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RESOLUTION OF THE 2nd STANDING COMMITTEE

(Justice)

(*Rapporteur*: ALBERTINI)

approved at the session of 10 May 2016

ON 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 final)**

pursuant to Article 144(1) and (6) of the Rules of Procedure

Sent to the Speaker's Office on 13 May 2016

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The Committee, having examined, pursuant to Articles 50 and 144(6) of the Rules of Procedure, the EU document (COM(2016) 106 final) on the Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes,

and having considered the comments by the Committee on European Union Policies;

whereas this Regulation brings into effect the decision authorising enhanced cooperation in the area of decisions relating to matrimonial property regimes and the property consequences of registered partnerships, as laid out in COM(2016) 108;

whereas the increasing mobility of persons within an area without internal frontiers has led to a significant increase in the number of marriages and partnerships between nationals of different Member States who live in a Member State other than their own or acquire property in more than one Member State;

whereas this has led to a number of practical and legal difficulties relating to the daily management of property following the separation of the couple or the death of one of the partners. These difficulties often result from the great disparities between the applicable rules, both in substantive law and in private international law, that govern the property effects of marriage or registered partnerships;

whereas, in 2011, the European Commission prepared two Proposals for Regulations to regulate this matter; however, owing to the reservations expressed by various Member States, they could not be definitively approved;

whereas, 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) indicated their wish to establish enhanced cooperation between themselves in the area 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 asked the Commission to submit a proposal to the Council to that end;

whereas, further to this request, on 2 March 2016, the Commission presented a Proposal for a Decision authorising enhanced cooperation;

whereas, the Proposal in question, which reflects just that desire for enhanced cooperation, aims to avoid the occurrence of parallel proceedings and the application of different substantive laws to the property of married couples, while determining which law applies where the laws of several countries could apply to the matter at hand; it also aims to ensure spouses are able to choose the rules and legal provisions applicable to their situation; to facilitate the recognition and enforcement of decisions relating to international matrimonial property regimes; to make it possible for a couple to bring all legal matters relating to their case before the same court, thereby specifying which court has jurisdiction; to facilitate the recognition and enforcement of a judgment on property matters in one Member State given in another Member State;

having noted that:

the Proposal for a Regulation aims to establish a full 'corpus' of rules of private international law applicable to matrimonial property regimes;

the objectives of the Proposal, which relate solely to the property effects of marriage, can only be achieved through the adoption of common rules on matrimonial property regimes, which must be identical in all participating Member States in order to guarantee legal certainty and predictability for citizens;

the overall aims of the Proposal under discussion, the wording of which is broadly well-balanced, are to be welcomed, since they do not in any way interfere with Member States' viewpoints on the legal definition of marriage;

the provisions in the aforementioned measure will undoubtedly have a positive impact on citizens, in terms of legal certainty and the predictability of applicable rules, especially with regard to the need to ensure the full protection of fundamental rights;

the Proposal helps improve access to justice for citizens within the EU while simplifying the implementation of Article 47 of the Charter of Fundamental Rights of the European Union, which guarantees the right to an effective remedy and to a fair trial;

hereby issues a positive assessment.

COMMENTS AND PROPOSALS OF THE 14TH STANDING COMMITTEE

(EUROPEAN UNION POLICY)

(Rapporteur: GINETTI)

13 April 2016

The Committee, having examined EU documents COM(2016) 106 and COM(2016) 107,

- whereas the documents bring into effect the decision authorising enhanced cooperation in the area of decisions relating to matrimonial property regimes and the property consequences of registered partnerships, as laid out in COM(2016) 108;

- whereas the documents seek to resolve the practical and legal difficulties facing couples 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, both in the daily management of their property and in its division following the separation of the couple or the death of one of the partners.

having noted that:

- the Proposal for a Regulation on decisions in matters of matrimonial property regimes (COM(2016) 106), which is the first implementing act of the enhanced cooperation, is based on the text of the compromise package submitted to the Council meeting of 3 December 2015, and aims to establish a clear legal framework in the European Union for determining jurisdiction and the law applicable to matrimonial property regimes and to facilitate the circulation of decisions and instruments on this matter among Member States. The Proposal does not cover the substantive aspects governing marriage.

In particular, in application of existing EU legislation, courts handling divorce proceedings, legal separation, annulment of the marriage or a succession case following the death of one of the spouses have their jurisdiction extended to any related matrimonial property regime proceedings (Articles 4 to 19). Jurisdiction depends on the agreement of the spouses in the cases referred to in Article 5(2); in other cases, it is defined according to the criteria provided for in Article 6.

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 (Articles 20 to 35).

Decisions issued in one Member State are recognised in other Member States without any particular procedure being necessary; under Article 44(2), local jurisdiction for the enforcement of the provisions shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement;

- the Proposal for a Regulation on decisions in matters of the property consequences of registered partnerships (COM(2016) 107), which is the second implementing act of the enhanced

cooperation, is also based on the text of the compromise package submitted to the Council meeting of 3 December 2015, and aims to establish a clear legal framework in the European Union for determining jurisdiction, applicable law and the recognition and enforcement of decisions in the area of the property consequences of registered partnerships.

In particular, in application of existing EU legislation, courts handling the dissolution of a registered partnership or a succession case following the death of one of the partners, have their jurisdiction extended to any related proceedings on the property consequences of the partnership (Articles 4-19).

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 (Articles 20 to 35).

The rules proposed for the recognition and enforcement of decisions will facilitate the movement of citizens between different Member States (Articles 36 to 57);

considering that:

- Article 67(1) of the Treaty on the Functioning of the European Union (TFEU) states that the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and different legal systems. Under paragraph 4 of the same Article, the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters;

- with regard to the legal basis, the Proposals for Regulations are based on the first subparagraph of Article 81(3) TFEU, on measures concerning aspects of family law with cross-border implications, specifically in conjunction with the preceding paragraph 2(a) and (c), on the mutual recognition and enforcement 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.

The Council is required to vote unanimously on family law matters with cross-border implications, after consulting the European Parliament; this is not, however, the case for other subjects falling within judicial cooperation in civil law matters, for which Article 81(2) TFEU instead provides for the application of ordinary legislative proceedings and thus for the Council to act by qualified majority and as co-legislator with the European Parliament; the decision authorising enhanced cooperation is intended to settle these proceedings;

- with regard to the principle of subsidiarity, the two Proposals include the adoption of common rules on matrimonial and registered partnership property regimes, which must be identical in all Member States participating in the enhanced cooperation in order to guarantee legal certainty and predictability. The application of the Regulation is consistent with this aim;

- with regard to the principle of proportionality, the two Proposals do not try to harmonise the substantive laws of the Member States concerning matrimonial and registered partnership property regimes, nor do they affect the way in which the liquidation of matrimonial property regimes is taxed. Moreover, citizens shall not be liable for any fees, while the fees incurred by the relevant national authorities shall be limited;

whereas, in the previous Parliament, the Senate, further to views expressed by the Justice Committee and this Committee, adopted two reasoned opinions in which it made a number of critical assessments of the two Proposals for Regulations referred to in COM(2011) 126 and 127, in particular the part in which they used Article 81(3) TFEU, on family law, as the legal basis for governing matters concerning marriage or registered partnerships between persons of the same gender;

having assessed the reports submitted to the government under Article 6(4) and (5) of Law No 234 of 24 December 2012,

states, for matters within its remit, that it does not object to the proposals, highlighting the following points:

the Proposal for a Regulation on decisions in matters of matrimonial property regimes (COM(2016) 106) appears very reasonable and has no impact on the substantive regulation of the institution of marriage, since it does not undermine said institution as the basic unit of society covered by Article 29 of the Constitution, as interpreted in Constitutional Court Rulings 138 of 15 April 2010 and 170 of 3 May 2014.

The Proposal for a Regulation on decisions in matters of the property consequences of registered partnerships (COM(2016) 107) now falls within an internal legal framework that focuses more on the regulation of civil partnerships, as is evident from the Senate's approval of the related draft law on 25 February 2016.

Moreover, both Proposals clearly specify that, as their sole purpose is to govern property consequences, they do not define the institutions of either marriage or registered partnerships, nor do they impose upon Member States the recognition of a marriage or registered partnership concluded in another Member State. Furthermore, in this regard, they are consistent with the case-law of the Court of Justice, which confers on Member States jurisdiction for regulating the civil status of persons, except with regard to respect for the principles of non-discrimination and equality of treatment.

Finally, it should be noted that the current wording of Article 19 raises uncertainty as regards the definition of laws to be applied to provisional and protective measures.