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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2016/1103

of 24 June 2016

implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to Council Decision (EU) 2016/954 of 9 June 2016 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 ⁽¹⁾,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with point (c) of Article 81(2) of the Treaty on the Functioning of the European Union (TFEU), such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (4) A programme of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾, common to the Commission and to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-law rules as measures facilitating the mutual recognition of decisions and provides for the drawing-up of an instrument in matters of matrimonial property regimes.

⁽¹⁾ OJ L 159, 16.6.2016, p. 16.

⁽²⁾ Opinion of 23 June 2016 (not yet published in the Official Journal).

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague programme: strengthening freedom, security and justice in the European Union' ⁽¹⁾. In this programme the Council asked the Commission to present a Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area.
- (6) On 17 July 2006 the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available.
- (7) At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'The Stockholm programme — An open and secure Europe serving and protecting citizens' ⁽²⁾. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example matrimonial property rights, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.
- (8) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010, the Commission announced that it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.
- (9) On 16 March 2011, the Commission adopted a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.
- (10) At its meeting of 3 December 2015, the Council concluded that no unanimity could be reached for the adoption of the proposals for the regulations on matrimonial property regimes and the property consequences of registered partnerships and that therefore the objectives of cooperation in this area could not be attained within a reasonable period by the Union as a whole.
- (11) From December 2015 to February 2016, Belgium, Bulgaria, the Czech Republic, Germany, Greece, Spain, France, Croatia Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden addressed requests to the Commission indicating that they wished to establish enhanced cooperation between themselves in the area of the property regimes of international couples and, specifically, of the 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 asking the Commission to submit a proposal to the Council to that effect. By letter to the Commission in March 2016, Cyprus indicated its wish to participate in the establishment of the enhanced cooperation; Cyprus reiterated this wish during the work of the Council.
- (12) On 9 June 2016, the Council adopted Decision (EU) 2016/954 authorising such enhanced cooperation.
- (13) According to Article 328(1) TFEU, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation should ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the Member States which participate in 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, by virtue of Decision (EU) 2016/954, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU.

⁽¹⁾ OJ C 53, 3.3.2005, p. 1.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

- (14) In accordance with Article 81 TFEU, this Regulation should apply in the context of matrimonial property regimes having cross-border implications.
- (15) To provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.
- (16) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, applicable law, recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements.
- (17) This Regulation does not define 'marriage', which is defined by the national laws of the Member States.
- (18) The scope of this Regulation should include all civil-law aspects of matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses. For the purposes of this Regulation, the term 'matrimonial property regime' should be interpreted autonomously and should encompass not only rules from which the spouses may not derogate but also any optional rules to which the spouses may agree in accordance with the applicable law, as well as any default rules of the applicable law. It includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any property relationships, between the spouses and in their relations with third parties, resulting directly from the matrimonial relationship, or the dissolution thereof.
- (19) For reasons of clarity, a number of questions which could be seen as having a link with matters of matrimonial property regime should be explicitly excluded from the scope of this Regulation.
- (20) Accordingly, this Regulation should not apply to questions of general legal capacity of the spouses; however, this exclusion should not cover the specific powers and rights of either or both spouses with regard to property, either as between themselves or as regards third parties, as these powers and rights should fall under the scope of this Regulation.
- (21) This Regulation should not apply to other preliminary questions such as the existence, validity or recognition of a marriage, which continue to be covered by the national law of the Member States, including their rules of private international law.
- (22) As maintenance obligations between spouses are governed by Council Regulation (EC) No 4/2009 ⁽¹⁾, they should be excluded from the scope of this Regulation, as should issues relating to the succession to the estate of a deceased spouse, since they are covered by Regulation (EU) No 650/2012 of the European Parliament and of the Council ⁽²⁾.
- (23) Issues of entitlements to transfer or adjustment between spouses of rights to retirement or disability pension, whatever their nature, accrued during marriage and which have not generated pension income during the marriage are matters that should be excluded from the scope of this Regulation, taking into account the specific systems existing in the Member States. However, this exclusion should be strictly interpreted. Hence, this Regulation should govern in particular the issue of classification of pension assets, the amounts that have already been paid to one spouse during the marriage, and the possible compensation that would be granted in case of a pension subscribed with common assets.
- (24) This Regulation should allow for the creation or the transfer resulting from the matrimonial property regime of a right in immoveable or moveable property as provided for in the law applicable to the matrimonial property regime. It should, however, not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.

⁽¹⁾ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

⁽²⁾ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107).

- (25) However, in order to allow the spouses to enjoy in another Member State the rights which have been created or transferred to them as a result of the matrimonial property regime, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right, the authorities or competent persons of the State whose law is applied to the matrimonial property regime may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.
- (26) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.
- (27) The requirements for the recording in a register of a right in immovable or moveable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions, and how, the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of a spouse to a property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents, drawn up in another Member State by the competent authorities the circulation of which is provided for by this Regulation. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.
- (28) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.
- (29) This Regulation should respect the different systems for dealing with matters of the matrimonial property regime applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the strict sense of the word, exercising judicial functions, but also for example notaries in some Member States who, in certain matters of matrimonial property regime, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given matrimonial property regime by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of matrimonial property regime, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.
- (30) This Regulation should allow all notaries who are competent in matters of matrimonial property regime in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.
- (31) Acts issued by notaries in matters of matrimonial property regime in the Member States should circulate in accordance with this Regulation. When notaries exercise judicial functions they should be bound by the rules of jurisdiction set out in this Regulation, and the decisions they give should circulate in accordance with the provisions of this Regulation on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they should not be bound by those rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions of this Regulation on authentic instruments.

- (32) To reflect the increasing mobility of couples during their married life and facilitate the proper administration of justice, the rules on jurisdiction set out in this Regulation should enable citizens to have their various related procedures handled by the courts of the same Member State. To that end, this Regulation should seek to concentrate the jurisdiction on matrimonial property regime in the Member State whose courts are called upon to handle the succession of a spouse in accordance with Regulation (EU) No 650/2012, or the divorce, legal separation or marriage annulment in accordance with Council Regulation (EC) No 2201/2003⁽¹⁾.
- (33) This Regulation should provide that, where proceedings on the succession of a spouse are pending before the court of a Member State seised under Regulation (EU) No 650/2012, the courts of that State should have jurisdiction to rule on matters of matrimonial property regimes arising in connection with that succession case.
- (34) Similarly, matters of matrimonial property regimes arising in connection with proceedings pending before the court of a Member State seised for divorce, legal separation or marriage annulment under Regulation (EC) No 2201/2003, should be dealt with by the courts of that Member State unless the jurisdiction to rule on the divorce, legal separation or marriage annulment may only be based on specific grounds of jurisdiction. In such cases, the concentration of jurisdiction should not be allowed without the spouses' agreement.
- (35) Where matters of matrimonial property regime are not linked to proceedings pending before the court of a Member State on the succession of a spouse or on divorce, legal separation or marriage annulment, this Regulation should provide for a scale of connecting factors for the purposes of determining jurisdiction, starting with the habitual residence of the spouses at the time the court is seised. These connecting factors are set in view of the increasing mobility of citizens and in order to ensure that a genuine connecting factor exists between the spouses and the Member State in which jurisdiction is exercised.
- (36) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should, under certain circumstances, enable the parties to conclude a choice of court agreement in favour of the courts of the Member State of the applicable law or of the courts of the Member State of the conclusion of the marriage.
- (37) For the purposes of this Regulation and in order to cover all possible situations, the Member State of the conclusion of the marriage should be the Member State before whose authorities the marriage is concluded.
- (38) The courts of a Member State may hold that, under their private international law, the marriage in question cannot be recognised for the purposes of matrimonial property regime proceedings. In such a case, it may exceptionally be necessary to decline jurisdiction under this Regulation. The courts shall act swiftly and the party concerned should have the possibility to submit the case in any other Member State that has a connecting factor granting jurisdiction, irrespective of the order of the jurisdiction grounds, while at the same time respecting the parties' autonomy. Any court seised after a declining of jurisdiction other than the courts of the Member State of the conclusion of the marriage, may also exceptionally need to decline jurisdiction under the same conditions. The combination of the various jurisdiction rules should, however, ensure that parties have all possibilities to seise the courts of a Member State which will accept jurisdiction for the purposes of giving effect to their matrimonial property regime.
- (39) This Regulation should not prevent the parties from settling the matrimonial property regime case amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the matrimonial property regime is not the law of that Member State.
- (40) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the matrimonial property regimes of spouses, this Regulation should set out in an exhaustive way the grounds on which such subsidiary jurisdiction may be exercised.

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

- (41) In order to remedy, in particular, situations of denial of justice, this Regulation should provide for a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a matrimonial property regime which is closely connected with a third state. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third state in question, for example because of civil war, or when a spouse cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.
- (42) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters. One such procedural rule is a *lis pendens* rule, which will come into play if the same matrimonial property regime case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the matrimonial property regime case.
- (43) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable spouses to know in advance which law will apply to their matrimonial property regime. Harmonised conflict-of-law rules should therefore be introduced in order to avoid contradictory results. The main rule should ensure that the matrimonial property regime is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the matrimonial property regime, the law applicable to a matrimonial property regime should govern that regime as a whole, that is to say, all the property covered by that regime, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third state.
- (44) The law determined by this Regulation should apply even if it is not the law of a Member State.
- (45) To facilitate to spouses the management of their property, this Regulation should authorise them to choose the law applicable to their matrimonial property regime, regardless of the nature or location of the property, among the laws with which they have close links because of habitual residence or their nationality. This choice may be made at any moment, before the marriage, at the time of conclusion of the marriage or during the course of the marriage.
- (46) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the matrimonial property regime being made without the spouses being notified, no change of law applicable to the matrimonial property regime should be made except at the express request of the parties. Such a change by the spouses should not have retrospective effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties.
- (47) Rules on the material and formal validity of an agreement on the choice of applicable law should be set up so that the informed choice of the spouses is facilitated and their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. If, at the time the agreement is concluded, the spouses are habitually resident in different Member States which lay down different formal rules, compliance with the formal rules of one of these States should suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a Member State which lays down additional formal rules, those rules should be complied with.
- (48) A matrimonial property agreement is a type of disposition on matrimonial property the admissibility and acceptance of which vary among the Member States. In order to make it easier for matrimonial property rights acquired as a result of a matrimonial property agreement to be accepted in the Member States, rules on the formal validity of a matrimonial property agreement should be defined. At least the agreement should be expressed in writing, dated and signed by both parties. However, the agreement should also fulfil additional formal validity requirements set out in the law applicable to the matrimonial property regime as determined by this Regulation and in the law of the Member State in which the spouses have their habitual residence. This Regulation should also determine which law is to govern the material validity of such an agreement.

- (49) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation should introduce harmonised conflict-of-law rules to determine the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses shortly after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at the time of the conclusion of the marriage, the third criterion should be the law of the State with which the spouses have the closest links. In applying the latter criterion all the circumstances should be taken into account and it should be made clear that these links are to be considered as they were at the time the marriage was entered into.
- (50) Where this Regulation refers to nationality as a connecting factor, the question of how to consider a person having multiple nationalities is a preliminary question which falls outside the scope of this Regulation and should be left to national law, including, where applicable, international Conventions, in full observance of the general principles of the Union. This consideration should have no effect on the validity of a choice of law made in accordance with this Regulation.
- (51) With regard to the determination of the law applicable to the matrimonial property regime in the absence of a choice of law and a matrimonial property agreement, the judicial authority of a Member State, at the request of either of the spouses, should, in exceptional cases — where the spouses have moved to the State of their habitual residence for a long duration — be able to arrive at the conclusion that the law of that State may apply if the spouses have relied on it. Whatever the case, it may not infringe the rights of third parties.
- (52) The law determined as the law applicable to the matrimonial property regime should govern the matrimonial property regime from the classification of property of one or both spouses into different categories during the marriage and after its dissolution, to the liquidation of the property. It should include the effects of the matrimonial property regime on a legal relationship between a spouse and third parties. However, the law applicable to matrimonial property regime may be invoked by a spouse against a third party to govern such effects only when the legal relations between the spouse and the third party arose at a time where the third party knew or should have known of that law.
- (53) Considerations of public interest, such as the protection of a Member State's political, social or economic organisation, should justify giving the courts and other competent authorities of the Member States the possibility, in exceptional cases, of applying exceptions based on overriding mandatory provisions. Accordingly, the concept of 'overriding mandatory provisions' should cover rules of an imperative nature such as rules for the protection of the family home. However, this exception to the application of the law applicable to the matrimonial property regime requires a strict interpretation in order to remain compatible with the general objective of this Regulation.
- (54) Considerations of public interest should also allow courts and other competent authorities dealing with matters of matrimonial property regime in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union ('Charter'), and in particular Article 21 thereof on the principle of non-discrimination.
- (55) Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.
- (56) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of matrimonial property regime, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.

- (57) In order to take into account the different systems for dealing with matters of matrimonial property regimes in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of matrimonial property regime.
- (58) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.
- (59) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (60) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. A party wishing to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the matrimonial property regime.
- (61) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (62) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (63) Should an authority, in application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.
- (64) The recognition and enforcement of a decision on matrimonial property regime under this Regulation should not in any way imply the recognition of the marriage underlying the matrimonial property regime which gave rise to the decision.
- (65) The relationship between this Regulation and the bilateral or multilateral conventions on matrimonial property regime to which the Member States are party should be specified.
- (66) This Regulation should not preclude Member States which are parties to the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden containing international law provisions on marriage, adoption and guardianship, as revised in 2006; to the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised in June 2012; and to the Convention of 11 October 1977 between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgments in civil matters, from

continuing to apply certain provisions of these Conventions in so far as they provide for simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of matrimonial property regime.

- (67) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring Member States to communicate certain information regarding their legislation and procedures relating to matrimonial property regimes within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC ⁽¹⁾. In order to allow for the timely publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.
- (68) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement.
- (69) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council ⁽²⁾ should apply.
- (70) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽³⁾.
- (71) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation.
- (72) The objectives of this Regulation, namely the free movement of persons in the Union, the opportunity for spouses to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, where appropriate by means of enhanced cooperation between Member States. In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, the Union has therefore competence to act. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (73) This Regulation respects fundamental rights and observes the principles recognised in the Charter, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the principle of non-discrimination and the right to an effective remedy and to a fair trial. This Regulation should be applied by the courts and other competent authorities of the Member States in compliance with those rights and principles.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Regulation shall apply to matrimonial property regimes.

It shall not apply to revenue, customs or administrative matters.

⁽¹⁾ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

⁽²⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

⁽³⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

2. The following shall be excluded from the scope of this Regulation:
 - (a) the legal capacity of spouses;
 - (b) the existence, validity or recognition of a marriage;
 - (c) maintenance obligations;
 - (d) the succession to the estate of a deceased spouse;
 - (e) social security;
 - (f) the entitlement to transfer or adjustment between spouses, in the case of divorce, legal separation or marriage annulment, of rights to retirement or disability pension accrued during marriage and which have not generated pension income during the marriage;
 - (g) the nature of rights *in rem* relating to a property; and
 - (h) any recording in a register of rights in immovable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

Article 2

Competence in matters of matrimonial property regimes within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of matrimonial property regimes.

Article 3

Definitions

1. For the purposes of this Regulation:
 - (a) 'matrimonial property regime' means a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution;
 - (b) 'matrimonial property agreement' means any agreement between spouses or future spouses by which they organise their matrimonial property regime;
 - (c) 'authentic instrument' means a document in a matter of a matrimonial property regime which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
 - (i) relates to the signature and the content of the authentic instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin;
 - (d) 'decision' means any decision in a matter of a matrimonial property regime given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;
 - (e) 'court settlement' means a settlement in a matter of matrimonial property regime which has been approved by a court, or concluded before a court in the course of proceedings;

- (f) 'Member State of origin' means the Member State in which the decision has been given, the authentic instrument drawn up, or the court settlement approved or concluded;
- (g) 'Member State of enforcement' means the Member State in which recognition and/or enforcement of the decision, the authentic instrument, or the court settlement is requested.

2. For the purposes of this Regulation, the term 'court' means any judicial authority and all other authorities and legal professionals with competence in matters of matrimonial property regimes which exercise judicial functions or act by delegation of power by a judicial authority or under its control, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 64.

CHAPTER II

JURISDICTION

Article 4

Jurisdiction in the event of the death of one of the spouses

Where a court of a Member State is seised in matters of the succession of a spouse pursuant to Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that succession case.

Article 5

Jurisdiction in cases of divorce, legal separation or marriage annulment

1. Without prejudice to paragraph 2, where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No 2201/2003, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application.
2. Jurisdiction in matters of matrimonial property regimes under paragraph 1 shall be subject to the spouses' agreement where the court that is seised to rule on the application for divorce, legal separation or marriage annulment:
 - (a) is the court of a Member State in which the applicant is habitually resident and the applicant had resided there for at least a year immediately before the application was made, in accordance with the fifth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003;
 - (b) is the court of a Member State of which the applicant is a national and the applicant is habitually resident there and had resided there for at least six months immediately before the application was made, in accordance with sixth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003;
 - (c) is seised pursuant to Article 5 of Regulation (EC) No 2201/2003 in cases of conversion of legal separation into divorce; or
 - (d) is seised pursuant to Article 7 of Regulation (EC) No 2201/2003 in cases of residual jurisdiction.

3. If the agreement referred to in paragraph 2 of this Article is concluded before the court is seised to rule on matters of matrimonial property regimes, the agreement shall comply with Article 7(2).

Article 6

Jurisdiction in other cases

Where no court of a Member State has jurisdiction pursuant to Article 4 or 5 or in cases other than those provided for in those Articles, jurisdiction to rule on a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:

- (a) in whose territory the spouses are habitually resident at the time the court is seised; or failing that
- (b) in whose territory the spouses were last habitually resident, insofar as one of them still resides there at the time the court is seised; or failing that
- (c) in whose territory the respondent is habitually resident at the time the court is seised; or failing that
- (d) of the spouses' common nationality at the time the court is seised.

Article 7

Choice of court

1. In cases which are covered by Article 6, the parties may agree that the courts of the Member State whose law is applicable pursuant to Article 22, or point (a) or (b) of Article 26(1), or the courts of the Member State of the conclusion of the marriage shall have exclusive jurisdiction to rule on matters of their matrimonial property regime.
2. The agreement referred to in paragraph 1 shall be expressed in writing and dated and signed by the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

Article 8

Jurisdiction based on the appearance of the defendant

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable pursuant to Article 22 or point (a) or (b) of Article 26(1), and before which a defendant enters an appearance, shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Article 4 or 5(1).
2. Before assuming jurisdiction pursuant to paragraph 1, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

Article 9

Alternative jurisdiction

1. By way of exception, if a court of the Member State that has jurisdiction pursuant to Article 4, 6, 7 or 8 holds that, under its private international law, the marriage in question is not recognised for the purposes of matrimonial property regime proceedings, it may decline jurisdiction. If the court decides to decline jurisdiction, it shall do so without undue delay.

2. Where a court having jurisdiction pursuant to Article 4 or 6 declines jurisdiction and where the parties agree to confer jurisdiction to the courts of any other Member State in accordance with Article 7, jurisdiction to rule on the matrimonial property regime shall lie with the courts of that Member State.

In other cases, jurisdiction to rule on the matrimonial property regime shall lie with the courts of any other Member State pursuant to Article 6 or 8, or the courts of the Member State of the conclusion of the marriage.

3. This Article shall not apply when the parties have obtained a divorce, legal separation or marriage annulment which is capable of being recognised in the Member State of the forum.

Article 10

Subsidiary jurisdiction

Where no court of a Member State has jurisdiction pursuant to Article 4, 5, 6, 7 or 8, or when all the courts pursuant to Article 9 have declined jurisdiction and no court has jurisdiction pursuant to Article 9(2), the courts of a Member State shall have jurisdiction in so far as immovable property of one or both spouses are located in the territory of that Member State, but in that event the court seised shall have jurisdiction to rule only in respect of the immovable property in question.

Article 11

Forum necessitatis

Where no court of a Member State has jurisdiction pursuant to Article 4, 5, 6, 7, 8 or 10, or when all the courts pursuant to Article 9 have declined jurisdiction and no court of a Member State has jurisdiction pursuant to Article 9(2) or Article 10, the courts of a Member State may, on an exceptional basis, rule on a matrimonial property regime case if proceedings cannot reasonably be brought or conducted or would be impossible in a third state with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

Article 12

Counterclaims

The court in which proceedings are pending pursuant to Article 4, 5, 6, 7, 8, 9 (2), 10 or 11 shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

Article 13

Limitation of proceedings

1. Where the estate of the deceased whose succession falls under Regulation (EU) No 650/2012 comprises assets located in a third state, the court seised to rule on the matrimonial property regime may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third state.

2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

Article 14

Seising a court

For the purpose of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;
- (b) if the document has to be served before being lodged with the court, at a time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court; or
- (c) if the proceedings are opened on the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Article 15

Examination as to jurisdiction

Where a court of a Member State is seised of a matter of matrimonial property regime over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 16

Examination as to admissibility

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction pursuant to this Regulation shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council ⁽¹⁾ shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

⁽¹⁾ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

*Article 17***Lis pendens**

1. Where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In the cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised.
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

*Article 18***Related actions**

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where the actions referred to in paragraph 1 are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

*Article 19***Provisional, including protective, measures**

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

APPLICABLE LAW*Article 20***Universal application**

The law designated as applicable by this Regulation shall be applied whether or not it is the law of a Member State.

*Article 21***Unity of the applicable law**

The law applicable to a matrimonial property regime pursuant to Article 22 or 26 shall apply to all assets falling under that regime, regardless of where the assets are located.

*Article 22***Choice of the applicable law**

1. The spouses or future spouses may agree to designate, or to change, the law applicable to their matrimonial property regime, provided that that law is one of the following:
 - (a) the law of the State where the spouses or future spouses, or one of them, is habitually resident at the time the agreement is concluded; or
 - (b) the law of a State of nationality of either spouse or future spouse at the time the agreement is concluded.
2. Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall have prospective effect only.
3. Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law.

*Article 23***Formal validity of the agreement on a choice of applicable law**

1. The agreement referred to in Article 22 shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.
2. If the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.
3. If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.
4. If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

*Article 24***Consent and material validity**

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it pursuant to Article 22 if the agreement or term were valid.

2. Nevertheless, a spouse may, in order to establish that he did not consent, rely upon the law of the country in which he has his habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 25

Formal validity of a matrimonial property agreement

1. The matrimonial property agreement shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. If the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

3. If the law applicable to the matrimonial property regime imposes additional formal requirements, those requirements shall apply.

Article 26

Applicable law in the absence of choice by the parties

1. In the absence of a choice-of-law agreement pursuant to Article 22, the law applicable to the matrimonial property regime shall be the law of the State:

- (a) of the spouses' first common habitual residence after the conclusion of the marriage; or, failing that
- (b) of the spouses' common nationality at the time of the conclusion of the marriage; or, failing that
- (c) with which the spouses jointly have the closest connection at the time of the conclusion of the marriage, taking into account all the circumstances.

2. If the spouses have more than one common nationality at the time of the conclusion of the marriage, only points (a) and (c) of paragraph 1 shall apply.

3. By way of exception and upon application by either spouse, the judicial authority having jurisdiction to rule on matters of the matrimonial property regime may decide that the law of a State other than the State whose law is applicable pursuant to point (a) of paragraph 1 shall govern the matrimonial property regime if the applicant demonstrates that:

- (a) the spouses had their last common habitual residence in that other State for a significantly longer period of time than in the State designated pursuant to point (a) of paragraph 1; and
- (b) both spouses had relied on the law of that other State in arranging or planning their property relations.

The law of that other State shall apply as from the conclusion of the marriage, unless one spouse disagrees. In the latter case, the law of that other State shall have effect as from the establishment of the last common habitual residence in that other State.

The application of the law of the other State shall not adversely affect the rights of third parties deriving from the law applicable pursuant to point (a) of paragraph 1.

This paragraph shall not apply when the spouses have concluded a matrimonial property agreement before the establishment of their last common habitual residence in that other State.

Article 27

Scope of the applicable law

The law applicable to the matrimonial property regime pursuant to this Regulation shall govern, inter alia:

- (a) the classification of property of either or both spouses into different categories during and after marriage;
- (b) the transfer of property from one category to the other one;
- (c) the responsibility of one spouse for liabilities and debts of the other spouse;
- (d) the powers, rights and obligations of either or both spouses with regard to property;
- (e) the dissolution of the matrimonial property regime and the partition, distribution or liquidation of the property;
- (f) the effects of the matrimonial property regime on a legal relationship between a spouse and third parties; and
- (g) the material validity of a matrimonial property agreement.

Article 28

Effects in respect of third parties

1. Notwithstanding point (f) of Article 27, the law applicable to the matrimonial property regime between the spouses may not be invoked by a spouse against a third party in a dispute between the third party and either or both of the spouses unless the third party knew or, in the exercise of due diligence, should have known of that law.

2. The third party is deemed to possess the knowledge of the law applicable to the matrimonial property regime, if:

(a) that law is the law of:

- (i) the State whose law is applicable to the transaction between a spouse and the third party;
- (ii) the State where the contracting spouse and the third party have their habitual residence; or,
- (iii) in cases involving immovable property, the State in which the property is situated;

or

(b) either spouse had complied with the applicable requirements for disclosure or registration of the matrimonial property regime specified by the law of:

- (i) the State whose law is applicable to the transaction between a spouse and the third party;

- (ii) the State where the contracting spouse and the third party have their habitual residence; or
 - (iii) in cases involving immovable property, the State in which the property is situated.
3. Where the law applicable to the matrimonial property regime between the spouses cannot be invoked by a spouse against a third party by virtue of paragraph 1, the effects of the matrimonial property regime in respect of the third party shall be governed:
- (a) by the law of the State whose law is applicable to the transaction between a spouse and the third party; or
 - (b) in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.

Article 29

Adaptation of rights *in rem*

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the matrimonial property regime and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.

Article 30

Overriding mandatory provisions

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
2. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime pursuant to this Regulation.

Article 31

Public policy (*ordre public*)

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 32

Exclusion of renvoi

The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.

*Article 33***States with more than one legal system — territorial conflicts of laws**

1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of matrimonial property regimes, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.
2. In the absence of such internal conflict-of-laws rules:
 - (a) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the spouses, be construed as referring to the law of the territorial unit in which the spouses have their habitual residence;
 - (b) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the spouses, be construed as referring to the law of the territorial unit with which the spouses have the closest connection;
 - (c) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.

*Article 34***States with more than one legal system — inter-personal conflicts of laws**

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of matrimonial property regimes, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouses have the closest connection shall apply.

*Article 35***Non-application of this Regulation to internal conflicts of laws**

A Member State which comprises several territorial units each of which has its own rules of law in respect of matrimonial property regimes shall not be required to apply this Regulation to conflicts of laws arising between such units only.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS*Article 36***Recognition**

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in Articles 44 to 57, apply for the decision to be recognised.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 37

Grounds of non-recognition

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 38

Fundamental rights

Article 37 of this Regulation shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles recognised in the Charter, in particular in Article 21 thereof on the principle of non-discrimination.

Article 39

Prohibition of review of jurisdiction of the court of origin

1. The jurisdiction of the court of the Member State of origin may not be reviewed.
2. The public policy (*ordre public*) criterion referred to in Article 37 shall not apply to the rules on jurisdiction set out in Articles 4 to 11.

Article 40

No review as to substance

Under no circumstances may a decision given in a Member State be reviewed as to its substance.

*Article 41***Staying of recognition proceedings**

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.

*Article 42***Enforceability**

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 44 to 57.

*Article 43***Determination of domicile**

To determine whether, for the purposes of the procedure provided for in Articles 44 to 57, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

*Article 44***Jurisdiction of local courts**

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to the Commission in accordance with Article 64.
2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

*Article 45***Procedure**

1. The application procedure shall be governed by the law of the Member State of enforcement.
2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.
3. The application shall be accompanied by the following documents:
 - (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
 - (b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 67(2), without prejudice to Article 46.

*Article 46***Non-production of the attestation**

1. If the attestation referred to in point (b) of Article 45(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or competent authority so requires, a translation or transliteration of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

*Article 47***Declaration of enforceability**

The decision shall be declared enforceable immediately on completion of the formalities set out in Article 45 without any review under Article 37. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

*Article 48***Notice of the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

*Article 49***Appeal against the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability may be appealed by either party.
2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 64.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 16 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.
5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

*Article 50***Procedure to contest the decision given on appeal**

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 64.

*Article 51***Refusal or revocation of a declaration of enforceability**

The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 37. It shall give its decision without delay.

*Article 52***Staying of proceedings**

The court with which an appeal is lodged under Article 49 or Article 50 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

*Article 53***Provisional, including protective, measures**

1. When a decision must be recognised in accordance with this Chapter, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 46 being required.
2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.
3. During the time specified for an appeal pursuant to Article 49(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

*Article 54***Partial enforceability**

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
2. An applicant may request a declaration of enforceability limited to parts of a decision.

*Article 55***Legal aid**

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

*Article 56***No security, bond or deposit**

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement in the Member State of enforcement.

*Article 57***No charge, duty or fee**

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

CHAPTER V

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS*Article 58***Acceptance of authentic instruments**

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 67(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State for as long as the challenge is pending before the competent court.

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged for as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of matrimonial property regimes, that court shall have jurisdiction over that question.

Article 59

Enforceability of authentic instruments

1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.

2. For the purposes of point (b) of Article 45(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

Article 60

Enforceability of court settlements

1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.

2. For the purposes of point (b) of Article 45(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or 50 shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 61

Legalisation and other similar formalities

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

Article 62

Relations with existing international conventions

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation or of a decision pursuant to the second or third subparagraph of Article 331(1) TFEU and which concern matters covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 TFEU.

2. Notwithstanding paragraph 1, this Regulation shall, as between Member States, take precedence over conventions concluded between them in so far as such conventions concern matters governed by this Regulation.

3. This Regulation shall not preclude the application of the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden containing international private law provisions on marriage, adoption and guardianship, as revised in 2006; of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised in June 2012; and of the Convention of 11 October 1977 between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements in civil matters, by the Member States which are parties thereto, in so far as they provide for simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of matrimonial property regime.

Article 63

Information made available to the public

The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to matrimonial property regimes, including information on the type of authority which has competence in matters of matrimonial property regimes and on the effects in respect of third parties referred to in Article 28.

The Member States shall keep the information permanently updated.

Article 64

Information on contact details and procedures

1. By 29 April 2018, the Member States shall communicate to the Commission:

- (a) the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 44(1) and with appeals against decisions on such applications in accordance with Article 49(2);
- (b) the procedures to contest the decision given on appeal referred to in Article 50.

The Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union*, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a) of paragraph 1.

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 65

Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.
3. The Commission shall publish the list and any subsequent amendments in the *Official Journal of the European Union*.
4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 66

Establishment and subsequent amendment of the attestations and forms referred to in point (b) of Article 45(3) and Articles 58, 59 and 60

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in point (b) of Article 45(3) and Articles 58, 59 and 60. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

Article 67

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 68

Review clause

1. By 29 January 2027, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. Where necessary, the report shall be accompanied by proposals to amend this Regulation.
2. By 29 January 2024, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of Articles 9 and 38 of this Regulation. This report shall evaluate in particular the extent to which these Articles have ensured access to justice.
3. For the purposes of the reports referred to in paragraphs 1 and 2, Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.

Article 69

Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019 subject to paragraphs 2 and 3.
2. If the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.

3. Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019.

Article 70

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. This Regulation shall apply in the Member States which participate in 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, as authorised by Decision (EU) 2016/954.

It shall apply from 29 January 2019, except for Articles 63 and 64 which shall apply from 29 April 2018, and Articles 65, 66 and 67, which shall apply from 29 July 2016. For those Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU, this Regulation shall apply as from the date indicated in the decision concerned.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at Luxembourg, 24 June 2016.

For the Council

The President

A.G. KOENDERS

COUNCIL REGULATION (EU) 2016/1104**of 24 June 2016****implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to Council Decision (EU) 2016/954 of 9 June 2016 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 ⁽¹⁾,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with point (c) of Article 81(2) of the Treaty on the Functioning of the European Union (TFEU), such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (4) A programme of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾, common to the Commission and to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-law rules as measures facilitating the mutual recognition of decisions and provides for the drawing-up of an instrument in matters of matrimonial property regimes and the property consequences of the separation of unmarried couples.
- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague Programme: strengthening freedom, security and justice in the European Union' ⁽⁴⁾. In this programme the Council asked the Commission to present a Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area.

⁽¹⁾ OJ L 159, 16.6.2016, p. 16.

⁽²⁾ Opinion of 23 June 2016 (not yet published in the Official Journal).

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

- (6) On 17 July 2006 the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available. The Green Paper also addressed all issues of private international law encountered by couples in unions other than marriages, including couples with registered partnerships, and issues specific to them.
- (7) At its meeting in Brussels on 10 and 11 December 2009, the European Council adopted a new multiannual programme called 'The Stockholm Programme — An open and secure Europe serving and protecting citizens' ⁽¹⁾. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example the property consequences of the separation of couples, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.
- (8) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010, the Commission announced that it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.
- (9) On 16 March 2011, the Commission adopted a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.
- (10) At its meeting of 3 December 2015, the Council concluded that no unanimity could be reached for the adoption of the proposals for the regulations on matrimonial property regimes and the property consequences of registered partnerships and that therefore the objectives of cooperation in this area could not be attained within a reasonable period by the Union as a whole.
- (11) From December 2015 to February 2016, Belgium, Bulgaria, the Czech Republic, Germany, Greece, Spain, France, Croatia Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden addressed requests to the Commission indicating that they wished to establish enhanced cooperation between themselves in the area of the property regimes of international couples and, specifically, of the 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 asking the Commission to submit a proposal to the Council to that effect. By letter to the Commission in March 2016, Cyprus indicated its wish to participate in the establishment of the enhanced cooperation; Cyprus reiterated this wish during the work of the Council.
- (12) On 9 June 2016, the Council adopted Decision (EU) 2016/954 authorising such enhanced cooperation.
- (13) According to Article 328(1) TFEU, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation should ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the Member States which participate in 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, by virtue of Decision (EU) 2016/954, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU.
- (14) In accordance with Article 81 TFEU, this Regulation should apply in the context of the property consequences of registered partnerships having cross-border implications.

⁽¹⁾ OJ C 115, 4.5.2010, p. 1.

- (15) To provide unmarried couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to the property consequences of registered partnerships should be covered in a single instrument.
- (16) The way in which forms of union other than marriage are provided for in the Member States' legislation differs from one State to another, and a distinction should be drawn between couples whose union is institutionally sanctioned by the registration of their partnership with a public authority and couples in de facto cohabitation. While some Member States do make provision for such de facto unions, they should be considered separately from registered partnerships, which have an official character that makes it possible to take account of their specific features and lay down rules on the subject in Union legislation. To ensure the smooth functioning of the internal market, barriers to the free movement of people who have entered into a registered partnership need to be eliminated, particularly those creating difficulties for such couples in the administration and division of their property. In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, applicable law, recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements.
- (17) The Regulation should cover matters arising from the property consequences of registered partnerships. 'Registered partnership' should be defined here solely for the purpose of this Regulation. The actual substance of the concept should remain defined in the national laws of the Member States. Nothing in this Regulation should oblige a Member State whose law does not have the institution of registered partnership to provide for it in its national law.
- (18) The scope of this Regulation should include all civil-law aspects of the property consequences of registered partnerships, both the daily management of the partner's property and its liquidation, in particular as a result of the couple's separation or the death of one of the partners.
- (19) This Regulation should not apply to areas of civil law other than the property consequences of registered partnerships. For reasons of clarity, a number of questions which could be seen as having a link with the property consequences of registered partnerships should be explicitly excluded from the scope of this Regulation.
- (20) Accordingly, this Regulation should not apply to questions of general legal capacity of the partners; however, this exclusion should not cover the specific powers and rights of either or both partners with regard to property, either as between themselves or as regards third parties, as these powers and rights should fall under the scope of this Regulation.
- (21) This Regulation should not apply to other preliminary questions such as the existence, validity or recognition of a registered partnership, which is covered by the national law of the Member States, including their rules of private international law.
- (22) As maintenance obligations between spouses are governed by Council Regulation (EC) No 4/2009 ⁽¹⁾, they should be excluded from the scope of this Regulation, as should issues relating to the succession to the estate of a deceased partner, since they are covered by Regulation (EU) No 650/2012 of the European Parliament and of the Council ⁽²⁾.
- (23) Issues of entitlements to transfer or adjustment between partners of rights to retirement or disability pension, whatever their nature, accrued during the registered partnership and which have not generated pension income during the registered partnership are matters that should be excluded from the scope of this Regulation, taking into account the specific systems existing in the Member States. However, this exclusion should be strictly interpreted. Hence, this Regulation should govern in particular the issue of classification of pension assets, the amounts that have already been paid to one partner during the registered partnership, and the possible compensation that would be granted in case of pension subscribed with common assets.

⁽¹⁾ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

⁽²⁾ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107).

- (24) This Regulation should allow for the creation or the transfer resulting from the property consequences of registered partnerships of a right in immovable or movable property as provided for in the law applicable to the property consequences of registered partnerships. It should, however, not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.
- (25) However, in order to allow the partners to enjoy in another Member State the rights which have been created or transferred to them as a result of the property consequences of a registered partnership, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right, the authorities or competent persons of the State whose law is applied to the property consequences of a registered partnership may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.
- (26) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.
- (27) The requirements for the recording in a register of a right in immovable or moveable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions, and how, the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of a partner to a property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents, drawn up in another Member State by the competent authorities the circulation of which is provided for by this Regulation. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.
- (28) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.
- (29) This Regulation should respect the different systems for dealing with matters of the property consequences of registered partnerships applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the strict sense of the word, exercising judicial functions, but also for example notaries in some Member States who, in certain matters of the property consequences of registered partnerships, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in dealing with the property consequences of a registered partnership by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of the property consequences of registered partnerships, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.
- (30) This Regulation should allow all notaries who are competent in matters of the property consequences of registered partnerships in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.

- (31) Acts issued by notaries in matters of the property consequences of registered partnerships in the Member States should circulate in accordance with this Regulation. When notaries exercise judicial functions they should be bound by the rules of jurisdiction set out in this Regulation, and the decisions they give should circulate in accordance with the provisions of this Regulation on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they should not be bound by those rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions of this Regulation on authentic instruments.
- (32) To reflect the increasing mobility of couples and facilitate the proper administration of justice, the rules on jurisdiction set out in this Regulation should enable citizens to have their various related procedures handled by the courts of the same Member State. To that end, this Regulation should seek to concentrate the jurisdiction on the property consequences of registered partnerships in the Member State whose courts are called upon to handle the succession of a partner in accordance with Regulation (EU) No 650/2012 or the dissolution or annulment of the registered partnership.
- (33) This Regulation should provide that, where proceedings on the succession of a partner are pending before the court of a Member State seised under Regulation (EU) No 650/2012, the courts of that State should have jurisdiction to rule on matters of the property consequences of registered partnerships arising in connection with that succession case.
- (34) Similarly, matters of the property consequences of registered partnerships arising in connection with proceedings pending before the court of a Member State seised with an application for dissolution or annulment of a registered partnership should be dealt with by the courts of that Member State, if the partners so agree.
- (35) Where matters of the property consequences of registered partnerships are not linked to proceedings pending before the court of a Member State on the succession of a partner or on dissolution or annulment of the registered partnership, this Regulation should provide for a scale of connecting factors for the purposes of determining jurisdiction starting with the habitual residence of the partners at the time the court is seised. The last step of the scale of jurisdiction factors should point to the Member State under whose law the mandatory registration of the partnership was made in order to establish it. These connecting factors are set in view of the increasing mobility of citizens and to ensure that a genuine connecting factor exists between the partners and the Member State in which jurisdiction is exercised.
- (36) Given that the institution of registered partnership is not provided for in all Member States, the courts of a Member State whose law does not provide for the institution of registered partnership may exceptionally need to decline jurisdiction under this Regulation. In such case, the courts shall act swiftly and the party concerned should have the possibility to submit the case in any other Member State that has a connecting factor granting jurisdiction, irrespective of the order of these jurisdiction grounds, while at the same time respecting the parties' autonomy. Any court seised after a declining of jurisdiction, other than the courts of the Member State under whose law the registered partnership was created, which has jurisdiction on the basis of a choice of court agreement or the appearance of the defendant, may also exceptionally need to decline jurisdiction under the same conditions. Finally, if no court has jurisdiction to deal with the situation in light of the other provisions of this Regulation, an alternative jurisdictional rule should be included in this Regulation to avoid any risk of denial of justice.
- (37) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should, under certain circumstances, enable the parties to conclude a choice of court agreement in favour of the courts of the Member State of the applicable law or of the courts of the Member State under whose law the registered partnership was created.
- (38) This Regulation should not prevent the parties from settling the case amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the property consequences of a registered partnership is not the law of that Member State.
- (39) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the property consequences of registered partnerships, this Regulation should provide in an exhaustive way the ground on which such subsidiary jurisdiction may be exercised.

- (40) In order to remedy, in particular, situations of denial of justice, this Regulation should provide for a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on the property consequences of a registered partnership which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a partner cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.
- (41) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters. One such procedural rule is a *lis pendens* rule, which will come into play if same case on the property consequences of registered partnerships is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the case.
- (42) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable partners to know in advance which law will apply to the property consequences of their registered partnership. Harmonised conflict-of-law rules should therefore be introduced in order to avoid contradictory results. The main rule should ensure that the property consequences of a registered partnership are governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid fragmentation, the law applicable should govern the property consequences of the registered partnership as a whole, that is to say, all the property consequences covered by the registered partnership, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.
- (43) The law determined by this Regulation should apply even if it is not the law of a Member State.
- (44) To facilitate partners' management of their property, this Regulation should authorise them to choose the law applicable to the property consequences of their registered partnership, regardless of the nature or location of the property, among the laws with which they have close links such as because of their habitual residence or nationality. However, in order to avoid depriving the choice of law of any effect and thereby leaving the partners in a legal vacuum, such choice of law should be limited to a law that attaches property consequences to registered partnerships. This choice may be made at any moment, before the registration of the partnership, at the time of the registration of the partnership or during the course of the registered partnership.
- (45) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the property consequences of registered partnerships being made without the partners being notified, no change of law applicable to the property consequences of registered partnership should be made except at the express request of the parties. Such a change by the partners should not have retrospective effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties.
- (46) Rules on the material and formal validity of an agreement on the choice of applicable law should be set up so that the informed choice of the partners is facilitated and their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that partners are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the Member State in which the two partners have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. For example, such additional formal rules may exist in a Member State where the agreement is included in a partnership property agreement. If, at the time the agreement is concluded, the partners are habitually resident in different Member States which lay down different formal rules, compliance with the formal rules of one of these States would suffice. If, at the time the agreement is concluded, only one of the partners is habitually resident in a Member State which lays down additional formal rules, those rules should be complied with.
- (47) A partnership property agreement is a type of disposition on partners' property the admissibility and acceptance of which vary among the Member States. In order to make it easier for property rights acquired as a result of a partnership property agreement to be accepted in the Member States, rules on formal validity of a partnership property agreement should be defined. At least the agreement should be expressed in writing, dated and signed

by both parties. However, the agreement should also fulfil additional formal validity requirements set out in the law applicable to the property consequences of registered partnership as determined by this Regulation and in the law of the Member State in which the partners have their habitual residence. This Regulation should also determine which law is to govern the material validity of such an agreement.

- (48) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation should provide for that the law of the State under whose law the mandatory registration of the partnership was made in order to establish it apply to the property consequences of the registered partnership.
- (49) Where this Regulation refers to nationality as a connecting factor, the question of how to consider a person having multiple nationalities is a preliminary question which falls outside the scope of this Regulation and should be left to national law, including, where applicable, international Conventions, in full observance of the general principles of the Union. This consideration should have no effect on the validity of a choice of law made in accordance with this Regulation.
- (50) With regard to the determination of the law applicable to the property consequences of a registered partnership in the absence of a choice of law and a partnership property agreement, the judicial authority of a Member State, at the request of either of the partners, should, in exceptional cases — where the partners have moved to the State of their habitual residence for a long duration — be able to arrive at the conclusion that the law of that State may apply if the partners have relied on it. Whatever the case, it may not infringe the rights of third parties.
- (51) The law determined as the law applicable to the property consequences of registered partnerships should govern it from the classification of property of one or both partners into different categories during the registered partnership and after its dissolution to the liquidation of the property. It should include the effects of the property consequences of the registered partnership on a legal relationship between a partner and third parties. However the law applicable to property consequences of registered partnerships may be invoked by a partner against a third party to govern such effects only when the legal relations between the partner and the third party arose at a time where the third party knew or should have known of that law.
- (52) Considerations of public interest, such as the protection of a Member State's political, social or economic organisation, should justify giving the courts and other competent authorities of the Member States the possibility, in exceptional cases, of applying exceptions based on overriding mandatory provisions. Accordingly, the concept of 'overriding mandatory provisions' should cover rules of an imperative nature such as rules for the protection of the family home. However, this exception to the application of the law applicable to the property consequences of registered partnerships requires a strict interpretation in order to remain compatible with the general objective of this Regulation.
- (53) Considerations of public interest should also allow courts and other competent authorities dealing with matters of the property consequences of registered partnerships in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public policy exception in order to set aside the law of another State or to refuse to recognise –or, as the case may be, accept –, or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union ('Charter'), and in particular Article 21 thereof on the principle of non-discrimination.
- (54) Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.
- (55) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of the property consequences of registered partnerships, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.

- (56) In order to take into account the different systems for dealing with matters of the property consequences of registered partnerships in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of the property consequences of registered partnerships.
- (57) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.
- (58) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (59) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. A party wishing to challenge the legal acts or legal relationship recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the property consequences of the registered partnership.
- (60) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (61) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (62) Should an authority, in the application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority, taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.
- (63) The recognition and enforcement of a decision on the property consequences of a registered partnership under this Regulation should not in any way imply the recognition of the registered partnership which gave rise to the decision.
- (64) The relationship between this Regulation and the bilateral or multilateral conventions on the property consequences of registered partnerships to which the Member States are party should be specified.
- (65) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring Member States to communicate certain information regarding their legislation and procedures relating to the property consequences of registered partnerships within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC⁽¹⁾. In order to allow for the timely

⁽¹⁾ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.

- (66) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement.
- (67) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council ⁽¹⁾ should apply.
- (68) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾.
- (69) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation.
- (70) The objectives of this Regulation, namely the free movement of persons in the Union, the opportunity for partners to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, where appropriate by means of enhanced cooperation between Member States. In accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union, the Union has therefore competence to act. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (71) This Regulation respects fundamental rights and observes the principles recognised in the Charter, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to found a family according to national laws, property rights, the principle of non-discrimination and the right to an effective remedy and to a fair trial. This Regulation should be applied by the courts and other competent authorities of the Member States in compliance with those rights and principles,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Regulation shall apply to matters of the property consequences of registered partnerships.

It shall not apply to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:
 - (a) the legal capacity of partners,
 - (b) the existence, validity or recognition of a registered partnership,

⁽¹⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124 8.6.1971, p. 1).

⁽²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (c) maintenance obligations,
- (d) the succession to the estate of a deceased partner,
- (e) social security,
- (f) the entitlement to transfer or adjustment between partners, in the case of dissolution or annulment of the registered partnership, of rights to retirement or disability pension accrued during the registered partnership and which have not generated pension income during the registered partnership,
- (g) the nature of rights in rem relating to a property, and
- (h) any recording in a register of rights in immoveable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

Article 2

Competence in matters of property consequences of registered partnerships within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of property consequences of registered partnerships.

Article 3

Definitions

1. For the purposes of this Regulation:
 - (a) 'registered partnership' means the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation;
 - (b) 'property consequences of a registered partnership' means the set of rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution;
 - (c) 'partnership property agreement' means any agreement between partners or future partners by which they organise the property consequences of their registered partnership;
 - (d) 'authentic instrument' means a document in a matter of the property consequences of a registered partnership which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
 - (i) relates to the signature and the content of the authentic instrument, and
 - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin;
 - (e) 'decision' means any decision in a matter of the property consequences of a registered partnership given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;
 - (f) 'court settlement' means a settlement in a matter of the property consequences of a registered partnership which has been approved by a court, or concluded before a court in the course of proceedings;
 - (g) 'Member State of origin' means the Member State in which the decision has been given, the authentic instrument drawn up, or the court settlement approved or concluded;
 - (h) 'Member State of enforcement' means the Member State in which recognition and/or enforcement of the decision, the authentic instrument, or the court settlement is requested.

2. For the purposes of this Regulation, the term 'court' means any judicial authority and all other authorities and legal professionals with competence in matters of property consequences of registered partnerships which exercise judicial functions or act by delegation of power by a judicial authority or under its control, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 64.

CHAPTER II

JURISDICTION

Article 4

Jurisdiction in the event of the death of one of the partners

Where a court of a Member State is seised in matters of the succession of a registered partner under Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matters of the property consequences of the registered partnership arising in connection with that succession case.

Article 5

Jurisdiction in cases of dissolution or annulment

1. Where a court of a Member State is seised to rule on the dissolution or annulment of a registered partnership, the courts of that State shall have jurisdiction to rule on the property consequences of the registered partnership arising in connection with that case of dissolution or annulment, where the partners so agree.
2. If the agreement referred to in paragraph 1 of this Article is concluded before the court is seised to rule on matters of the property consequences of the registered partnership, the agreement shall comply with Article 7.

Article 6

Jurisdiction in other cases

Where no court of a Member State has jurisdiction pursuant to Article 4 or 5 or in cases other than those provided for in those Articles, jurisdiction to rule on the property consequences of a registered partnership shall lie with the courts of the Member State:

- (a) in whose territory the partners are habitually resident at the time the court is seised, or failing that,
- (b) in whose territory the partners were last habitually resident, insofar as one of them still resides there at the time the court is seised, or failing that,
- (c) in whose territory the respondent is habitually resident at the time the court is seised, or failing that,
- (d) of the partners' common nationality at the time the court is seised, or failing that,
- (e) under whose law the registered partnership was created.

*Article 7***Choice of court**

1. In cases which are covered by Article 6, the parties may agree that the courts of the Member State whose law is applicable pursuant to Article 22 or Article 26(1) or the courts of the Member State under whose law the registered partnership was created shall have exclusive jurisdiction to rule on the property consequences of their registered partnership.
2. The agreement referred to in paragraph 1 shall be expressed in writing and dated and signed by the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

*Article 8***Jurisdiction based on the appearance of the defendant**

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable pursuant to Article 22 or Article 26(1), and before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Article 4.
2. Before assuming jurisdiction pursuant to paragraph 1, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

*Article 9***Alternative jurisdiction**

1. If a court of the Member State that has jurisdiction pursuant to Article 4, 5, or point (a), (b), (c) or (d) of Article 6 holds that its law does not provide for the institution of registered partnership, it may decline jurisdiction. If the court decides to decline, it shall do so without undue delay.
2. Where a court referred to in paragraph 1 of this Article declines jurisdiction and where the parties agree to confer jurisdiction to the courts of any other Member State in accordance with Article 7, jurisdiction to rule on the property consequences of the registered partnership shall lie with the courts of that Member State.

In other cases, jurisdiction to rule on the property consequences of a registered partnership shall lie with the courts of any other Member State pursuant to Article 6 or 8.

3. This Article shall not apply when the parties have obtained a dissolution or annulment of a registered partnership which is capable of being recognised in the Member State of the forum.

*Article 10***Subsidiary jurisdiction**

Where no court of a Member State has jurisdiction pursuant to Articles 4, 5, 6, 7 or 8, or when all the courts pursuant to Article 9 have declined jurisdiction and no court of a Member State has jurisdiction pursuant to point (e) of Article 6, Article 7 or 8, the courts of a Member State shall have jurisdiction in so far as immovable property of one or both partners are located in the territory of that Member State, but in that event the court seised shall have jurisdiction to rule only in respect of the immovable property in question.

*Article 11***Forum necessitatis**

Where no court of a Member State has jurisdiction pursuant to Article 4, 5, 6, 7, 8, or 10 or when all of the courts pursuant to Article 9 have declined jurisdiction and no court of a Member State has jurisdiction pursuant to point (e) of Articles 6, or Article 7, 8 or 10, the courts of a Member State may, on an exceptional basis, rule on the property consequences of a registered partnership if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

*Article 12***Counterclaims**

The court in which proceedings are pending pursuant to Article 4, 5, 6, 7, 8, 10 or 11 shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

*Article 13***Limitation of proceedings**

1. Where the estate of the deceased whose succession falls under Regulation (EU) No 650/2012 comprises assets located in a third State, the court seised to rule on the property consequences of a registered partnership may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

*Article 14***Seising a court**

For the purpose of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court; or
- (c) if the proceedings are opened on the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

*Article 15***Examination as to jurisdiction**

Where a court of a Member State is seised of a matter concerning the property consequences of a registered partnership over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

*Article 16***Examination as to admissibility**

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction pursuant to this Regulation shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council ⁽¹⁾ shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

*Article 17***Lis pendens**

1. Where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In the cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised.
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

*Article 18***Related actions**

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where the actions referred to in paragraph 1 are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

*Article 19***Provisional, including protective, measures**

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

⁽¹⁾ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

CHAPTER III

APPLICABLE LAW

*Article 20***Universal application**

The law designated as applicable by this Regulation shall be applied whether or not it is the law of a Member State.

*Article 21***Unity of the applicable law**

The law applicable to the property consequences of a registered partnership shall apply to all assets that are subject to those consequences, regardless of where the assets are located.

*Article 22***Choice of the applicable law**

1. The partners or future partners may agree to designate or to change the law applicable to the property consequences of their registered partnership, provided that that law attaches property consequences to the institution of the registered partnership and that that law is one of the following:

- (a) the law of the State where the partners or future partners, or one of them, is habitually resident at the time the agreement is concluded
- (b) the law of a State of nationality of either partner or future partner at the time the agreement is concluded, or
- (c) the law of the State under whose law the registered partnership was created.

2. Unless the partners agree otherwise, a change of the law applicable to the property consequences of their registered partnership made during the partnership shall have prospective effect only.

3. Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law.

*Article 23***Formal validity of the agreement on a choice of applicable law**

1. The agreement referred to in Article 22 shall be expressed in writing, dated and signed by both partners. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. If the law of the Member State in which both partners have their habitual residence at the time the agreement is concluded lays down additional formal requirements for partnership property agreements, those requirements shall apply.

3. If the partners are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for partnership property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

4. If only one of the partners is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for partnership property agreements, those requirements shall apply.

*Article 24***Consent and material validity**

1. The existence and validity of an agreement on choice of law, or of any term thereof, shall be determined by the law which would govern it pursuant to Article 22 if the agreement or term were valid.
2. Nevertheless, a partner may, in order to establish that he did not consent, rely upon the law of the country in which he has his habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

*Article 25***Formal validity of a partnership property agreement**

1. The partnership property agreement shall be expressed in writing, dated and signed by both partners. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.
2. If the law of the Member State in which both partners have their habitual residence at the time the agreement is concluded lays down additional formal requirements for partnership property agreements, those requirements shall apply.

If the partners are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for partnership property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

If only one of the partners is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for partnership property agreements, those requirements shall apply.

3. If the law applicable to the property consequences of a registered partnership imposes additional formal requirements, those requirements shall apply

*Article 26***Applicable law in the absence of choice by the parties**

1. In the absence of a choice-of-law agreement pursuant to Article 22, the law applicable to the property consequences of registered partnerships shall be the law of the State under whose law the registered partnership was created.
2. By way of exception and upon application by either partner, the judicial authority having jurisdiction to rule on matters of the property consequences of a registered partnership may decide that the law of a State other than the State whose law is applicable pursuant to paragraph 1 shall govern the property consequences of the registered partnership if the law of that other State attaches property consequences to the institution of the registered partnership and if the applicant demonstrates that:
 - (a) the partners had their last common habitual residence in that other State for a significantly long period of time; and
 - (b) both partners had relied on the law of that other State in arranging or planning their property relations.

The law of that other State shall apply as from the creation of the registered partnership, unless one partner disagrees. In the latter case, the law of that other State shall have effect as from the establishment of the last common habitual residence in that other State.

The application of the law of the other State shall not adversely affect the rights of third parties deriving from the law applicable pursuant to paragraph 1.

This paragraph shall not apply when the partners have concluded a partnership property agreement before the establishment of their last common habitual residence in that other State.

Article 27

Scope of the applicable law

The law applicable to the property consequences of registered partnerships pursuant to this Regulation shall govern, inter alia:

- (a) the classification of property of either or both partners into different categories during and after the registered partnership,
- (b) the transfer of property from one category to the other one,
- (c) the responsibility of one partner for liabilities and debts of the other partner,
- (d) the powers, rights and obligations of either or both partners with regard to property,
- (e) the partition, distribution or liquidation of the property upon dissolution of the registered partnership,
- (f) the effects of the property consequences of registered partnerships on a legal relationship between a partner and third parties, and
- (g) the material validity of a partnership property agreement.

Article 28

Effects in respect of third parties

1. Notwithstanding point (f) of Article 27, the law applicable to the property consequences of a registered partnership between the partners may not be invoked by a partner against a third party in a dispute between the third party and either or both of the partners unless the third party knew or, in the exercise of due diligence, should have known of that law.

2. The third party is deemed to possess the knowledge of the law applicable to the property consequences of the registered partnership, if:

- (a) that law is the law of:
 - (i) the State whose law is applicable to the transaction between a partner and the third party,
 - (ii) the State where the contracting partner and the third party have their habitual residence or,
 - (iii) in cases involving immovable property, the State in which the property is situated;or
- (b) either partner had complied with the applicable requirements for disclosure or registration of the property consequences of the registered partnership specified by the law of:
 - (i) the State whose law is applicable to the transaction between a partner and the third party,
 - (ii) the State where the contracting partner and the third party have their habitual residence, or
 - (iii) in cases involving immovable property, the State in which the property is situated.

3. Where the law applicable to the property consequences of a registered partnership cannot be invoked by a partner against a third party by virtue of paragraph 1, the property consequences of the registered partnership in respect of the third party shall be governed:

- (a) by the law of the State whose law is applicable to the transaction between a partner and the third party; or
- (b) in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.

Article 29

Adaptation of rights in rem

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the property consequences of a registered partnership and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.

Article 30

Overriding mandatory provisions

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
2. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the property consequences of a registered partnership pursuant to this Regulation.

Article 31

Public policy (ordre public)

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 32

Exclusion of renvoi

The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.

Article 33

States with more than one legal system — territorial conflicts of laws

1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of the property consequences of registered partnerships, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.

2. In the absence of such internal conflict-of-laws rules:
 - (a) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the partners, be construed as referring to the law of the territorial unit in which the partners have their habitual residence;
 - (b) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the partners, be construed as referring to the law of the territorial unit with which the partners have the closest connection;
 - (c) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.

Article 34

States with more than one legal system — inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of the property consequences of registered partnerships, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the partners have the closest connection shall apply.

Article 35

Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units each of which has its own rules of law in respect of the property consequences of registered partnerships shall not be required to apply this Regulation to conflicts of laws arising between such units only.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 36

Recognition

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in Articles 44 to 57, apply for the decision to be recognised.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

*Article 37***Grounds of non-recognition**

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

*Article 38***Fundamental rights**

Article 37 of this Regulation shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles recognised in the Charter, in particular in Article 21 thereof on the principle of non-discrimination.

*Article 39***Prohibition of review of jurisdiction of the court of origin**

1. The jurisdiction of the court of the Member State of origin may not be reviewed.
2. The public policy (*ordre public*) criterion referred to in Article 37 shall not apply to the rules on jurisdiction set out in Articles 4 to 12.

*Article 40***No review as to substance**

Under no circumstances may a decision given in a Member State be reviewed as to its substance.

*Article 41***Staying of recognition proceedings**

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.

*Article 42***Enforceability**

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 44 to 57.

*Article 43***Determination of domicile**

To determine whether, for the purposes of the procedure provided for in Articles 44 to 57, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

*Article 44***Jurisdiction of local courts**

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to the Commission in accordance with Article 64.
2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

*Article 45***Procedure**

1. The application procedure shall be governed by the law of the Member State of enforcement.
2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.
3. The application shall be accompanied by the following documents:
 - (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
 - (b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 67(2), without prejudice to Article 46.

*Article 46***Non-production of the attestation**

1. If the attestation referred to in point (b) of Article 45(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or competent authority so requires, a translation or transliteration of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

*Article 47***Declaration of enforceability**

The decision shall be declared enforceable immediately on completion of the formalities set out in Article 45 without any review under Article 37. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

*Article 48***Notice of the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

*Article 49***Appeal against the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability may be appealed by either party.
2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 64.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 16 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.
5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

*Article 50***Procedure to contest the decision given on appeal**

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 64.

*Article 51***Refusal or revocation of a declaration of enforceability**

The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 37. It shall give its decision without delay.

*Article 52***Staying of proceedings**

The court with which an appeal is lodged under Article 49 or Article 50 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

*Article 53***Provisional, including protective, measures**

1. When a decision must be recognised in accordance with this Chapter, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 47 being required.
2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.
3. During the time specified for an appeal pursuant to Article 49(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

*Article 54***Partial enforceability**

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
2. An applicant may request a declaration of enforceability limited to parts of a decision.

*Article 55***Legal aid**

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

*Article 56***No security, bond or deposit**

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

*Article 57***No charge, duty or fee**

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

CHAPTER V

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 58

Acceptance of authentic instruments

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 67(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State for as long as the challenge is pending before the competent court.

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged for as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of property consequences of registered partnerships, that court shall have jurisdiction over that question.

Article 59

Enforceability of authentic instruments

1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.

2. For the purposes of point (b) of Article 45(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

Article 60

Enforceability of court settlements

1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.

2. For the purposes of point (b) of Article 45(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or 50 shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 61

Legalisation and other similar formalities

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

Article 62

Relations with existing international conventions

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation or of a decision pursuant to the second or third subparagraph of Article 331(1) TFEU and which concerns matters covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 TFEU.

2. Notwithstanding paragraph 1, this Regulation shall, as between Member States, take precedence over conventions concluded between them in so far as such conventions concern matters governed by this Regulation.

Article 63

Information made available to the public

The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to the property consequences of registered partnerships, including information on the type of authority which has competence in matters of the property consequences of registered partnerships and on the effects in respect of third parties referred to in Article 28.

The Member States shall keep the information permanently updated.

Article 64

Information on contact details and procedures

1. By 29 April 2018, the Member States shall communicate to the Commission:

- (a) the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 44(1) and with appeals against decisions on such applications in accordance with Article 49(2);
- (b) the procedures to contest the decision given on appeal referred to in Article 50;

The Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union*, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a) of paragraph 1.

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 65

Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.

3. The Commission shall publish the list and any subsequent amendments in the *Official Journal of the European Union*.

4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 66

Establishment and subsequent amendment of the attestations and forms referred to in point (b) of Article 45(3), and Articles 58, 59 and 60

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in point (b) of Article 45(3) and Articles 58, 59 and 60. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

Article 67

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 68

Review clause

1. By 29 January 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. Where necessary, the report shall be accompanied by proposals to amend this Regulation.

2. By 29 January 2024, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of Articles 9 and 38 of this Regulation. This report shall evaluate in particular the extent to which these Articles have ensured access to justice.

3. For the purposes of the reports referred to in paragraphs 1 and 2, Member shall communicate to the Commission relevant information on the application of this Regulation by their courts.

Article 69

Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019 subject to paragraphs 2 and 3
2. If the the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.
3. Chapter III shall apply only to partners who register their partnership or who specify the law applicable to the property consequences of their registered partnership after 29 January 2019.

Article 70

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply in the Member States which participate in 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, as authorised by Decision (EU) 2016/954.

It shall apply from 29 January 2019, except for Articles 63 and 64 which shall apply from 29 April 2018, and Articles 65, 66 and 67, which shall apply from 29 July 2016. For those Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU, this Regulation shall apply as from the date indicated in the decision concerned.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at Luxembourg, 24 June 2016.

For the Council

The President

A.G. KOENDERS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1105**of 7 July 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 July 2016.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)			
CN code	Third country code ⁽¹⁾	Standard import value	
0702 00 00	MA	150,6	
	ZZ	150,6	
0709 93 10	TR	135,9	
	ZZ	135,9	
0805 50 10	AR	191,9	
	BO	220,8	
	CL	185,5	
	TR	134,0	
	UY	143,3	
	ZA	149,7	
	ZZ	170,9	
	ZZ	170,9	
0808 10 80	AR	155,3	
	BR	97,7	
	CL	127,3	
	CN	116,1	
	NZ	145,7	
	US	149,7	
	UY	67,7	
	ZA	109,4	
	ZZ	121,1	
	ZZ	121,1	
	0808 30 90	AR	195,3
		CL	124,9
CN		91,9	
ZA		119,6	
ZZ		132,9	
0809 10 00	TR	208,5	
	ZZ	208,5	
0809 29 00	TR	326,5	
	ZZ	326,5	
0809 30 10, 0809 30 90	TR	126,8	
	ZZ	126,8	
0809 40 05	TR	160,5	
	ZZ	160,5	

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DIRECTIVES

COMMISSION DIRECTIVE (EU) 2016/1106

of 7 July 2016

amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences ⁽¹⁾, and in particular Article 8 thereof,

Whereas:

- (1) Scientific knowledge on medical conditions which affect fitness to drive has progressed since the adoption of Directive 2006/126/EC, in particular as regards the estimation of both the risks for road safety associated with the medical conditions and the effectiveness of treatment in averting those risks.
- (2) The current text of Directive 2006/126/EC no longer reflects the latest knowledge on disorders that affect the heart and the blood vessels which either pose a current or a prospective risk of a significant, sudden and disabling event, or impair an individual from safely controlling their vehicle, or lead to both consequences.
- (3) The Committee on driving licences has established a Working Group on Driving and Cardiovascular Diseases with the objective to assess the road safety risks associated with cardiovascular diseases from a current medical perspective and to formulate appropriate guidelines. The report ⁽²⁾ produced by the working group demonstrates why it is necessary to update the provisions on cardiovascular diseases in Annex III to Directive 2006/126/EC. It proposes to take into account the latest medical understanding and to clearly indicate for which conditions driving should be allowed and in which situations driving licences should not be issued or renewed. Furthermore, the report includes detailed information on how the updated provisions on cardiovascular diseases should be applied by the competent national authorities.
- (4) The knowledge and methods for diagnosing and treating hypoglycaemia have advanced since the last update of the provisions on diabetes in Annex III to Directive 2006/126/EC in 2009. The Diabetes Working Group, established by the Committee on driving licences, has concluded that those developments should be taken into account by updating those provisions, in particular concerning the relevance of hypoglycaemia occurring during sleep and duration of the driving ban following recurrent severe hypoglycaemia for group 1 drivers.
- (5) To appropriately take into account individual specificities and to adapt properly to future developments in these medical fields, Member States should be provided with an option for the competent national medical authorities to allow driving in duly justified individual cases.
- (6) Directive 2006/126/EC should therefore be amended accordingly.
- (7) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽³⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.

⁽¹⁾ OJ L 403, 30.12.2006, p. 18.

⁽²⁾ New Standards for Driving and Cardiovascular Diseases, Report of the Expert Group on Driving and Cardiovascular Diseases, Brussels, October 2013.

⁽³⁾ OJ C 369, 17.12.2011, p. 14.

- (8) The measures provided for in this Directive are in accordance with the opinion of the Committee on driving licences,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex III to Directive 2006/126/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 1 January 2018 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2018.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 7 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Annex III to Directive 2006/126/EC is amended as follows:

(1) Section 9 ('CARDIOVASCULAR DISEASES') is replaced by the following:

'CARDIOVASCULAR DISEASES'

9. Cardiovascular conditions or diseases can lead to a sudden impairment of the cerebral functions that constitutes a danger to road safety. These conditions represent grounds for establishing temporary or permanent restrictions to driving.

9.1 For the following cardiovascular conditions, driving licences may be issued or renewed for applicants or drivers in the indicated groups, only after the condition has been effectively treated and subject to competent medical authorisation and if appropriate, regular medical assessment:

- (a) brady-arrhythmias (sinus node disease and conduction disturbances) and tachy-arrhythmias (supraventricular and ventricular arrhythmias) with history of syncope or syncopal episodes due to arrhythmic conditions (applies to group 1 and 2);
- (b) brady-arrhythmias: sinus node disease and conduction disturbances with second degree atrioventricular (AV) block Mobitz II, third degree AV block or alternating bundle branch block (applies to group 2 only);
- (c) tachy-arrhythmias (supraventricular and ventricular arrhythmias) with
 - structural heart disease and sustained ventricular tachycardia (VT) (applies to group 1 and 2), or
 - polymorphic nonsustained VT, sustained ventricular tachycardia or with an indication for a defibrillator (applies to group 2 only);
- (d) symptomatic of angina (applies to group 1 and 2);
- (e) permanent pacemaker implantation or replacement (applies to group 2 only);
- (f) defibrillator implantation or replacement or appropriate or inappropriate defibrillator shock (applies to group 1 only);
- (g) syncope (a transient loss of consciousness and postural tone, characterised by rapid onset, short duration, and spontaneous recovery, due to global cerebral hypoperfusion, of presumed reflex origin, of unknown cause, with no evidence of underlying heart disease)(applies to group 1 and 2);
- (h) acute coronary syndrome (applies to group 1 and 2);
- (i) stable angina if symptoms do not occur with mild exercise (applies to group 1 and 2);
- (j) percutaneous coronary intervention (PCI) (applies to group 1 and 2);
- (k) coronary artery bypass graft surgery (CABG) (applies to group 1 and 2);
- (l) stroke/transient ischemic attack (TIA) (applies to group 1 and 2);
- (m) significant carotid artery stenosis (applies to group 2 only);
- (n) maximum aortic diameter exceeding 5,5 cm (applies to group 2 only);
- (o) heart failure:
 - New York Heart Association (NYHA) I, II, III (applies to group 1 only),
 - NYHA I and II provided that the left ventricular ejection fraction is at least 35 % (applies to group 2 only);
- (p) heart transplantation (applies to group 1 and 2);

- (q) cardiac assist device (applies to group 1 only);
- (r) valvular heart surgery (applies to group 1 and 2);
- (s) malignant hypertension (elevation in systolic blood pressure ≥ 180 mmHg or diastolic blood pressure ≥ 110 mmHg associated with impending or progressive organ damage) (applies to group 1 and 2);
- (t) grade III blood pressure (diastolic blood pressure ≥ 110 mmHg and/or systolic blood pressure ≥ 180 mmHg) (applies to group 2 only);
- (u) congenital heart disease (applies to group 1 and 2);
- (v) hypertrophic cardiomyopathy if without syncope (applies to group 1 only);
- (w) long QT syndrome with syncope, Torsade des Pointes or QTc > 500 ms (applies to group 1 only).

9.2 For the following cardiovascular conditions, driving licences shall not be issued or renewed for applicants or drivers in the indicated groups:

- (a) implant of a defibrillator (applies to group 2 only);
- (b) peripheral vascular disease — thoracic and abdominal aortic aneurysm when maximum aortic diameter is such that it predisposes to a significant risk of sudden rupture and hence a sudden disabling event (applies to group 1 and 2);
- (c) heart failure:
 - NYHA IV (applies to group 1 only),
 - NYHA III and IV (applies to group 2 only);
- (d) cardiac assist devices (applies to group 2 only);
- (e) valvular heart disease with aortic regurgitation, aortic stenosis, mitral regurgitation or mitral stenosis if functional ability is estimated to be NYHA IV or if there have been syncopal episodes (applies to group 1 only);
- (f) valvular heart disease in NYHA III or IV or with ejection fraction (EF) below 35 %, mitral stenosis and severe pulmonary hypertension or with severe echocardiographic aortic stenosis or aortic stenosis causing syncope; except for completely asymptomatic severe aortic stenosis if the exercise tolerance test requirements are fulfilled (applies to group 2 only);
- (g) structural and electrical cardiomyopathies — hypertrophic cardiomyopathy with history of syncope or when two or more of the following conditions present: left ventricle (LV) wall thickness > 3 cm, non-sustained ventricular tachycardia, a family history of sudden death (in a first degree relative), no increase of blood pressure with exercise (applies to group 2 only);
- (h) long QT syndrome with syncope, Torsade des Pointes and QTc > 500 ms (applies to group 2 only);
- (i) Brugada syndrome with syncope or aborted sudden cardiac death (applies to group 1 and 2).

Driving licences may be issued or renewed in exceptional cases, provided that it is duly justified by competent medical opinion and subject to regular medical assessment ensuring that the person is still capable of driving the vehicle safely taking into account the effects of the medical condition.

9.3 Other cardiomyopathies

The risk of sudden incapacitating events shall be evaluated in applicants or drivers with well described cardiomyopathies (e.g. arrhythmogenic right ventricular cardiomyopathy, non-compaction cardiomyopathy, catecholaminergic polymorphic ventricular tachycardia and short QT syndrome) or with new cardiomyopathies that may be discovered. A careful specialist evaluation is required. The prognostic features of the particular cardiomyopathy shall be considered.

9.4 Member States may restrict the issue or renewal of driving licences for applicants or drivers with other cardiovascular diseases.;

(2) point 10.2 of section 10 ('DIABETES MELLITUS') is replaced by the following:

- '10.2 An applicant or driver with diabetes treated with medication which carries a risk of inducing hypoglycaemia shall demonstrate an understanding of the risk of hypoglycaemia and adequate control of the condition.

Driving licences shall not be issued to, or renewed for, applicants or drivers who have inadequate awareness of hypoglycaemia.

Driving licences shall not be issued to, or renewed for, applicants or drivers who have recurrent severe hypoglycaemia, unless supported by competent medical opinion and regular medical assessment. For recurrent severe hypoglycaemias during waking hours a licence shall not be issued or renewed until 3 months after the most recent episode.

Driving licences may be issued or renewed in exceptional cases, provided that it is duly justified by competent medical opinion and subject to regular medical assessment, ensuring that the person is still capable of driving the vehicle safely taking into account the effects of the medical condition.'

DECISIONS

COUNCIL DECISION (CFSP) 2016/1107

of 7 July 2016

amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 42(4) and Article 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 25 November 2005, the Council adopted Joint Action 2005/889/CFSP ⁽¹⁾.
- (2) On 2 July 2015, the Council adopted Decision (CFSP) 2015/1065 ⁽²⁾ amending Joint Action 2005/889/CFSP and extending it until 30 June 2016.
- (3) Following the Interim Strategic Review of EU BAM Rafah, the Mission should be extended for a further period of 12 months, until 30 June 2017.
- (4) Joint Action 2005/889/CFSP should therefore be amended accordingly.
- (5) EU BAM Rafah will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Joint Action 2005/889/CFSP is amended as follows:

- (1) in Article 13(1), the following subparagraph is added:

'The financial reference amount intended to cover the expenditure related to EU BAM Rafah for the period from 1 July 2016 to 30 June 2017 shall be EUR 1 545 000.');

- (2) in Article 16, the second paragraph is replaced by the following:

'It shall expire on 30 June 2017.'.

Article 2

This Decision shall enter into force on the date of its adoption.

It shall apply from 1 July 2016.

Done at Brussels, 7 July 2016.

For the Council

The President

M. LAJČÁK

⁽¹⁾ Council Joint Action 2005/889/CFSP of 25 November 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah) (OJ L 327, 14.12.2005, p. 28).

⁽²⁾ Council Decision (CFSP) 2015/1065 of 2 July 2015 amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah) (OJ L 174, 3.7.2015, p. 23).

COUNCIL DECISION (CFSP) 2016/1108**of 7 July 2016****amending Decision 2013/354/CFSP on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 42(4) and Article 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 3 July 2013, the Council adopted Decision 2013/354/CFSP ⁽¹⁾ which continued EUPOL COPPS as from 1 July 2013.
- (2) On 2 July 2015, the Council adopted Decision (CFSP) 2015/1064 ⁽²⁾ which amended Decision 2013/354/CFSP and extended EUPOL COPPS from 1 July 2015 to 30 June 2016.
- (3) Following the Interim Strategic Review of EUPOL COPPS, the Mission should be extended for a further period of 12 months, to 30 June 2017.
- (4) Decision 2013/354/CFSP should be amended accordingly.
- (5) EUPOL COPPS will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2013/354/CFSP is amended as follows:

- (1) in Article 12(1), the following subparagraph is added:

‘The financial reference amount intended to cover the expenditure related to EUPOL COPPS for the period from 1 July 2016 until 30 June 2017 shall be EUR 10 320 000’;

- (2) in Article 15, the third paragraph is replaced by the following:

‘It shall expire on 30 June 2017.’.

Article 2

This Decision shall enter into force on the date of its adoption.

It shall apply from 1 July 2016.

Done at Brussels, 7 July 2016.

For the Council

The President

M. LAJČÁK

⁽¹⁾ Council Decision 2013/354/CFSP of 3 July 2013 on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS) (OJ L 185, 4.7.2013, p. 12).

⁽²⁾ Council Decision (CFSP) 2015/1064 of 2 July 2015 amending Decision 2013/354/CFSP on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS) (OJ L 174, 3.7.2015, p. 21).

COMMISSION IMPLEMENTING DECISION (EU) 2016/1109**of 6 July 2016****on a request for derogation by Italy in accordance with Article 9(4) of Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community***(notified under document C(2016) 4137)***(Only the Italian text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community ⁽¹⁾, and in particular Article 9(4) thereof,

Whereas:

- (1) Directive 98/41/EC aims at enhancing the safety and possibilities of rescue of passengers and crew on board passenger ships and ensuring that search and rescue and the aftermath of any accident can be dealt with more effectively.
- (2) Article 5(1) of Directive 98/41/EC requires certain information to be recorded regarding every passenger ship that departs from a port located in a Member State to undertake a voyage of more than 20 miles from the point of departure.
- (3) Article 9(4) of Directive 98/41/EC allows Member States to request the Commission to derogate from this requirement.
- (4) By letter of 3 March 2015, the Italian Republic transmitted to the Commission a request to derogate from the requirement to record information on persons on board specified in Article 5(1) of Directive 98/41/EC concerning all passenger ships travelling on the following routes: (a) Termoli — Tremiti Islands and vice versa; (b) Terracina — Ponza and vice versa; and (c) Ponza — Ventotene and vice versa.
- (5) The Commission requested on 4 June 2015 additional information from the Italian Republic, in order to allow it to assess the request. On 10 November 2015, the Italian Republic submitted its response.
- (6) On 31 March 2016, the Italian Republic modified the scope of the derogation request regarding some exemptions for categories of persons on board for which the number will need to be recorded.
- (7) The Commission, assisted by EMSA, assessed the derogation request on the basis of the information at its disposal.
- (8) The Italian Republic provided the following information: (1) the annual probability of the significant wave height's exceeding 2 metres is less than 10 % on the identified routes; (2) the ships to which the derogation would apply are engaged in regular services; (3) the voyages do not exceed 30 miles from the point of departure; (4) the sea area where the passenger ships are sailing is provided with shore-based navigational guidance, weather forecast services as well as permanent search and rescue facilities of the Italian Coast Guard; (5) there is a lack of adequate buffer infrastructure and port facilities for registering passenger details in a way compatible with the schedule of the voyages and with the synchronization with land transport; (6) the derogation request would apply to all operators sailing on the specified routes; and (7) the derogation would not apply as regards recording information concerning the number of infants on board and, when volunteered by a passenger, the need for assistance in emergency situations.
- (9) The final outcome of the assessment demonstrates that all the conditions for the approving the derogation are fulfilled.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

⁽¹⁾ OJ L 188, 2.7.1998, p. 35.

HAS ADOPTED THIS DECISION:

Article 1

1. The derogation request of the Italian Republic pursuant to Article 9(4) of Directive 98/41/EC regarding recording information on persons on board for all passengers ships in regular service sailing on the following routes: Termoli — Tremiti Islands and vice versa, Terracina — Ponza and vice versa, Ponza — Ventotene and vice versa, is hereby approved.
2. The derogation provided in paragraph 1 does not apply as regards recording information concerning the number of infants on board and, when volunteered by a passenger, the need for assistance in emergency situations.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 6 July 2016.

For the Commission
Violeta BULC
Member of the Commission

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2016/1110

of 28 June 2016

on the monitoring of the presence of nickel in feed

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The presence of nickel (Ni) in feed can arise from both natural and anthropogenic sources. Additionally, certain feed materials contain metallic nickel, since it is used as a catalyst in their production.
- (2) The European Food Safety Authority ('the Authority') Panel on Contaminants in the Food Chain (CONTAM Panel) has provided a scientific opinion on the risks to animal and public health and the environment to the presence of Ni in feed ⁽¹⁾.
- (3) The CONTAM Panel concluded that any adverse impact of Ni via feed to cattle, pigs, rabbits, ducks, fish, dogs, chickens, horses, sheep, goats and cats is unlikely. Concerning the assessment of human health risks from the presence of Ni in food of animal origin, the CONTAM Panel concluded that in the average population the current levels of chronic exposure to Ni, considering only foods of animal origin, might be of potential concern in the young population. Regarding acute dietary exposure, the CONTAM Panel concluded that nickel-sensitized individuals are also at risk of developing eczematous flare-up skin reactions through the consumption of food of animal origin. The contribution of food of animal origin to human dietary exposure to Ni should therefore not be underestimated, particularly in age classes with high dietary exposure to Ni. However from the available data it was not possible to determine carry-over rates from feed to food of animal origin.
- (4) It is observed that the occurrence data on Ni in feed used in the EFSA scientific opinion were mainly originating from one Member State and are therefore not necessarily representative for the presence of Ni in feed in the EU.
- (5) It is therefore appropriate to monitor the presence of Ni in feed across the EU before considering the setting of maximum levels of Ni in feed or any other risk management measures needed to ensure a high level of animal and human health protection,

HAS ADOPTED THIS RECOMMENDATION:

1. Member States should, with the active involvement of feed business operators, perform monitoring for the presence of Ni in feed.
2. In order to ensure that the samples are representative for the sampled lot, Member States should follow the sampling procedure laid down in Commission Regulation (EC) No 152/2009 ⁽²⁾.

⁽¹⁾ EFSA CONTAM Panel (EFSA Panel on Contaminants in the Food Chain), 2015. Scientific Opinion on the risks to animal and public health and the environment related to the presence of nickel in feed. EFSA Journal 2015;13(4):4074, 76 pp. doi:10.2903/j.efsa.2015.4074 www.efsa.europa.eu/efsajournal

⁽²⁾ Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed (OJ L 54, 26.2.2009, p. 1).

3. Member States should ensure that the analytical results are provided on a regular basis and at the latest by 31 October 2017 to EFSA in the EFSA data submission format in line with the requirements of EFSA's Guidance on Standard Sample Description (SSD) for Food and Feed ⁽¹⁾ and the additional EFSA's specific reporting requirements.

Done at Brussels, 28 June 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

⁽¹⁾ <http://www.efsa.europa.eu/en/datex/datexsubmitdata.htm>

COMMISSION RECOMMENDATION (EU) 2016/1111**of 6 July 2016****on the monitoring of nickel in food****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Nickel is a metal occurring widely in the earth's surface. Nickel is present in food and drinking water due to natural and anthropogenic activity.
- (2) The Hellenic Food Authority asked the European Food Safety Authority ('EFSA') to evaluate the risk to human health from the presence of nickel in food, particularly in vegetables.
- (3) The EFSA Scientific Panel on Contaminants in the Food Chain (CONTAM Panel) decided to extend the risk assessment to drinking water and adopted the Scientific Opinion on the risks to public health related to the presence of nickel in food and drinking water ⁽¹⁾. This opinion identified reproductive and developmental toxicity as the critical effect for the risk characterization of chronic oral exposure to nickel. Eczematous flare-up reactions and worsening of allergic reactions were identified as the critical effect for acute oral exposure to nickel of nickel-sensitized humans.
- (4) Data related to occurrence of nickel in food and drinking water was collected in 15 different European countries. However, as 80 % of the total collected data were collected in one Member State, a geographically more wide spread data set would be needed to verify the occurrence of nickel in food throughout the Union.
- (5) For certain food groups considered as main contributors to dietary exposure in the EFSA Scientific Opinion, only limited occurrence data were available. In view of possible future risk management measures, a better view on the nickel content in food commodities belonging to these food groups would be advisable,

HAS ADOPTED THIS RECOMMENDATION:

1. Member States should, with the active involvement of food business operators and other interested parties, perform monitoring of the presence of nickel in food during 2016, 2017 and 2018. The monitoring should focus on cereals, cereal-based products, infant formula, follow-on formula, processed cereal-based food for infants and young children, baby food, food for special medical purposes intended specifically for infants and young children, food supplements, legumes, nuts and oil seeds, milk and dairy products, alcoholic and non-alcoholic beverages, sugar and confectionery (including cocoa and chocolate), fruits, vegetables and vegetable products (including fungi), dry tea leaves, dry parts of other plants used for herbal infusions and bivalve molluscs.
2. The sampling procedures should be performed in accordance with the provisions laid down in Commission Regulation (EC) No 333/2007 ⁽²⁾ in order to ensure that the samples are representative for the sampled lot.
3. The samples should be analysed as marketed. The analysis of total nickel should be performed in accordance with Standard EN 13804:2013, 'Foodstuffs — Determination of elements and their chemical species — General considerations and specific requirements', preferably by making use of an analytical method based on flame atomic absorption spectrometry (FAAS) or graphite furnace atomic absorption spectrometry (GFAAS), inductively coupled plasma optical emission spectrometry (ICP-OES) or mass spectrometry (ICP-MS).

⁽¹⁾ EFSA CONTAM Panel (EFSA Panel on Contaminants in the Food Chain), 2015. Scientific Opinion on the risks to public health related to the presence of nickel in food and drinking water. EFSA Journal 2015;13(2):4002, 202 pp. doi:10.2903/j.efsa.2015.4002

⁽²⁾ Commission Regulation (EC) No 333/2007 of 28 March 2007 laying down the methods of sampling and analysis for the control of the levels of trace elements and processing contaminants in foodstuffs (OJ L 88, 29.3.2007, p. 29).

4. Member States, food business operators and other interested parties should provide to EFSA the monitoring data expressed on whole weight basis with the information and in the electronic reporting format as set out by EFSA for compilation into one database by 1 October of 2016, 2017 and 2018. Available occurrence data from preceding years that have not yet been provided should be transmitted according to the same modalities at the earliest occasion.

Done at Brussels, 6 July 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

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