

PROPOSAL FOR A COUNCIL REGULATION on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2016)106)

FINAL DOCUMENT

The Committee on Justice of Italy's Chamber of Deputies, having examined the proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2016)106), pursuant to article 127 of the Chamber of Deputies Rules of Procedure,

whereas:

- the increasing mobility of persons within an area without internal borders has led to a significant increase in the number of couples, married or not, belonging to different Member States or living in a Member State of which they are not citizens, or who acquire property in the territory of several States within the Union;
- a number of practical and legal difficulties have arisen in the management of their property following separation or the death of a partner, often due to conflict of laws and of jurisdiction both in terms of substantive and of private international law applying to the property effects as a result of marriage and of registered partnerships;
- in 2011, the European Commission had drawn up two proposals for a Regulation to regulate this matter which, because of the reservations raised by several Member States, could not be finally adopted;
- subsequently, seventeen Member States (Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria and Finland) stated their intention to establish enhanced cooperation regarding jurisdiction, applicable law, and the recognition and enforcement of decisions regarding matrimonial property regimes (the same intention has also been declared in relation to registered partnership property regimes), requesting the Commission to submit a proposal to the Council to attain this end;
- following this request, on March 2, 2016, the European Commission presented a proposal for a decision authorising this enhanced cooperation;
- this proposal, which is fully in keeping with the purposes of enhanced cooperation, is designed to avoid creating parallel procedures and enforcing differing substantive laws applying to the property of married couples; to guarantee spouses the possibility to choose the rules and legal provisions which apply to their situation; to facilitate the recognition and implementation of decisions regarding the international property regimes of married couples; to enable couples to apply to the same judicial authority to settle all questions regarding their situation;

- in particular, the joinder of procedures before a single judicial authority would bring substantial economies, according to the European Commission, estimated to be between about 2,000 and 3,000 euro per procedure, thereby relieving citizens of the need to apply to several judicial authorities depending on the subject matter and the object of the case;

noting that:

- this proposal for a Regulation is intended to institute a complete body of private international law provisions applicable to matrimonial property regimes, with regard to jurisdiction, applicable law, recognition and enforcement of the relevant decisions;
- the purposes of these proposals, which refer solely to their effects on matrimonial property, may only be achieved by adopting common provisions governing matrimonial property regimes, which must be identical in every participating State, in order to guarantee the certainty and predictability of the law;
- the general purposes pursued by the proposals under discussion, of which the text is substantially well-balanced, are judged positively, and do not interfere in any way with the positions of the Member States in regard to their legal definition of the institution of marriage;
- the provisions set forth in the measure under discussion will certainly have a positive impact on citizens in terms of the certainty of the law and the predictability of the applicable provisions, with particular reference to the need to guarantee the full protection of fundamental rights;
- the proposal will help improve citizens' access to justice in the European Union, facilitating the implementation of article 47 of the Charter of Fundamental Rights which guarantees the right to an effective remedy and to a fair trial;
- considering the need to forward this final document promptly to the European Commission as part of the so-called political dialogue, and to the European Parliament and to the Council;

expresses a positive opinion.