

ITALIAN SENATE

17TH PARLIAMENTARY TERM

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No 129

RESOLUTION OF THE 2nd STANDING COMMITTEE

(Justice)

(*Rapporteur*: ALBERTINI)

approved at the session of 10 May 2016

ON 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 (COM (2016) 108 FINAL) (EU DOCUMENT NO 122)

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 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 (COM (2016) 108 final);

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; 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 this Proposal is based on Article 329(1) of the Treaty on the Functioning of the European Union, since the legal and factual grounds are present to justify the use of enhanced cooperation within the meaning of Article 20 of the Treaty on European Union, insofar as the Proposal relates to areas falling within the Union's non-exclusive competences, namely conflict-of-law rules in matters of family law;

having noted that:

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, will provide citizens with significant benefits as it will enable the property regimes of couples to be addressed by a single applicable law, while also allowing international couples to choose the law to be applied to their property, thereby increasing legal certainty for international couples; it will also allow citizens to bring legal proceedings before one court, while simplifying the procedure for the recognition and enforcement of decisions and facilitating the circulation of instruments throughout the EU;

the implementing measures include: *a*) a Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (Decision No 106); *b*) a 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 (Decision No 107);

hereby issues a positive assessment.

OPINION OF THE 14th STANDING COMMITTEE
(EUROPEAN UNION POLICY)

(Rapporteur: GINETTI)

13 April 2016

The Committee, having examined the above-mentioned Community act,

whereas the two Proposals for Regulations on decisions in matters of matrimonial property regimes and the property consequences of registered partnerships (COM(2016) 106 and 107) constitute the continuation of two previous Proposals presented on 16 March 2011 (COM(2011) 126 and 127), which aimed to: treat coherently the property regimes of couples under a single applicable law and by one single authority; to enable married couples to choose the law to be applied to their property; to increase legal certainty for registered partnerships with an international dimension by applying, as a general rule, the law of the State of registration to the property of registered couples;

whereas no agreement could be reached on the proposals presented on 16 March 2011, nor, as the Council concluded at its meeting of 3 December 2015, would it be possible to reach an agreement within a reasonable period. This was also because the legal basis of the Proposals was Article 81(3) of the Treaty on the Functioning of the European Union (TFEU), on judicial cooperation in civil matters relating to measures concerning family law, for which the Treaty states that the Council, in accordance with a special legislative procedure, shall act unanimously after consulting the European Parliament;

whereas, notwithstanding the extensive consultations held in the course of the legislative process for the two above-mentioned Proposals and thus during the 2014 Italian Presidency, the politically-sensitive nature of the matters examined brought to light complications in several Member States whose legal systems make no provision for marriage between persons of the same gender and/or registered partnerships; nor could it be ruled out, even if any future instruments would not require them to introduce unknown institutions into national law, that recognition in their country of the property consequences of such institutions in Member States in which they were permitted could have an indirect effect on their national family law;

whereas, between December 2015 and February 2016, seventeen Member States (Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria and Finland) addressed a request to the Commission to launch the procedure for establishing enhanced cooperation between themselves in the areas addressed by the two above-mentioned Proposals; with this in mind, the approval of the above-mentioned Proposal for a Decision is a prerequisite;

considering that:

the Proposal for a Decision is based on Article 329(1) TFEU and the legal and factual grounds are deemed to exist to justify the use of enhanced cooperation within the meaning of Article 20 of the Treaty on European Union; the Proposal relates to areas falling within the Union's non-exclusive competences, namely conflict-of-law rules in matters of family law; the measures promote the achievement of the objectives of the European Union and strengthen the process of integration; at least nine Member States are participating; the 'last resort' condition is satisfied, since the objectives of the enhanced cooperation, as reported to the Council on 3 December 2015, cannot be attained by the Union as a whole (28 countries);

the Proposal is not subject to scrutiny as regards subsidiarity and proportionality;

the Proposal for a Decision merely authorises the 17 EU Member States to establish enhanced cooperation between themselves in matters of matrimonial property regimes and the property consequences of registered partnerships (Article 1).

having assessed the report 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 proposal, highlighting the following points:

we hereby issue a positive assessment of the Proposal for a Decision on the establishment of enhanced cooperation in the areas referred to above.

We believe the Proposal brings benefits for all citizens of the 17 participating Member States without causing any disadvantage for citizens of the remaining Member States, which could also join the enhanced cooperation at a later date, as provided for by Article 328 TFEU.