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2016/0060 (CNS)

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**

## EXPLANATORY MEMORANDUM

### **1. BACKGROUND TO THE PROPOSAL**

#### **1.1. General background**

Article 67(1) of the Treaty on the Functioning of the European Union provides that the Union is to constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. Paragraph 4 of that article lays down that the Union is to facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. Article 81 of the Treaty explicitly refers to measures aimed at ensuring 'the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases' and 'the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction'. Many instruments have already been adopted on this basis, in particular 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, repealing Regulation (EC) No 1347/2000. None of them, however, cover the property consequences of registered partnerships.

The programme on mutual recognition of decisions in civil and commercial matters adopted by the Council on 30 November 2000<sup>1</sup> provided for the drafting of legislation on jurisdiction and the recognition and enforcement of decisions as regards 'rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple'. The Hague programme<sup>2</sup>, which was adopted by the European Council on 4 and 5 November 2004, set the implementation of the mutual recognition programme as a top priority and called on the Commission to submit a Green Paper on 'the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition', and stressed the need to adopt such legislation by 2011.

The Stockholm Programme, which was adopted by the European Council on 11 December 2009, also states that mutual recognition should be extended to matrimonial property regimes and the property consequences of the separation of unmarried couples.

In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010<sup>3</sup>, the Commission identified uncertainty surrounding the property rights of international couples as one of the main obstacles faced by EU citizens in their daily lives when they tried to exercise the rights the EU conferred on them across national borders. To remedy this, it 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 and which law applied to their property rights.

On 16 March 2011, the Commission adopted a proposal<sup>4</sup> for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal<sup>5</sup> for a Council Regulation on jurisdiction, applicable law and the

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<sup>1</sup> OJ L 12, 15.1.2001, p. 1.

<sup>2</sup> OJ L 53, 3.3.2005, p. 1.

<sup>3</sup> COM(2010) 603.

<sup>4</sup> COM (2011) 126.

<sup>5</sup> COM (2011) 127.

recognition and enforcement of decisions regarding the property consequences of registered partnerships<sup>6</sup>.

The legal basis for the proposed Council Regulations was Article 81(3) of the Treaty on the Functioning of the European Union. The proposals related to judicial cooperation in civil matters covering 'aspects relating to family law'. Under this legal basis measures are adopted by the Council acting unanimously after consulting the European Parliament. The European Parliament delivered its opinion on 10 September 2013<sup>7</sup>.

The Commission proposals were discussed in the Council Working Party on Civil Law Matters (Matrimonial property regimes and the property consequences of registered partnerships) until the end of 2014. In December 2014, the Council decided to grant a reflection period to those Member States which continued to have difficulties; this period should not last, however, more than one year. 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. The Council also noted that several Member States expressed their readiness to give positive consideration to the establishment of enhanced cooperation on the matters covered by the proposals.

From December 2015 to February 2016, 17 Member States<sup>8</sup> addressed a request to the Commission indicating that they wished to establish enhanced cooperation between themselves in the area of the property regimes of international couples and, specifically, of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, and asking the Commission to submit a proposal to the Council to that effect.

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 (hereinafter referred to as 'the participating Member States'). The proposal for a Council Decision contains a detailed assessment of the legal conditions governing, and the appropriateness of, the introduction of 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.

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<sup>6</sup> In accordance with Articles 1 and 2 of Protocol on the position of Denmark annexed to the Treaties, Denmark did not take part in the adoption of the proposed Regulation and was not bound by it or subject to its application. In accordance with Article 1 and 2 of Protocol on the position of the United Kingdom and Ireland annexed to the Treaties, Ireland and the United Kingdom did not give notice of their wish to take part in the adoption and application of the proposed Regulation.

<sup>7</sup> A7-0253/2013

<sup>8</sup> Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria and Finland.

## 1.2. Grounds for and objectives of the proposal

The increasing mobility of persons within an area without internal frontiers leads to a significant increase in the number of couples, in whatever form, made up of nationals of different Member States who live in a Member State other than their own or acquire property in more than one Member State. A study carried out by the consortium ASSER-UCL in 2003<sup>9</sup> 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 separates 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.

Because of the features that distinguish registered partnerships and marriage and the different legal consequences resulting from these forms of union, the Commission is presenting two separate proposals for Regulations: one on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, and the other on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. These two proposals are the implementing measures of the enhanced cooperation established 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.

The purpose of this 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 and to facilitate the circulation of decisions and instruments on this matter among Member States.

## 2. RESULT OF THE CONSULTATIONS – 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. Following the 2003 study, on 17 July 2006 the Commission published a Green Paper on conflict of laws in matters concerning matrimonial property regimes<sup>10</sup>, including the question of jurisdiction and mutual recognition, that launched wide-ranging consultations on the subject. A group of experts, PRM/III, was set up by the Commission to draw up the proposal. The group was composed of experts representing the range of professions concerned and the different European legal traditions; it met five times between 2008 and 2010. The Commission also held a public hearing on 28 September 2009 involving some hundred participants. The debates confirmed the need for an EU instrument in this area that covered in particular applicable law, jurisdiction and the recognition and enforcement of decisions. A meeting with national experts was held on 23 March 2010 to discuss the thrust of the proposal being drafted. Finally, the Commission conducted a joint impact study on the proposals for

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<sup>9</sup> ASSER-UCL Consortium, *Study in comparative law on the rules governing conflicts of jurisdiction and laws on matrimonial property regimes and the implementation for property issues of the separation of unmarried couples in the Member States*.

<sup>10</sup> See: [http://europa.eu.int/comm/justice\\_home/doc\\_centre/civil/studies/doc\\_civil\\_studies\\_en.htm](http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm)  
COM(2006) 400.

regulations on the property consequences of registered partnerships and matrimonial property regimes.

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 discussions in the Council and the European Parliament up to the end of 2015.

### **3. LEGAL ASPECTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The legal basis for this proposal is Article 81(3) of the Treaty on the Functioning of the European Union, which confers on the Council the power to adopt measures concerning family law having cross-border implications by unanimity after consulting the European Parliament.

As with matrimonial property regimes, property relationships between registered partners and between the partners and third parties, derive from the prior existence of the registered partnership. The property consequences of registered partnerships are created by the registration of the partnership – just as a matrimonial regime is created by marriage – and they disappear with its dissolution. By registering their partnership with a public authority, partners establish a stable, legally recognised relationship with each other. Most Member States with legal provisions for partnerships make the rules as similar as possible to those of marriage.

The aim of this proposal is to establish a comprehensive set of rules of international private 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. The cross-border requirement in Article 81(3) is consequently fulfilled. This proposal only concerns the property consequences of the registered partnership and does not define the institution of registered partnership nor does it impose the recognition of a registered partnership in another Member State.

#### **3.2. Subsidiarity principle**

The only way of achieving the proposal's objectives is through the adoption of common rules on the property consequences of registered partnerships, rules which must be identical in all participating Member States in order to guarantee legal certainty and predictability for citizens. Unilateral action by Member States would therefore run counter to this objective. No international agreements are applicable in this context other than the Convention on the recognition of registered partnerships of 5 September 2007 of the International Commission on Civil Status. However, this Convention covers only the recognition of partnerships and has not entered into force, so it is unlikely to offer the solutions needed in view of the magnitude of the problems addressed by this proposal, as revealed by both the impact study and the public hearings. Given the nature and the scale of the problems experienced by Union citizens, the proposal's objectives can only be achieved at Union level.

#### **3.3. Proportionality principle**

The proposal complies with the principle of proportionality in that it is strictly limited to what is necessary to achieve its objectives. It does not try to harmonise the substantive laws of the Member States concerning the property aspects of registered partnerships and it does not affect the way in which the liquidation of the property of registered partnerships is taxed by Member States. This

proposal will not entail any financial or administrative burdens on citizens and only a very limited additional burden on national authorities.

### **3.4. Impact on fundamental rights**

In accordance with the strategy for the effective implementation of the Charter of Fundamental Rights by the European Union<sup>11</sup>, the Commission has checked that the proposal complies with the rights set out in the Charter.

It does not affect the right to respect for private and family life nor the right to marry and to found a family according to national laws, as provided for in Articles 7 and 9 of the Charter.

The right to property referred to in Article 17 of the Charter is strengthened. The predictability of the law applicable to all the couple's property will in fact enable the partners to exercise their property rights more fully.

The Commission has also checked that the proposal complies with Article 9 of the Charter on the right to found a family in accordance with national laws, and with Article 21 of the Charter, which prohibits any discrimination.

Finally, the proposal would increase citizens' access to justice in the EU, in particular for registered partnerships. It would facilitate implementation of Article 47 of the Charter, which guarantees the right to an effective remedy and to a fair trial. By setting out objective criteria for determining the court having jurisdiction, parallel proceedings and appeals precipitated by the most active party can be avoided.

### **3.5. Choice of instrument**

The need for legal certainty and predictability calls for clear and uniform rules and requires that the legislation take the form of a regulation. The proposed rules on jurisdiction, applicable law and free circulation of decisions are set out clearly and in detail, requiring no transposition into national law. The objectives of legal certainty and predictability would be compromised if the Member States had discretion with regard to implementing the rules.

## **4. BUDGETARY IMPACT, SIMPLIFICATION AND CONSISTENCY WITH OTHER UNION POLICIES**

### **4.1. Budgetary impact**

The proposal will have no impact on the Union budget.

### **4.2. Simplification**

The harmonisation of the rules on jurisdiction will greatly simplify procedures by making it possible to determine the court with jurisdiction to deal with the property consequences of registered partnerships on the basis of common rules. If courts handling the termination of the partnership or a succession case following the death of one of the partners in application of existing EU legislation have their jurisdiction extended to related proceedings on the property consequences of the partnership, citizens will be able to have the same court dealing with all aspects of their situation.

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<sup>11</sup> Communication from the Commission, COM(2010) 573 of 19.10.2010.

The harmonisation of conflict-of-law rules will considerably simplify procedures by establishing which law is applicable on the basis of a single set of rules replacing the various national conflict-of-law rules of the participating Member States.

Finally, the rules proposed for the recognition and enforcement of court decisions will facilitate the movement of citizens between different Member States.

### **4.3. Consistency with other Union policies**

This proposal is 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 referred to earlier.

## **5. COMMENTS ON THE ARTICLES**

### **5.1. Chapter I: Scope and definitions**

#### *Article 1*

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.

To determine the areas that will be covered it proved preferable to compile a comprehensive list of matters excluded from the Regulation. Thus, matters already covered by existing EU regulations, such as maintenance obligations<sup>12</sup>, especially between partners, and matters arising from the law of succession<sup>13</sup>, 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 Regulation does not concern the nature of rights in rem relating to a property, the classification of property and of rights, or the determination of the prerogatives of the holder of such rights.

The requirements to make an entry in the land register and the effects of an entry or failure to make an entry in this register are also excluded from the scope of the Regulation.

#### *Article 3*

For the sake of consistency and to facilitate their understanding and uniform application, some definitions of terms appearing in this Regulation are common to other EU instruments in force.

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.

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<sup>12</sup> Governed by Regulation (EC) No 4/2009, OJ L 7, 10.1.2009, p. 1.

<sup>13</sup> Governed by Regulation (EU) No 650/2012, OJ L 201, 27.7.2012, p. 107.

The proposed definition of 'court' includes authorities and legal professions (such as notaries) which exercise judicial functions or act by delegation of power by a court, so that their decisions are treated as court decisions for the purposes of recognition and enforcement in a Member State other than the Member State where they were delivered.

## **5.2. Chapter II: Jurisdiction**

Legal proceedings on the property consequences of registered partnerships often arise from the liquidation of the property when the couple ceases to exist, either as a result of the death of one of the partners or of their separation or the dissolution or annulment of the registered partnership.

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 Regulation 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.

### *Article 4*

To ensure that, in the event of the death of one of the partners, the competent court can handle both the succession of the deceased partner and the liquidation of the property of the registered partnership, 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.

### *Article 5*

Similarly, the court of a Member State dealing with the dissolution or annulment of a registered partnership should also rule, if the partners agree, on the liquidation of the property of the registered partnership arising from the dissolution or annulment of the registered partnership.

### *Articles 6 and 7*

Article 6 also provides for rules governing jurisdiction that would apply when matters of the property regime of the registered partnership are not linked to proceedings on succession or the dissolution or annulment of the registered partnership (for example, when the partners want to change the property regime of their registered partnership). A list of connecting factors, in order of precedence, would determine the Member State whose courts have jurisdiction to deal with the proceedings concerning the property consequences of the registered partnership.

The proposed criteria include the common habitual residence of the partners, their last common habitual residence if one of them still resides there or the habitual residence of the respondent; these widely used criteria frequently coincide with the location of the partners' property. Another criterion is the common nationality of the partners, and the last criterion is the Member State where the registered partnership was created.

In such cases, in order to enhance predictability and the freedom to choose of the spouses, Article 7 would also allow the partners to agree that the courts that should deal with matters of their property regime should be the courts of the Member State whose law applies to the property consequences

of the registered partnership or the courts of the Member State where the registered partnership was created.

#### *Article 9*

Exceptionally, the court of a Member State that has jurisdiction may decline such jurisdiction if the national law of its Member State does not provide for the institution of registered partnership. In order to ensure the partners' access to justice in such cases, the partners can agree that the courts of the Member State whose law applies to the property consequences of the registered partnership or the courts of the Member State where the registered partnership was created will rule on the proceedings. Otherwise, the criteria laid down by Article 5 would determine the Member State whose courts should rule on the matter.

In any event, the court of a Member State that has jurisdiction will not be able to decline such jurisdiction when the partners have obtained a dissolution or annulment of their registered partnership and this dissolution or annulment is capable of recognition in the court's Member State.

#### *Article 10*

Where no Member State has jurisdiction in application of the previous articles, this article ensures access to justice for partners and interested third parties before the courts of the Member State in which one or both of the partners has immovable property. In these cases, the courts would only rule in respect of the immovable property located in that Member State.

### **5.3. Chapter III: Applicable law**

#### *Article 20*

The law that would apply to matters of the property consequences of a registered partnership can be the law of a Member State or the law of a non-Member State.

#### *Article 21*

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

Immovable property has a special place in the property of couples, and one of the possible options would have been to make it subject to the law of the country in which it is located (*lex situs*), thus allowing the dismemberment of the law applicable to the property regime of the registered partnership. This solution is, however, fraught with difficulties, particularly when it comes to the liquidation of the property of the registered partnership, in that it would lead to an undesirable fragmentation of the unity of the property of the registered partnership (while the liabilities would remain in a single scheme), and to the application of different laws to different properties within the property regime of the registered partnership. The Regulation therefore provides that the law applicable to the property of the registered partnership, whether chosen by the partners or, in the absence of any such choice, determined under other provisions, will apply to all the couple's property, moveable or immovable, irrespective of its location.

## *Article 22*

During the consultations a broad consensus emerged in favour of according spouses a degree of freedom in choosing the law applicable to their matrimonial property regime in order to facilitate the spouses' management of their property. The possibility to choose the law applicable to the property regime of a registered partnership should equally apply to registered partners. This option should be clearly regulated to prevent the law chosen from having little relation to the couple's real situation or past history: the law chosen must therefore be the law of the habitual residence or of the nationality of the partners or future partners or of one of them, or the law of the State where the registered partnership was created.

In addition to the possibility for the partners to choose the law applicable at the time of the creation of their registered partnership, this article makes provision for making such a choice later. Similarly, partners having chosen the applicable law at the time of the creation of their registered partnership may later decide to change it. If the partners decide to change the law applicable to their property regime, they can only choose one of the laws that they could have chosen at the time of the creation of their registered partnership.

Only a voluntary change of applicable law is possible. The Regulation does not provide for any automatic change of applicable law without the partners expressing their consent to such change or without them having been notified, in order to avoid legal uncertainty.

Furthermore, to prevent a change of the law applicable to the property regime of the registered partnership from having undesirable effects for the partners, such a change is effective only in the future, unless the partners decide to make it retrospective.

The rights of third parties whose interests might be prejudiced by a change of the law applicable to the property consequences of the registered partnership are protected: the Regulation provides that the effects of a retroactive change of the law applicable to the property consequences of the registered partnership cannot adversely affect the rights of third parties.

## *Articles 23 to 25*

These provisions set out rules on the procedures to follow by partners to choose the applicable law and to agree on their property regime through a partnership property agreement.

## *Article 26*

When partners do not choose the law applicable to the property regime of their registered partnership, it is important to have common rules in the participating Member States to determine what law is applicable in the absence of choice by the partners. The applicable law would be the law of the State in which 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.

## *Articles 27 and 28*

The Regulation lists some of the matters that would be governed by the law applicable to the property consequences of the registered partnership. Such matters include the liquidation of the property and also the effects of the property consequences of the registered partnership on the relationships between a partner and a third party. However, in order to protect the rights of third parties, the Regulation provides that a partner cannot invoke the applicable law against a third party in a dispute unless the third party knew or should have known the law applicable to the property consequences of the registered partnership. The Regulation specifies the cases in which it would be considered that the third party knew or should have known the applicable law that governs the property consequences of the registered partnership.

## *Article 29*

To take account of national rules for the protection of the family home, this provision allows a Member State to set aside the application of a foreign law in favour of its own. Accordingly, to protect the family home, a Member State where the 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 partnership property agreement concluded in another Member State.

## **5.4. Chapter IV: Recognition, enforceability and enforcement**

The proposed Regulation provides for the free circulation of decisions, authentic instruments and court settlements concerning the property consequences of registered partnerships. 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 judgments, authentic acts and legal transactions originating in another Member State. The procedure replaces the national procedures currently in force in the different Member States. The grounds for non-recognition or refusal to enforce are also harmonised at Union level or reduced to the absolute minimum. They replace the varied, and often broader, grounds that currently exist at national level.

### *Decisions*

The proposed rules on the recognition and enforcement of judgments are in line with those contained in Regulation No 650/2012 on succession. They therefore refer to the exequatur procedure laid down in that Regulation. This means that any decision of a Member State would be recognised in other Member States without any special procedure and that, to have a decision enforced in another Member State, applicants would have to follow a uniform procedure in the Member State of enforcement to obtain a declaration of enforceability. The procedure is unilateral and is initially confined to a verification of documents. Only at a later stage, if the defendant objects, would the judge proceed to consider possible grounds for refusal. This offers adequate protection of the rights of defendants.

These rules are a major step forward compared with the current situation. At present, the recognition and enforcement of judgments is governed by the Member States' national laws or bilateral agreements between some Member States. The procedures to be followed vary with the

Member States concerned, as do the documents required for obtaining a declaration of enforceability and the grounds on which foreign judgments may be rejected.

As explained earlier, this Regulation is a first step in the area of the property consequences of registered partnerships and it concerns family law (see point 3.1). Given its specific circumstances, the free circulation of judgments is subject to the exequatur procedure. Nevertheless, the removal of intermediate proceedings (exequatur) could, as in other areas, be considered at a later stage, after an evaluation of the application of the rules in this Regulation and the development of judicial cooperation on the property consequences of registered partnerships.

The acts of authorities exercising their powers by delegation in accordance with the definition of a court in Article 2 of this Regulation will be treated as court decisions and thus covered by the provisions on recognition and enforcement under this chapter.

#### *Authentic instruments*

Given the practical importance of authentic instruments for the property consequences of registered partnerships and in order to ensure the consistency of this Regulation with other EU instruments, this Regulation should ensure their acceptance for the purposes of their free circulation.

This acceptance means that they will enjoy the same evidentiary effect in respect of the contents of the instrument and the facts contained therein, and the same presumption of authenticity and enforceability as in the country of origin.

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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>14</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) 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. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with point c) of Article 81(2) of the Treaty on the Functioning of the European Union, such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (4) A programme of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters<sup>16</sup>, common to the Commission and to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-law rules as measures facilitating the mutual recognition

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<sup>14</sup> OJ C [...], [...], p. [...].

<sup>15</sup> OJ C [...], [...], p. [...].

<sup>16</sup> OJ C 12, 15.1.2001, p. 1.

of decisions and provides for the drawing-up of an instrument in matters of matrimonial property regimes and the property consequences of the separation of unmarried couples.

- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague Programme: strengthening freedom, security and justice in the European Union'<sup>17</sup>. In this programme the Council asked the Commission to present a Green Paper on conflicts of law in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area.
- (6) 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<sup>18</sup>. 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 Green Paper also addressed all issues of private international law encountered by couples in unions other than marriages, including couples with registered partnerships, and issues specific to them.
- (7) At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'the Stockholm Programme – An open and secure Europe serving and protecting citizens'<sup>19</sup>. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example the property consequences of the separation of couples, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.
- (8) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010<sup>20</sup>, the Commission announced that it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.
- (9) On 16 March 2011, the Commission adopted a proposal<sup>21</sup> for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal<sup>22</sup> for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.
- (10) At its meeting of 3 December 2015, the Council concluded that no unanimity could be reached for the adoption of the proposals for the 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.
- (11) From December 2015 to February 2016, Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria and Finland addressed requests to the Commission

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<sup>17</sup> OJ C 53, 3.3.2005, p. 1.

<sup>18</sup> COM(2006) 400.

<sup>19</sup> OJ L 115, 4.5.2010, p. 1.

<sup>20</sup> COM(2010) 603.

<sup>21</sup> COM (2011) 126.

<sup>22</sup> COM (2011) 127.

indicating that they wished to establish enhanced cooperation between themselves in the area of the property regimes of international couples and, specifically, of the jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, and asking the Commission to submit a proposal to the Council to that effect.

- (12) On [...], the Council adopted 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.
- (13) According to Article 328(1) of the Treaty on the Functioning of the European Union, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation should ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the participating Member States in accordance with the Treaties.
- (14) In accordance with Article 81 of the Treaty on the Functioning of the European Union, this Regulation should apply in the context of the property consequences of registered partnerships having cross-border implications.
- (15) To provide unmarried couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to the property consequences of registered partnerships should be covered in a single instrument.
- (16) The way in which forms of union other than marriage are provided for in the Member States' legislation differs from one State to another, and a distinction should be drawn between couples whose union is institutionally sanctioned by the registration of their partnership with a public authority and couples in de facto cohabitation. While some Member States do make provision for such de facto unions, they should be considered separately from registered partnerships, which have an official character that makes it possible to take account of their specific features and lay down rules on the subject in Union legislation. To ensure the smooth functioning of the internal market, barriers to the free movement of people who have entered into a registered partnership need to be eliminated, particularly those creating difficulties for such couples in the administration and division of their property. In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, applicable law, recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements.
- (17) The Regulation should cover matters arising from the property consequences of registered partnerships. 'Registered partnership' should be defined here solely for the purpose of this Regulation. The actual substance of the concept should remain defined in the national laws of the Member States. Nothing in this Regulation should oblige a Member State whose law does not know the institution of registered partnership to provide for it in its national law.
- (18) The scope of this Regulation should include all civil-law aspects of the property consequences of registered partnerships, both the daily management of the partners'

property and its liquidation, in particular as a result of the couple's separation or the death of one of the partners.

- (19) This Regulation should not apply to areas of civil law other than the property consequences of registered partnerships. For reasons of clarity, a number of questions which could be seen as having a link with the property consequences of registered partnerships should be explicitly excluded from the scope of this Regulation.
- (20) Accordingly, this Regulation should not apply to questions of general legal capacity of the partners; however, this exclusion should not cover the specific powers and rights of either or both partners with regard to property, either as between themselves or as regards third parties, as these powers and rights should fall under the scope of the Regulation.
- (21) It should not apply to other preliminary questions such as the existence, validity or recognition of a registered partnership, which is covered by the national laws of the Member States, including their rules of private international law.
- (22) As maintenance obligations between partners are governed by Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>23</sup>, they should be excluded from the scope of this Regulation, as should issues relating to the succession to the estate of a deceased partner, that are covered by 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<sup>24</sup>.
- (23) Issues of entitlements to transfer or adjustment between partners of rights to retirement or disability pension, whatever their nature, accrued during the registered partnership and which have not generated pension income during the registered partnership are matters that should remain excluded from the scope of this Regulation, taking into account the specific systems existing in the Member States. However, such exception should remain of strict interpretation. Hence, this Regulation should govern in particular the issue of classification of pension assets, the amounts that have already been paid to one partner during the registered partnership, and the possible compensation that would be granted in case of pension subscribed with common assets.
- (24) This Regulation should allow for the creation or the transfer resulting from the property consequences of registered partnerships of a right in immovable or moveable property as provided for in the law applicable to the property consequences of registered partnerships. It should, however, not affect the limited number (*'numerus clausus'*) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.
- (25) However, in order to allow the partners to enjoy in another Member State the rights which have been created or transferred to them as a result of the property consequences of a registered partnership, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining

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<sup>23</sup> OJ L 7, 10.1.2009, p. 1.

<sup>24</sup> OJ L 201, 27.7.2012, p. 107.

the closest equivalent national right, the authorities or competent persons of the State whose law applied to the property consequences of the registered partnership may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.

- (26) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.
- (27) The requirements for the recording in a register of a right in immovable or moveable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of a partner to a property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities the circulation of which is provided by this Regulation. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.
- (28) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.
- (29) This Regulation should respect the different systems for dealing with matters of the property consequences of registered partnerships applied in the Member States. For the purposes of this Regulation, the term ‘court’ should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also for example notaries in some Member States who, in certain matters of the property consequences of registered partnerships, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in dealing with the property consequences of a registered partnership by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term ‘court’ should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of the property consequences of registered partnerships, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.

- (30) This Regulation should allow all notaries who have competence in matters of the property consequences of registered partnerships in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term ‘court’ for the purposes of this Regulation.
- (31) Acts issued by notaries in matters of the property consequences of registered partnerships in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.
- (32) To reflect the increasing mobility of couples and facilitate the proper administration of justice, the rules on jurisdiction in this Regulation should enable citizens to have their various related procedures handled by the courts of the same Member State. To that end, the Regulation should seek to concentrate the jurisdiction on the property consequences of registered partnerships in the Member State whose courts are called upon to handle the succession of a partner in accordance with Regulation (EU) No 650/2012 or the dissolution or annulment of the registered partnership.
- (33) The Regulation should provide that, where proceedings on the succession of a partner are pending before the court of a Member State seised under Regulation (EU) No 650/2012, the courts of that State should have jurisdiction to rule on matters of the property consequences of registered partnerships arising in connection with that succession case.
- (34) Similarly, matters of the property consequences of registered partnerships arising in connection with proceedings pending before the court of a Member State seised with an application for dissolution or annulment of a registered partnership should be dealt with by the courts of that Member State, if the partners so agree.
- (35) Where matters of the property consequences of registered partnerships are not linked to proceedings pending before the court of a Member State on the succession of a partner or the dissolution or annulment of the registered partnership, this Regulation should provide for a scale of connecting factors for the purposes of determining jurisdiction, starting with the habitual residence of the partners at the time the court is seised. The last step of the scale of jurisdiction connecting factors should point to the Member State under whose law the mandatory registration of the partnership was made in order to establish it. These connecting factors are set in view of the increasing mobility of citizens and in order to ensure that a genuine connecting factor exists between the partners and the Member State in which jurisdiction is exercised.
- (36) Given that the institution of registered partnership is not provided for in all Member States, the courts of a Member State whose law does not provide for the institution of registered partnership may exceptionally need to decline jurisdiction under this Regulation. In such case, the courts shall act swiftly and the party concerned should have the possibility to submit the case in any other Member State that has a connecting factor granting jurisdiction, irrespective of the order of these jurisdiction grounds, while at the same time respecting the parties' autonomy. Any court seised after a declining of jurisdiction, other than the courts of the Member State under whose law the registered partnership was created, which has jurisdiction on the basis of a choice of court agreement or the appearance of the defendant, may also exceptionally need to decline jurisdiction under the same conditions. Finally, if no

court has jurisdiction to deal with the situation in light of the other provisions of this Regulation, an alternative jurisdictional rule has been included to avoid any risk of denial of justice.

- (37) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should enable, under certain circumstances, the parties 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.
- (38) This Regulation should not prevent the parties from settling the case amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the property consequences of the registered partnership is not the law of that Member State.
- (39) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the property consequences of registered partnerships of partners, this Regulation should set out exhaustively the grounds on which such subsidiary jurisdiction may be exercised.
- (40) In order to remedy, in particular, situations of denial of justice, this Regulation should provide for a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on the property consequences of a registered partnership which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a partner cannot reasonably be expected to initiate or conduct proceedings in that State. 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.
- (41) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters. One such procedural rule is a *lis pendens* rule, which will come into play if the same case on the property consequences of a registered partnership is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the case.
- (42) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, the Regulation should enable partners to know in advance which law will apply to the property consequences of their registered partnership. Harmonised conflict-of-law rules should therefore be introduced in order to avoid contradictory results. The main rule should ensure that the property consequences of a registered partnership are governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid fragmentation, the law applicable should govern the property consequences of the registered partnership as a whole, that is to say, all the property consequences covered by the registered partnership, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.
- (43) The law determined by this Regulation should apply even if it is not the law of a Member State.
- (44) To facilitate to partners the management of their property, this Regulation should authorise them to choose the law applicable to the property consequences of their registered partnership, regardless of the nature or location of the property, among the laws with which they have close links such as because of their habitual residence or nationality. However, in

order to avoid depriving the choice of law of any effect and thereby leaving the partners with a legal vacuum, such choice of law should be limited to a law that attaches property consequences to registered partnerships. This choice may be made at any moment, before the registration of the partnership, at the time of the registration of the partnership or during the course of the registered partnership.

- (45) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the property consequences of registered partnerships being made without the partners being notified, no change of law applicable to the property consequences of the registered partnership should be made except at the express desire of the parties. Such a change by the partners should not have retrospective effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties.
- (46) Rules on the material and formal validity of the agreement on a choice of applicable law should be defined so that the informed choice of the partners is facilitated and their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that partners are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the Member State in which the two partners have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. For example, such additional formal rules may exist in a Member State where the agreement is inserted in a partnership property agreement. If, at the time the agreement is concluded, the partners are habitually resident in different Member States which lay down different formal rules, compliance with the formal rules of one of these States should suffice. If, at the time the agreement is concluded, only one of the partners is habitually resident in a Member State which lays down additional formal rules, these rules should be complied with.
- (47) A partnership property agreement is a type of disposition on partners' property the admissibility and acceptance of which vary among the Member States. In order to make it easier for property rights acquired as a result of a partnership property agreement to be accepted in the Member States, rules on the formal validity of partnership property agreements should be defined. At least the agreement should be expressed in writing, dated and signed by both parties. However, the agreement should also fulfil additional formal validity requirements set out in the law applicable to the property consequences of registered partnership as determined by the Regulation and in the law of the Member State in which the partners have their habitual residence. This Regulation should also determine which law is to govern the material validity of such agreement.
- (48) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation should provide that the law of the State under whose law the mandatory registration of the partnership was made in order to establish it should apply to the property consequences of the registered partnership.
- (49) Where this Regulation refers to nationality as a connecting factor, the question of how to consider a person having multiple nationalities is a preliminary question which falls outside the scope of this Regulation and should be left to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union. This consideration should have no effect on the validity of a choice of law made in accordance with this Regulation.

- (50) With regard to the determination of the law applicable to the property consequences of a registered partnership in the absence of a choice of law and a partnership property agreement, the judicial authority of a Member State, at the request of either of the partners, should, in exceptional cases – where the partners have moved to the State of their habitual residence for a long duration – be able to arrive at the conclusion that the law of that State may apply if the partners have relied on it. Whatever the case, it may not infringe the rights of third parties.
- (51) The law determined as the law applicable to the property consequences of the registered partnership should govern such consequences from the classification of property of one or both partners into different categories during the registered partnership and after its dissolution, to the liquidation of the property. It should include the effects of the property consequences of the registered partnership on a legal relationship between a partner and third parties. However the law applicable to property consequences of registered partnerships may be invoked against a third party by a partner to govern such effects only when the legal relations between the partner and the third party arose at a time where the third party knew or should have known of that law.
- (52) Considerations of public interest, such as the protection of a Member State's political, social or economic organisation, should justify giving the courts and other competent authorities of the Member States the possibility, in exceptional cases, of applying exceptions based on overriding mandatory provisions. Accordingly, the concept of "overriding mandatory provisions" should cover rules of imperative nature such as rules for the protection of the family home. However, this exception to the application of the law applicable to the property consequences of the registered partnership requires a strict interpretation in order to remain compatible with the general objective of this Regulation.
- (53) Considerations of public interest should also allow courts and other competent authorities dealing with matters of the property consequences of registered partnerships in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public policy exception in order to set aside the law of another State or to refuse to recognise — or, as the case may be, accept — or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof on the principle of non-discrimination.
- (54) Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.
- (55) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of the property consequences of registered partnerships, this Regulation should lay 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.
- (56) In order to take into account the different systems for dealing with matters of the property consequences of registered partnerships in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of property consequences of registered partnerships.

- (57) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.
- (58) The ‘authenticity’ of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (59) The term ‘the legal acts or legal relationships recorded in an authentic instrument’ should be interpreted as referring to the contents as to substance recorded in the authentic instrument. A party wishing to challenge the legal acts or legal relationship recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the property consequences of the registered partnership.
- (60) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (61) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (62) Should an authority, in the application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority, taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.
- (63) However, the recognition and enforcement of a decision on the property consequences of a registered partnership under this Regulation should not in any way imply the recognition of the registered partnership which gave rise to the decision.

- (64) The relationship between this Regulation and the bilateral or multilateral conventions on the property consequences of registered partnerships to which the Member States are party should be specified.
- (65) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring Member States to communicate certain information regarding their legislation and procedures relating to the property consequences of registered partnerships within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC<sup>25</sup>. In order to allow for the timely publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.
- (66) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement.
- (67) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>26</sup> should apply.
- (68) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>27</sup>.
- (69) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.
- (70) The objectives of this Regulation, namely the free movement of persons in the European Union, the opportunity for partners to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, where appropriate by means of enhanced cooperation between Member States. Under the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union, the Union has therefore competence to act. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (71) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21 and 47 covering, respectively, respect for private and family life, the right to found a family according to national laws, property rights, the principle of non-discrimination and the right

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<sup>25</sup> OJ L 174, 27.6.2001, p. 25.

<sup>26</sup> OJ L 124 8.6.1971, p. 1.

<sup>27</sup> OJ L 55, 28.2.2011, p. 13.

to an effective remedy and to a fair trial. This Regulation must be applied by the courts and other competent authorities of the Member States in observance of those rights and principles.

HAS ADOPTED THIS REGULATION:

## **Chapter I**

### **Scope and definitions**

#### *Article 1*

##### **Scope**

1. This Regulation shall apply to matters of the property consequences of registered partnerships.  
It shall not apply to revenue, customs or administrative matters.
2. The following shall be excluded from the scope of this Regulation:
  - (a) the legal capacity of partners,
  - (b) the existence, validity or recognition of a registered partnership,
  - (c) maintenance obligations,
  - (d) the succession to the estate of the deceased partner,
  - (e) social security,
  - (f) the entitlement to transfer or adjustment between partners in the case of dissolution or annulment of the registered partnership, of rights to retirement or disability pension accrued during the registered partnership and which have not generated pension income during the registered partnership,
  - (g) the nature of rights in rem relating to a property, and
  - (h) any recording in a register of rights in immovable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

#### *Article 2*

### **Competence in matters of property consequences of registered partnerships within the Member States**

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of property consequences of registered partnerships.

#### *Article 3*

##### **Definitions**

1. For the purposes of this Regulation:

- (a) 'registered partnership' means 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 fulfills the legal formalities required by that law for its creation;
- (b) 'property consequences of a registered partnership' means the set of rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution;
- (c) 'partnership property agreement' means any agreement between partners or future partners by which they organise the property consequences of their registered partnership;
- (d) 'authentic instrument' means a document in a matter of the property consequences of a registered partnership which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
  - (i) relates to the signature and the content of the authentic instrument, and
  - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin;;
- (e) 'decision' means any decision in a matter of the property consequences of a registered partnership given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;
- (f) 'court settlement' means a settlement in a matter of the property consequences of a registered partnership which has been approved by a court, or concluded before a court in the course of proceedings;
- (g) 'Member State of origin' means the Member State in which, as the case may be, the decision has been given, the authentic instrument drawn up, or the court settlement approved or concluded;
- (h) 'Member State of enforcement' means the Member State in which recognition and/or enforcement of the decision, authentic instrument, or court settlement is requested

2. For the purposes of this Regulation, the term 'court' means any judicial authority and all other authorities and legal professionals with competence in matters of property consequences of registered partnerships which exercise judicial functions or act by delegation of power by a judicial authority or under its control, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State in which they operate:
- (i) may be made the subject of an appeal to or review by a judicial authority; and
  - (ii) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 64.

## **Chapter II Jurisdiction**

### *Article 4*

#### **Jurisdiction in the event of the death of one of the partners**

Where a court of a Member State is seised in matters of the succession of a registered partner under Regulation (EU) n° 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.

### *Article 5*

#### **Jurisdiction in cases of dissolution or annulment**

1. 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.
2. If the agreement referred to in paragraph 1 is concluded before the court is seised to rule on matters of the property consequences of the registered partnership, the agreement shall comply with Article 7.

### *Article 6*

#### **Jurisdiction in other cases**

Where no court of a Member State has jurisdiction according to Articles 4 and 5 or in cases other than those provided for in Article 4 or 5, jurisdiction to rule on the property consequences of a registered partnership shall lie with the courts of the Member State:

- (a) in whose territory the partners are habitually resident at the time the court is seised, or failing that,
- (b) in whose territory the partners were last habitually resident, insofar as one of them still resides there at the time the court is seised, or failing that,
- (c) in whose territory the respondent is habitually resident at the time the court is seised, or failing that,
- (d) of the partners' common nationality at the time the court is seised, or failing that,
- (e) under whose law the registered partnership was created.

### *Article 7*

#### **Choice of court**

1. In cases covered by Article 6, the parties may agree that the courts of the Member State whose law is applicable in accordance with Articles 22 or 26(1) or the courts of the

Member State under whose law the registered partnership was created shall have exclusive jurisdiction to rule on the property consequences of their registered partnership.

2. The agreement shall be expressed in writing and dated and signed by the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

#### *Article 8*

### **Jurisdiction based on the appearance of the defendant**

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable in accordance with Articles 22, 26(1), and before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Article 4.
2. Before assuming jurisdiction under paragraph 1, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

#### *Article 9*

### **Alternative jurisdiction**

1. If a court of the Member State that has jurisdiction under Articles 4, 5, 6 (a) (b) (c) or (d) holds that its law does not provide for the institution of registered partnership, it may decline jurisdiction. If the court decides to decline, it shall do so without undue delay.
2. Where a court referred to in paragraph 1 declines jurisdiction and where the parties agree to confer jurisdiction to the courts of any other Member State in accordance with Article 7, jurisdiction to rule on the property consequences of the registered partnership shall lie with the courts of that Member State.

In other cases, jurisdiction to rule on the property consequences of a registered partnership shall lie with the courts of any other Member State under Article 6 or 8.

3. This Article shall not apply when the parties have obtained a dissolution or annulment of a registered partnership which is capable of recognition in the Member State of the forum.<sup>28</sup>

#### *Article 10*

### **Subsidiary jurisdiction**

Where no court of a Member State has jurisdiction under Articles 4, 5, 6, 7 and 8, or when all of the courts according to Article 9 have declined jurisdiction and no court of a Member State has jurisdiction under Article 6(e), Articles 7 and 8, the courts of a Member State shall have jurisdiction in so far as immovable property of one or both partners are located in the territory of that Member State, but in that event the court seised shall have jurisdiction to rule only in respect of the immovable property in question.

#### *Article 11*

### ***Forum necessitatis***

Where no court of a Member State has jurisdiction pursuant to Articles 4, 5, 6, 7, 8, and 10 or when all of the courts according to Article 9 have declined jurisdiction and no court of a Member

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<sup>28</sup> Similar language ("capable of recognition") can be found in Brussels I (recast) Regulation, Article 33(1)(a) and (3), Article 34(1)(b) and recital 23.

State has jurisdiction under Articles 6(e), 7, 8 and 10, the courts of a Member State may, on an exceptional basis, rule on the property consequences of a registered partnership if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

*Article 12*  
**Counterclaims**

The court in which proceedings are pending pursuant to Articles 4, 5, 6, 7, 8, 10 or 11 shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

*Article 13*  
**Limitation of proceedings**

1. Where the estate of the deceased whose succession falls under Regulation (EU) No 650/2012 comprises assets located in a third State, the court seised to rule on the property consequences of a registered partnership may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.
2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

*Article 14*  
**Seising a court**

For the purpose of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court; or
- (c) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

*Article 15*  
**Examination as to jurisdiction**

Where a court of a Member State is seised of a matter concerning the property consequences of a registered partnership over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

#### *Article 16*

#### **Examination as to admissibility**

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction according to this Regulation shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>29</sup> shall apply instead of paragraph 1 of this article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

#### *Article 17*

#### ***Lis pendens***

1. Where proceedings involving the same cause of action and between the parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In the cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised..
3. If the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

#### *Article 18*

#### **Related actions**

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

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<sup>29</sup> OJ L 324, 10.12.2007, p. 79.

*Article 19*

**Provisional, including protective, measures**

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

**Chapter III**  
**Applicable law**

*Article 20*

**Universal application**

The law designated as applicable by this Regulation shall be applied whether or not it is the law of a Member State.

*Article 21*

**Unity of the applicable law**

The law applicable to the property consequences of a registered partnership shall apply to all assets that are subject to those consequences, regardless of where the assets are located.

*Article 22*

**Choice of the applicable law**

1. 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:
  - (a) 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
  - (b) the law of a State of nationality of either partner or future partner at the time the agreement is concluded, or
  - (c) the law of the State under whose law the registered partnership was created.
2. Unless the partners agree otherwise, a change of the law applicable to the property consequences of their registered partnership made during the partnership shall have prospective effect only.
3. Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law.

*Article 23*

**Formal validity of the agreement on a choice of applicable law**

1. The agreement referred to in Article 22 shall be expressed in writing, dated and signed by both partners. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. However, if the law of the Member State in which both partners have their habitual residence at the time the agreement is concluded lays down additional formal requirements for partnership property agreements, those requirements shall apply.
3. If the partners are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for partnership property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.
4. If only one of the partners is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for partnership property agreements, those requirements shall apply.

#### *Article 24*

#### **Consent and material validity**

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under Article 22 of this Regulation if the agreement or term were valid.
2. Nevertheless, a partner, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

#### *Article 25*

#### **Formal validity of a partnership property agreement**

1. The partnership property agreement shall be expressed in writing, dated and signed by both partners. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.
2. However, if the law of the Member State in which both partners have their habitual residence at the time the agreement is concluded lays down additional formal requirements for partnership property agreements, those requirements shall apply.  
  
If the partners are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for partnership property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.  
  
If only one of the partners is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for partnership property agreements, those requirements shall apply.
3. However, if the law applicable to the property consequences of a registered partnership imposes additional formal requirements, those requirements shall apply

#### *Article 26*

#### **Applicable law in the absence of choice by the parties**

1. In the absence of any agreement pursuant to Article 22, 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.

2. By way of exception and upon application by either partner, the judicial authority having jurisdiction to rule on matters of the property consequences of a registered partnership may decide that the law of a State other than the State whose law is applicable under paragraph 1 shall govern the property consequences of the registered partnership if the law of that other State attaches property consequences to the institution of the registered partnership and if the applicant demonstrates that:
  - (a) the partners maintained their last common habitual residence in that State for a significantly long period of time; and
  - (b) both partners had relied on the law of that other State in arranging or planning their property relations.

The law of that other State shall apply as from the creation of the registered partnership, unless one partner disagrees. In the latter case, the law of that other State shall have effect as from the establishment of the last common habitual residence in that other State.

The application of the law of the other State shall not adversely affect the rights of third parties deriving from the law applicable under paragraph 1.

Paragraph 3 shall not apply when the partners have concluded a partnership property agreement before the establishment of their last common habitual residence in that other State.

#### *Article 27* **Scope of the applicable law**

The law applicable to the property consequences of registered partnerships under this Regulation shall determine, inter alia:

- (a) the classification of property of either or both partners into different categories during and after the registered partnership,
- (b) the transfer of property from one category to the other,
- (c) the responsibility of one partner for liabilities and debts of the other partner,
- (d) the powers, rights and obligations of either or both partners with regard to property,
- (e) the partition, distribution or liquidation of the property upon dissolution of the registered partnership,
- (f) the effects of the property consequences of registered partnerships on a legal relationship between a partner and third parties, and
- (g) the material validity of a partnership property agreement.

#### *Article 28* **Effects in respect of third parties**

1. Notwithstanding Article 27(f), the law that governs the property consequences of a registered partnership between the partners may not be invoked by a partner against a third

party in a dispute between the third party and either or both of the partners unless the third party knew or, in the exercise of due diligence, should have known of that law.

2. The third party is deemed to possess this knowledge, if
  - (a) the law that governs the property consequences of the registered partnership is the law of
    - (i) the State whose law is applicable to the transaction between a partner and the third party,
    - (ii) the State where the contracting partner and the third party have their habitual residence or,
    - (iii) in cases involving immovable property, the State in which the property is situated,
  - or
  - (b) either partner had complied with the applicable requirements for disclosure or registration of the property consequences of the registered partnership specified by the law of:
    - (i) the State whose law is applicable to the transaction between a partner and the third party
    - (ii) the State where the contracting partner and the third party have their habitual residence or,
    - (iii) in cases involving immovable property, the State in which the property is situated
3. Where the law that governs the property consequences of a registered partnership cannot be invoked by a partner against a third party by virtue of paragraph 1, the property consequences of the registered partnership in respect of the third party will be governed:
  - (a) by the law of the State whose law is applicable to the transaction between a partner and the third party; or
  - (b) in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered

#### *Article 29*

#### **Adaptation of rights *in rem***

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the property consequences of a registered partnership 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 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.

*Article 30*

**Overriding mandatory provisions**

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
2. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the property consequences of a registered partnership under this Regulation.

*Article 31*

**Public policy**

The application of a provision of the law of any State designated by this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

*Article 32*

**Exclusion of renvoi**

The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.

*Article 33*

**States with more than one legal system - territorial conflicts of laws**

1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of the property consequences of registered partnerships, the internal conflict of laws rules of that State shall determine the relevant territorial unit whose rules of law shall apply.
2. In the absence of such internal conflict of laws rules:
  - (a) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the partners, be construed as referring to the law of the territorial unit in which the partners have their habitual residence;
  - (b) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the partners, be construed as referring to the law of the territorial unit with which the partners have the closest connection;
  - (c) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.

*Article 34*

**States with more than one legal system - inter-personal conflicts of laws**

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of the property consequences of registered partnerships, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the partners have the closest connection shall apply.

*Article 35*

**Non-application of this Regulation to internal conflicts of laws**

A Member State which comprises several territorial units each of which has its own rules of law in respect of the property consequences of registered partnerships shall not be required to apply this Regulation to conflicts of laws arising between such units only.

**Chapter IV**  
**Recognition, enforceability and enforcement of decisions**

*Article 36*

**Recognition**

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in Articles 44 to 57, apply for the decision to be recognised.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

*Article 37*

**Grounds of non-recognition**

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;
- (d) it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the

earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

*Article 38*

**Fundamental rights**

Article 37 shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, in particular Article 21 thereof on the principle of non-discrimination.

*Article 39*

**Prohibition of review of jurisdiction of the court of origin**

1. The jurisdiction of the court of the Member State of origin may not be reviewed.
2. The public policy (*ordre public*) criterion referred to in Article 37 shall not apply to the rules on jurisdiction set out in Articles 4 to 12.

*Article 40*

**No review as to substance**

Under no circumstances may a decision given in a Member State be reviewed as to its substance.

*Article 41*

**Staying of recognition proceedings**

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.

*Article 42*

**Enforceability**

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 44 to 57.

*Article 43*

**Determination of domicile**

To determine whether, for the purposes of the procedure provided for in Articles 44 to 57, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

*Article 44*

**Jurisdiction of local courts**

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated to the Commission in accordance with Article 64.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

*Article 45*

**Procedure**

1. The application procedure shall be governed by the law of the Member State of enforcement.
2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.
3. The application shall be accompanied by the following documents:
  - (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
  - (b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 67(2), without prejudice to Article 46.

*Article 46*

**Non-production of the attestation**

1. If the attestation referred to in point (b) of Article 45(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or competent authority so requires, a translation or transliteration of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

*Article 47*

**Declaration of enforceability**

The decision shall be declared enforceable immediately on completion of the formalities in Article 45 without any review under Article 37. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

*Article 48*

**Notice of the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

*Article 49*

**Appeal against the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability may be appealed by either party.

2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 64.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 16 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.
5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

*Article 50*

**Procedure to contest the decision given on appeal**

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 64.

*Article 51*

**Refusal or revocation of a declaration of enforceability**

The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 37. It shall give its decision without delay.

*Article 52*

**Staying of proceedings**

The court with which an appeal is lodged under Article 49 or Article 50 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

*Article 53*

**Provisional, including protective, measures**

1. When a decision must be recognised in accordance with this Chapter, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 47 being required.
2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.
3. During the time specified for an appeal pursuant to Article 49(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

*Article 54*

**Partial enforceability**

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
2. An applicant may request a declaration of enforceability limited to parts of a decision.

*Article 55*

**Legal aid**

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

*Article 56*

**No security, bond or deposit**

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

*Article 57*

**No charge, duty or fee**

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

## **Chapter V**

### **Authentic instruments and court settlements**

*Article 58*

**Acceptance of authentic instruments**

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 67(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.
4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of property consequences of registered partnerships, that court shall have jurisdiction over that question

*Article 59*

**Enforceability of authentic instruments**

1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.
2. For the purposes of point (b) of Article 45(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).
3. The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

*Article 60*

**Enforceability of court settlements**

1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.
2. For the purposes of point (b) of Article 45(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).
3. The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

**Chapter VI**  
**General and final provisions**

*Article 61*

**Legalisation and other similar formalities**

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

#### Article 62

### **Relations with existing international conventions**

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation and which concerns matters covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 of the Treaty.
2. Notwithstanding paragraph 1, this Regulation shall, between Member States, take precedence over conventions which relate to subjects governed by this Regulation and to which the Member States are party.

#### Article 63

### **Information made available to the public**

The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, 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 which has competence in matters thereof and on the effects in respect of third parties referred to in Article 28.

The Member States shall keep the information permanently updated.

#### Article 64

### **Information on contact details and procedures**

1. By ...<sup>\*</sup>, the Member States shall communicate to the Commission:
  - (a) the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 44(1) and with appeals against decisions on such applications in accordance with Article 49(2);
  - (b) the procedures to contest the decision given on appeal referred to in Article 50;

The Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union*, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a) of paragraph 1.
3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.

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\* OJ: please insert the date: 9 months before the date of application of this Regulation.

*Article 65*

**Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)**

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).
2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.
3. The Commission shall publish the list and any subsequent amendments in the *Official Journal of the European Union*.
4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

*Article 66*

**Establishment and subsequent amendment of the attestations and forms referred to in Articles 45(3)(b), 58, 59 and 60**

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 45(3)(b), 58, 59 and 60. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

*Article 67*

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 68*

**Review clause**

1. No later than eight years after the date of application, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. Where necessary, the report shall be accompanied by proposals to amend this Regulation.
2. No later than five years after the date of application, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of Articles 9 and 38 of this Regulation. This report shall evaluate in particular the extent to which these articles have ensured access to justice.
3. To that end, Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.

*Article 69*  
**Transitional provisions**

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after the date of its application, subject to paragraphs 2 and 3
2. However, if the proceedings in the Member State of origin were instituted before the date of application of this Regulation, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.
3. Chapter III shall apply only to partners who register their partnership or who specify the law applicable to the property consequences of their registered partnership after the date of application of this Regulation.

*Article 70*  
**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from ...<sup>30</sup>, except for Articles 63 and 64 which shall apply from ...<sup>31</sup>, and Articles 65, 66 and 67, which shall apply from ...<sup>32</sup>

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at Brussels,  
*For the Council*

*The President*

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<sup>30</sup> Two and a half year after its entry into force.

<sup>31</sup> Nine months before the date of application

<sup>32</sup> The day following the date of entry into force of this Regulation.