



EUROPEAN COMMISSION
Impact Assessment Board

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Opinion

Title

Impact Assessment accompanying the proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement in the field of matrimonial property rights and on property rights of unmarried couples

(draft version of 3 May 2010)

(A) Context

The Stockholm Programme aims for a Europe of citizens where everybody can benefit from the common area of justice, freedom and security, and called for the principle of mutual recognition to be extended to matrimonial property rights and the property consequences of the separation of couples. In 2006 the Commission adopted a Green Paper on conflict of laws in matters concerning matrimonial property regimes. This IA accompanies the initiative on jurisdiction, applicable law and recognition and enforcement in the field of property rights of married couples and registered partnerships (given the specific problems of the latter, these may be dealt with in a separate instrument).

(B) Overall assessment

The report is generally of acceptable quality, but requires additional work in the following areas. First, it needs to clarify the scope of the problems being addressed, in particular by presenting more fully the differences between Member States' rules on jurisdiction, recognition and enforcement of judgements and conflict-of-law in the field of matrimonial property and the property of registered partnerships, and clarifying that also the problems of marriages/partnerships involving third-country nationals would be covered. Second, it should discuss more fully the extent to which the current legal uncertainty faced by marriages/partnerships with an international dimension affects differently various groups in society and how the measures proposed would improve the situation of the more vulnerable groups. Third, the report should analyse more fully the impact on national legal systems, how the need for adjustments would differ by Member State, and justify better the measures which entail the most significant changes to the Member States' legal systems. Finally, it should justify better the assumptions made for the calculation of costs and benefits of the proposed regime.

(C) Main recommendations for improvements

(1) Clarify the scope of the problems being addressed. The report should present more fully the existing differences between Member States' rules on jurisdiction, recognition and enforcement of judgements and conflict-of-law in the field of matrimonial property and the property of registered partnerships. It should make clear that this initiative addresses both marriages/partnerships composed of EU nationals and marriages/partnerships where one or both parties are third-country nationals. Accordingly, the problem definition should assess the number/percentage of such marriages/partnerships in the EU and provide examples to illustrate the specific problems that can arise in these cases.

(2) Discuss more fully the social dimension of this initiative. The report should discuss the extent to which legal uncertainty affects differently various groups in society (e.g. men/women, high income/lower income, high skilled/low skilled) and how this initiative would improve the situation of the more vulnerable groups. For example, the report should explain whether the initiative could improve the legal protection of women being EU nationals and married to nationals of third countries where rights of women may differ from those in the EU.

(3) Analyse more fully the impact on the national legal systems and justify better those measures which entail the most significant changes to those systems. The report should explain how national legal systems would be affected by the proposed measures and how the scale of necessary adjustments would differ by Member State. It should present systematically the views of the stakeholders, in particular the Member States, on the options, including on the proposed harmonisation of the rules on jurisdiction, recognition and enforcement of judgements and conflict-of-law with respect to registered partnerships. The areas of disagreement should be highlighted, and the report should respond to concerns which have been expressed, for example, by the UK government that the proposed solutions would not work in common law jurisdictions. To strengthen the justification for the measures entailing the most significant changes to Member States' legal systems (for example, harmonising the limits to the choice of law, subjecting both movable and immovable property to a single law, providing for the immutability principle), the report should demonstrate more fully how the differences in Member States' laws on these issues contribute to the costs/problems of spouses/partners or third parties. In this context, the report should analyse more fully the impact of the preferred option on the legal systems of Member States which do not currently recognise registered partnerships, strengthening the subsidiarity assessment on this particular aspect of the proposal. The report should explain why providing only for mutual recognition of the choice of law made by spouses/partners rather than harmonising the conflict-of-law rules has not been considered as an option. It should also explain whether this initiative would have an impact on taxation and tax revenues.

(4) Justify better the assumptions made for the calculation of costs and benefits of the proposed regime. The report should justify better the assumptions made when estimating the proportion of problem cases (such as that 50% of international couples who divorced face the problems of legal uncertainty), costs of the problems that would be eliminated by the proposed measures (e.g. 50% in the cases of both divorce or death), and discuss the assumptions behind the cost figures on the different options (e.g. 2 million

€/year for producing leaflets). Given that the problem definition provides a number of stylised examples to illustrate the problems (costs) of couples, the report should explain to what extent those concrete problems would be addressed by the proposed measures.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should follow more closely the format provided in the IA guidelines. While the report provides a glossary in annex 1, the latter should include all terms which might not be clear for a non-specialist reader (for example: *lis pendens*, the *renvoi* rule). The annexes should present the same options as the main report and the numbering should be consistent with the latter. The link/reference to the external study should be provided.

(E) IAB scrutiny process

Reference number	2010/JLS/075
External expertise used	No
Date of IAB meeting	2 June 2010