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**COMMISSION STAFF WORKING DOCUMENT**

**SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying document to the*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Bringing legal clarity to property rights for international couples**

Proposal for a

**COUNCIL REGULATION**

**on jurisdiction, applicable law and the recognition and enforcement of decisions in  
matters of matrimonial property regimes**

*and the*

Proposal for a

**COUNCIL REGULATION**

**on jurisdiction, applicable law and the recognition and enforcement of decisions  
regarding the property consequences of registered partnerships**

{COM(2011) 125 final}  
{COM(2011) 126 final}  
{COM(2011) 127 final}  
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## 1. PROCEDURAL ISSUES AND THE CONSULTATION OF INTERESTED PARTIES

Preparing the future EU initiatives in the field of property of couples lies within the framework of the 2000 Programme of Mutual Recognition of decisions in civil and commercial matters.

In 2003 the Commission commissioned a study on matrimonial property regimes and the property of unmarried couples in private international law and internal law, which highlighted the existence of problems. In 2006 the Commission adopted a Green Paper on conflict of laws in matters concerning matrimonial property regimes<sup>1</sup>, including the question of jurisdiction and mutual recognition.

The Commission set up an expert group to assist it in its work on future legislative proposals, composed of experts acting independently of the Member States (hereafter "MS"). A public hearing was organised on 28 September 2009: 99 participants, from the MS, the expert group as well as academics, lawyers, notaries and member of civil society attended to discuss the usefulness of a European instrument on matrimonial and patrimonial property regimes for international couples.

Finally, the Stockholm Programme called for the principle of mutual recognition to "*be extended to fields that are not yet covered but essential to every day life, e.g. matrimonial property rights and the property consequences of the separation of couples*".

The present report is based on the findings of an external study commissioned by the Commission to assist her in the impact assessment report.

## 2. PROBLEM DEFINITION

More and more citizens in EU move across national borders and this leads to an increased number of international couples or couples with an international dimension: spouses of different nationalities, couples living in a MS of which they are not nationals, owning assets in different MS and sometimes they divorce or die in a country other than the one of their origin. The problem is that it is very difficult for people to know which courts have jurisdiction, and which laws are applicable, to their personal situation and the situation of their property. As a result, they face unintended, and disadvantageous, consequences not only in the daily management of their assets, but also when the couple separates, or when a member of the couple dies.

Although EU rules exist on jurisdiction and applicable law in civil and commercial law, and in some areas of family law, no such laws currently exist for matrimonial property regimes, nor for property rights of unmarried couples. The subject is therefore governed by national law and international agreements between MS.

The causes of current problems for couples in registered partnerships are basically the same as for married couples. However, there are some important additional challenges because the concept of registered partnerships in itself exists only in 14 MS, not all MS have substantive laws on this matter, and even fewer have adopted jurisdiction rules and conflict of law rules.

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<sup>1</sup> COM(2006)400 final

The proposals cover respectively the married couples and the registered partnerships, "de facto" unions are not covered.

### **Size of the problem**

In 2007 there were 2 400 000 new marriages in the EU of which approximately 300 000 (13%) were international and there were 1 047 427 divorces, of which 13% also had an international element. Moreover, in the same year approx. 2.4 million marriages were dissolved through death, of which approximately 390 000 were estimated to be international. All in all, in 2007 more than 430 000 international couples split through divorce or death, and in all these cases matrimonial property had to be divided up.

In 2007 there were approximately 211 000 registered partnerships in the EU, of which over 41 000 had an 'international dimension' with regard to their property (total of international registered partnerships, registered partnerships living abroad or having property abroad).

### **3. OBJECTIVES**

The overall objective of the Proposals is to contribute to the creation of a genuine European area of civil justice in the field of property regimes for married couples and registered partnerships and provide common rules setting out which courts have jurisdiction, and which law should be applied, to property rights of couples with an international dimension.

The general and specific objectives are summarised in the following table:

General objective	Specific objectives
To remove the remaining restrictions on citizens exercising their rights in the European judicial area through the extension of mutual recognition to matrimonial property rights and the property consequences of the separation of couples.	1. To prevent parallel proceedings and of the application of different substantive laws to the property of a married or unmarried couple.
	2. To ensure spouses and partners are able to choose, as far as is appropriate, the rules and legal provisions applicable to their situation.
	3. To facilitate the recognition and enforcement of decisions relating to international property regimes of married and unmarried couples.
	4. To make it possible for a couple to bring all legal matters relating to their case (as a result of separation or death which brings about the liquidation of the matrimonial regime) before the same court.
	5. To ensure that spouses and partners know, where they have not chosen an applicable law, which law will be applicable in the event of liquidation of the property regime.
	6. To ensure compatibility with other proposed EU rules (e.g. in relation to successions and wills and, for married couples, applicable law in divorce proceedings)
	7. To increase access to information on matrimonial and patrimonial property regimes

## 4. POLICY OPTIONS

### 4.1. Description of the policy options

The following policy options have been identified:

Policy Option 1: Status quo - *no new EU action* -.

Policy Option 2: Provision of targeted information to raise citizens' awareness that patrimonial property regimes may not be the same in other MS –*information to be distributed to couples that are about to get married or to register a partnership (e.g. leaflet with some generic information)* -.

Policy Option 3: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments –*EU legislative action in term of Regulation(s) establishing harmonised jurisdiction rules (jurisdiction would be determined on the basis of connecting factors), and rules on automatic recognition and enforcement of judgments and other decisions* -.

Policy Option 4: Harmonisation of conflict of law rules – *EU legislative action would provide rules to determine which law is applicable; a choice of law would be permitted; if no choice of law was made, common connecting factors would determine which law apply* -.

Policy Option 5: Uniform optional European proforma for marriage contracts - *a standard marriage contract, common to EU MS, could be concluded by EU citizens. Some parts of these contracts would need to be adapted to the specifics of the national situation* -.

Policy Option 6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments - *this option would combine policy options 3 and 4*.

Policy Option 7: Provision of information for third parties on the existence of property regimes of married couples and registered partnerships – *different possibilities have been identified to address problems of identifying property relationships of married couples or couples in registered partnerships abroad* -.

### 4.2. Comparison of the options

**Policy Option 1: Status quo.** This option would not meet the objectives because MS are unlikely to streamline their national rules. If they may make changes to their national legal

systems on their own initiatives, variations between those systems are likely to remain. On the contrary, the existing problems may likely become aggravated in regards with the increasing mobility of citizens. **Fundamental rights:** without being a violation of the right to property as such, the complexity of the legal framework could have an impact on the actual enjoyment of property. **Social effects:** The problems experienced by the weaker party in the couple during separation proceedings are also likely to remain. **Financial costs:** no. **Economic effects:** with increasing numbers of international complicated cases, time delays and costs, including reduction of the value of assets will become worse than at present.

**Policy Option 2: Targeted provision of information to raise citizens' awareness that the property regime may not be the same in other Member States and that they can register their regime.** This option would contribute to prevent in a very limited extent the occurrence of parallel proceedings and the application of different substantive laws. **Fundamental rights:** positive impact on the actual enjoyment of property. **Social effects:** minor improvements compared to the present situation. **Financial costs:** costs to produce the information leaflets estimated at approximately 2 million euro per year. **Economic effects:** savings would be low.

**Policy option 3: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments, decisions and deeds.** This option would have a limited positive impact, by avoiding parallel court proceedings, and by facilitating the recognition of decisions. However, the lack of certainty on the question to determine which law is applicable would remain. **Fundamental rights:** positive impact on the actual enjoyment of property. **Social impacts:** costs could be saved by preventing parallel proceedings, and by facilitating recognition and enforcement of decisions. **Financial costs:** low (for the introduction of new jurisdiction rules). **Economic impacts:** cost savings for MS would be low.

**Policy option 4: Harmonisation of conflict of law rules.** This option would provide some advantages compared to the current situation. E.g., if several jurisdictions could still handle the same case, they should apply the same substantive law on property regimes (because they would apply the same conflict of law rules). Besides, by introducing harmonised rules on a limited choice of law for the couples, this would increase certainty as to what law would be applied. **Fundamental rights:** positive impact on the actual enjoyment of property. **Social effects:** costs reductions in terms of reduced legal fees. The current situation would be also improved by eliminating the reason for rush to court and by avoiding legal professionals having to look into other countries' conflict of law rules to know which law is applicable. **Financial costs:** very low for administration. **Economic effects:** costs savings would be low.

**Policy Option 5: Uniform optional European proforma for a marriage contract.** This option (developed only for married couples) would ensure that where couples have drawn up a marriage contract, this contract (and consequently the rules chosen by spouses) would be recognised throughout the EU. Furthermore, couples could choose the law to facilitate proceedings linked with divorce or successions. **Social impacts:** increasing of legal certainty. **Financial costs:** costs for administrative work to produce the necessary legislation at EU level. Training of legal professionals in the MS also would be required. **Economic effects:** it would lead to some limited cost savings. Nevertheless, a vast majority of experts consider that such a proposal is immature, because of big differences that still exists between legislation of MS.

**Policy Option 6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments.**

Harmonised conflict of law rules would ensure that the same law is applied throughout the EU to the same case (it would prevent the forum shopping and ensure choice of applicable rules). Besides, harmonised conflict of jurisdiction rules would greatly reduce the possibility of parallel proceedings, and rules on recognition and enforcement would facilitate the easy circulation of decisions and acts. **Social impacts:** reduction of costs for citizen (i.e. reduced legal fees, in particular when a choice of law is made). **Financial costs:** costs for administrative work to produce the necessary legislation at EU level. Training of legal professionals in the MS also would be required. **Economic effects:** costs saving would be the most important by comparison with others policy options.

For the **Policy Option 7, "Provision of information on property regimes of married couples and registered partnerships"**, several sub-options have been envisaged. :

- Creation of a webpage on existing registers of property regimes and national rules,
- Creation of a database/knowledge management system on existing registers of property regimes and national rules,
- Commission Recommendation on the establishment of interconnected national registers of property regimes and the organisation of information campaigns,
- Compulsory establishment of interconnected national registers of property regimes.

All these sub-options tend to increase access to information on property regimes. On the basis of the assessments made in terms of the achievement of objectives, and cost estimations made, the preferred option on information on property regimes is the creation of a webpage on existing registers of matrimonial property regimes and national rules. Although some of the other policy options achieve the objectives to a slightly higher extent, the predictable costs for those outweigh the limited additional benefits.

#### **4.3. The preferred option**

This option would involve EU level action in the form of:

- the adoption of a package of two **Regulations**, one dealing with married couples, the other with couples in registered partnerships, on the harmonisation of conflict of law rules and jurisdiction rules and the introduction of rules on automatic recognition and the enforcement of judgments, other acts; and,
- the **creation of a webpage** on existing registers of matrimonial property regimes and national rules.

#### **4.4. The potential scale and nature of impacts of the preferred option**

This option would address the specific objectives identified above better than any other of the options.

The harmonised jurisdiction rules (including a *lis pendens* provision in combination with rules on recognition and enforcement of judgments and acts) would lead to very few possibilities for parallel proceedings. Moreover, the harmonised conflict of law rules would help in

preventing the occurrence of forum shopping. It also ensures that the same law is applied to the same case in EU MS. The introduction of rules on a limited choice of law for the spouses would increase legal certainty and it would also give them a limited freedom to determine the applicable to their assets, while it would guarantee the protections of third parties' interests.

Problems in relation to recognition of judgments, decisions and deeds are likely to be almost completely eliminated. This includes important progress in terms of cost saving, delay for recognition of decisions, and by avoiding to go to courts in different MS.

Rules on jurisdiction with regard to the liquidation of property regimes would extend the jurisdiction of the court dealing with a divorce or with a succession to matters also relating to the liquidation of the property regime. This would give greater legal certainty to citizens as the jurisdiction handling the divorce or succession would also deal with the liquidation of the property regime.

Problems concerning couples who have not made a choice of law would also be addressed through a system based on a hierarchy of connecting factors that would be applicable to property regimes and would be common to all MS. Furthermore, the principle of immutability and a unitary system would ensure that the law applicable to the matrimonial property regime does not change when the couple move to another MS and apply to all assets.

Moreover, an increased access to information on property regimes in other MS would be provided through the creation of a webpage. It would provide contact details on existing registers and would also facilitate access to information concerning national legislation on property regimes. Overall the preferred option would increase the likelihood that the rights of each spouse or partner, private and public creditors etc. would be respected in an efficient way. The option would also lead to an increased likelihood that the initial choices of the spouses would not be affected by any decision to move to, or acquire property, in another country.

#### **4.5. The costs of the preferred option**

**At EU level** this preferred policy option would lead to the costs for administrative work to produce the necessary legislation. **At national level** costs would occur while establishing the necessary additional national rules (e.g. regarding the jurisdiction of applicable law rules), also in training of legal professionals (e.g. lawyers, judges, notaries, solicitors) and judicial cooperation. Both – EU and the MS – would have additional costs for information campaigns to present the new legislation.

Overall the preferred policy option could lead to cost reductions of up to an estimated maximum third of the costs currently pertaining due to the problems addressed, i.e. approx 0.4 billion euro (costs can be evaluated to 1.1 billion euro each year). These cost reductions would be particularly significant for international marriages and registered partnerships, and more specifically regarding issues related to problems occurring at the moment of separation or death.

The implications of simplifying the law (and reducing legal costs) would be a reduction in the fees for legal professionals. However, this would be offset by potential increases in work to assist those drawing up marriage contracts, or partnership contracts, and in improvements in the quality of work due to reductions in legal uncertainty.

The preferred option would be tax neutral, in so far as the package of two Regulations would not result in any changes to the MS' national legislation on taxation.

#### **4.6. EU added value**

The main problems are conflict between national rules on applicable law, jurisdiction, and problems of recognition and enforcement of decisions and acts between MS. As this is a cross-border problem, it can only be solved at a European level. If MS make changes to their national legal systems on their own initiative, it is unlikely that these will harmonise the country's rules with those of other EU MS. EU level action is necessary in view of the nature and scale of the problem, and would produce clear benefits compared to action at the level of MS. Existing EU legislation on jurisdiction and recognition of judgments in other fields has proved to be effective and useful for citizens.

The preferred option will bring clear benefits to EU citizens who are part of an "international" couple, by setting out clear rules on how their property should be dealt with upon separation or death. The problems addressed by the preferred policy option are in part a consequence of the internal market and free movement of people. If the current problems are not solved, trust in the EU internal market and the EU area of freedom, security and justice without internal borders may be damaged. Indeed, the liquidation of property regimes with international elements is both more costly and time-consuming for citizens than the liquidation of purely national property regimes. By ensuring more efficient handling of the liquidation of property regimes with international elements, the preferred option would promote trust in the operation of the internal market and simplify matters for citizens. The proposals would contribute to reaching the objective of the EU to make the lives of EU citizens easier, without any discrimination between purely national couples and couples with an international dimension.

Overall the estimated economic benefits of the preferred option are substantial, and should contribute to improving the situation of these couples significantly. Only such EU legislative initiatives could provide solutions to couples with cross-border dimensions, and improve the situation of European families who take advantage of a genuine European area without internal borders.

Nevertheless, the initiatives respect the principle of subsidiarity: as it is outside the EU's competence to harmonise the substantive law, the future instruments would not affect national rules of MS, and would not imply harmonisation of substantive laws that apply to property rights between spouses and partners.

## **5. MONITORING AND EVALUATION**

In order to monitor the effective implementation of the Regulations as well as the success of the webpage, regular evaluation and reporting by the Commission will take place. The Commission will prepare evaluation reports on the application of the Regulations. The Commission will also monitor the utilisation of the webpage to see how much it is being used by citizens and third parties to find information, and how it could be improved. Furthermore, the European Judicial Network for civil and commercial matters could play an important role to strengthen the cooperation between MS when applying the Regulations.