 at the request of the European Commission by the Consortium TMC Asser Instituut voor International Recht-UCL Département de Droit International de la Faculté de Droit.

The study is available at:

http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm

Taking into account that the study did not cover the legal systems of the 10 new Member States and, as this information was necessary for the elaboration of the Green Paper, the European Commission elaborated a questionnaire presented in the 10th meeting of the European Judicial Network in Civil and Commercial Matters and collected information in this way.

The Green Paper was presented in 2006 and was followed by a public consultation. In the period 2007-2010, expert meetings have taken place.

Which stakeholders & experts have been/will be consulted, how and at what stage?

The stakeholders were consulted through the Green Paper and a public hearing was organised in 2009. Several expert meetings have been arranged in this field with a view to possible future actions. In the framework of the Green Paper, approximately 40 answers were received from Ministries, regional and local authorities, NGOs, legal profession and community institutions. Besides, in the study done by the contractor, contacts were made with every Member State and legal professionals, Bar associations, Citizens Advice bureau, National Statistics Offices and Tax Authorities.