

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

2016/0059(CNS) - 24/06/2016 - Final act

PURPOSE: to establish a clear legal framework in the European Union for determining jurisdiction and the law applicable to matrimonial property regimes and to facilitate the circulation of decisions and instruments on this matter among Member States.

LEGISLATIVE ACT: Council Regulation (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

CONTENT: the Regulation applies to those Member States participating 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, in accordance with [Decision \(EU\) 2016/954](#).

This Regulation is closely linked to another [Regulation](#) concerning jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

Scope: the Regulation covers, with regard to matrimonial regimes, **the jurisdiction, applicable law and the recognition and enforcement of decisions**. It includes 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.

However, **excluded from the scope** of the Regulation are issues concerning the legal capacity of spouses, the existence, validity or recognition of a marriage, maintenance obligations and the succession to the estate of a deceased spouse.

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

Jurisdiction: the Regulation aims to enable citizens to have their various related procedures **handled by the courts of the same Member State**. It provides the following:

- 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;
- 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.

In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation enables the parties, under certain circumstances, 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. Where a Member State holds that the marriage in question cannot be recognised for the purposes of matrimonial property regime proceedings, the courts must act swiftly and the party concerned may submit the case in any other Member State that has a connecting factor. The Regulation does 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.

Applicable law: following the **principle of unity** of the applicable law, the Regulation stipulates that the law applicable to the matrimonial regime applies to all assets falling under that regime, regardless of where the assets are located. The law designated as applicable by the Regulation shall be applied whether or not it is the law of a Member State.

The 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:

- 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
- the law of a State of nationality of either spouse or future spouse at the time the agreement is concluded.

In the **absence of a choice-of-law agreement**, the law applicable to the matrimonial property regime shall be the law of the State:

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

Recognition, enforceability and enforcement of decisions: the Regulation lays 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. **Grounds for non-recognition** of a decision include circumstances where such recognition is manifestly contrary to public policy in the Member State in which recognition is sought.

The Regulation also allows for the acceptance and enforceability in all Member States of **authentic instruments** in matters of matrimonial property regime, in certain circumstances.

Information made available to the public: Member States shall 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 that has competence in the matter.

ENTRY INTO FORCE: 28.7.2016. The Regulation is applicable in the Member States that participate in enhanced, as authorised by Decision (EU) 2016/954.

APPLICATION: from 29.1.2019, except with respect to certain provisions that apply from 29.4.2018, and others that apply from 29.7.2016.

