

# Procedure file

Basic information			
NLE - Non-legislative enactments Decision	2010/0066(NLE)	Procedure completed	
Enhanced cooperation in the area of the law applicable to divorce and legal separation. Council Decision			
<b>Subject</b> 4.10.02 Family policy, family law, parental leave 7.40.02 Judicial cooperation in civil and commercial matters			

Key players			
European Parliament	Committee responsible  Legal Affairs	Rapporteur	Appointed
		PPE <u>ZWIEFLKA Tadeusz</u>	28/04/2010
	Committee for opinion  Civil Liberties, Justice and Home Affairs	Rapporteur for opinion	Appointed
		The committee decided not to give an opinion.	
	 Women's Rights and Gender Equality	The committee decided not to give an opinion.	
Council of the European Union	Council configuration <u>Agriculture and Fisheries</u> <u>Justice and Home Affairs (JHA)</u>	Meeting	Date
		<u>3026</u>	12/07/2010
		<u>3018</u>	03/06/2010
European Commission	Commission DG <u>Justice and Consumers</u>	Commissioner	
		REDING Viviane	

Key events			
24/03/2010	Preparatory document	<u>COM(2010)0104</u>	Summary
01/06/2010	Vote in committee		Summary
04/06/2010	Legislative proposal published	<u>09898/2010</u>	Summary
10/06/2010	Committee report tabled for plenary, 1st reading/single reading	<u>A7-0194/2010</u>	
15/06/2010	Committee referral announced in Parliament		
16/06/2010	Results of vote in Parliament		
16/06/2010	Decision by Parliament	<u>T7-0216/2010</u>	Summary
12/07/2010	Act adopted by Council after consultation		

	of Parliament	
12/07/2010	End of procedure in Parliament	
22/07/2010	Final act published in Official Journal	

## Technical information

Procedure reference	2010/0066(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the EU TFEU 329-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/02627

## Documentation gateway

Preparatory document	<a href="#">COM(2010)0104</a>	24/03/2010	EC	Summary
Committee draft report	<a href="#">PE442.861</a>	28/05/2010	EP	
Legislative proposal	<a href="#">09898/2010</a>	04/06/2010	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0194/2010</a>	10/06/2010	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0216/2010</a>	16/06/2010	EP	Summary

## Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Final act

<a href="#">Decision 2010/405</a> <a href="#">OJ L 189 22.07.2010, p. 0012</a>	Summary
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## Enhanced cooperation in the area of the law applicable to divorce and legal separation. Council Decision

PURPOSE: to authorise enhanced cooperation in the area of the law applicable to divorce and legal separation.

PROPOSED ACT: Council Decision.

BACKGROUND: for the progressive establishment of an area of freedom, security and justice, the Union is to adopt measures relating to judicial cooperation in civil matters with cross-border implications.

On 14 March 2005, the Commission adopted a Green paper on applicable law and jurisdiction in divorce matters. On 17 July 2006, the Commission adopted a proposal for a [Council Regulation amending Regulation \(EC\) No 2201/2003](#) as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters. In June 2008, the Council adopted political guidelines which recorded that there was no unanimity to go ahead with the proposed Regulation and insurmountable difficulties existed, making unanimity impossible at the time and in the foreseeable future.

In 2008 and 2009, 10 Member States - Bulgaria, Greece, Spain, France, Italy, Luxembourg, Hungary, Austria, Romania and Slovenia - addressed a request to the Commission indicating that they intended to establish enhanced cooperation between themselves in the area of

applicable law in matrimonial matters and that the Commission should submit a proposal to the Council to that end. On 3 March 2010, Greece withdrew its request.

This proposal for a Council Decision would authorise enhanced cooperation in the area of the law applicable to divorce and legal separation, and the [proposal for a Council Regulation](#) implementing this enhanced cooperation, that the Commission adopted simultaneously, represent the Commission's response to the nine Member States.

The total population of the nine requesting Member States is 216.3 million. This is almost half (44%) of the Union population. The proportion of 'international' marriages and divorces is around 13% in these participating Member States, i.e. on average the same level as usually occurring in the EU. The estimated numbers for divorces are around 440 000 divorces in these countries annually and 53 000 of these having international elements. Enhanced cooperation is open to all Member States; the more Member States participating in it, the higher would be the number of citizens concerned.

**IMPACT ASSESSMENT:** the document accompanying the Commission's proposal describes the advantages of enhanced cooperation in the area of the law applicable to divorce and separation (see below). Please refer also to the summary of the proposal for a Council Regulation of 24/03/2010 implementing this enhanced cooperation.

**LEGAL BASE:** enhanced cooperation is regulated by Article 20 of the Treaty on the European Union (TEU) and Articles 326 to 334 of the Treaty on the Functioning of the European Union (TFEU). The implication of these provisions is that two proposals are needed to implement enhanced cooperation in the area of the law applicable to divorce and legal separation:

- a Commission proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, based on Article 329(1) TFEU, and
- a Commission proposal for a Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, based on Article 81(3) TFEU.

**CONTENT:** the Commission considers that the benefits of using enhanced cooperation in the area of the law applicable to divorce and legal separation are numerous compared to the option of the status quo and that the advantages in this particular case of enhanced cooperation outweigh the possible disadvantages.

Such enhanced cooperation would offer citizens the following advantages:

- strengthening legal certainty and predictability: the enhanced cooperation will introduce harmonised conflict-of-law rules in matters of divorce and legal separation to enable spouses to easily predict which law will apply to their matrimonial proceedings. This is based in the first place on the choice of the spouses. The choice is confined to laws with which the marriage has a close connection to avoid the application of 'exotic' laws with which the spouses have little or no connection. In the absence of choice, the applicable law is determined on the basis of a scale of connecting factors which will ensure that the matrimonial proceedings are governed by a legal order with which the marriage has a close connection.
- increasing flexibility by introducing limited party autonomy: there is currently very limited scope for party autonomy in matrimonial matters. The national conflict-of-law rules provide in principle for only one solution in a given situation, e.g. the application of the law of the common nationality of the spouses or the application of the law of the forum. In the enhanced cooperation, the legal framework will be more flexible by introducing a limited possibility for the spouses to choose the applicable law concerning divorce and legal separation. To allow spouses to come to an agreement could be particularly useful in cases of divorce by mutual consent.
- preventing a 'rush to court' by one spouse: enhanced cooperation in the area of the law applicable to divorce and legal separation addresses the problem of the 'rush to court' by one spouse. This may lead to the application of a law with which the defendant does not feel closely connected or which fails to take into account his or her interests. It further renders reconciliation efforts difficult and leaves little time for mediation. The introduction of harmonised conflict-of-law rules are likely to greatly reduce the risk of a 'rush to court', since any court seized within the participating Member States would apply the law designated on the basis of common rules.

From the institutional standpoint, the enhanced cooperation is better than the possibility of interested Member States entering into negotiations on an international agreement on the matter of the law applicable to divorce and legal separation. This alternative would certainly be less advantageous. Even if the acts adopted in enhanced cooperation are binding only on participating Member States, they nevertheless fall under Union control in that area. Thus, the Commission can monitor their correct application under the Treaties and the Court of Justice of the EU has the jurisdiction to give preliminary rulings concerning their interpretation, thus ensuring the coherent and unified interpretation of measures adopted in enhanced cooperation.

Furthermore, the Commission considers that all the legal conditions set by the Treaties for the enhanced cooperation are fulfilled: i) conformity with the Treaties and Union law; ii) not undermine the internal market and economic, social and territorial cohesion; iii) does not constitute a barrier to or discrimination in trade; iv) does not distort competition; v) respects the competences, rights and obligations of those Member States that do not participate in it; vi) respects the fundamental rights set out in the Charter of Fundamental Rights of the European Union.

As a result, the Commission proposes authorising the enhanced cooperation between the requesting Member States. The Commission stresses that the enhanced cooperation in the area of the law applicable to divorce and legal separation is open at any time to all Member States and it encourages the Member States that have not yet so requested to participate in the enhanced cooperation, thus boosting its benefits and advantages.

## Enhanced cooperation in the area of the law applicable to divorce and legal separation. Council Decision

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The Committee on Legal Affairs adopted the report drafted by Tadeusz ZWIEFKA (EPP, PL) recommending that the European Parliament consents to the proposal for a Council decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

## Enhanced cooperation in the area of the law applicable to divorce and legal separation. Council Decision

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The Council reached a comfortable qualified majority agreement on authorising the first enhanced cooperation in the history of the EU. It concerns the law applicable to divorce and legal separation (Rome III). Ministers also decided to transmit the text to the European Parliament in order to obtain its consent to the enhanced cooperation.

In July 2006, the Commission adopted a proposal for a regulation amending regulation 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (Rome III). Its aim was to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments. The text was discussed during several presidencies but at its meeting in June 2008, the Council concluded that it was not possible - both then and in the near future - to reach unanimous agreement on the proposal as required by the Nice Treaty.

Given these circumstances, Greece, Spain, Italy, Hungary, Luxembourg, Austria, Romania and Slovenia addressed in July 2008 a request to the Commission indicating that they wished to establish enhanced cooperation between them in the area of applicable law in matrimonial matters and that they expected the Commission to submit a proposal to the Council to that end. Since then Greece has withdrawn from this request, and a further six member states have joined it: Bulgaria in August 2008, France in January 2009, Germany and Belgium in April 2010, Latvia and Malta in May 2010, Portugal in June 2010.

14 Member States will participate in the enhanced cooperation. Once they reach unanimous agreement, the regulation will set clear rules on how international couples can seek divorce or legal separation in these countries. Other EU Member States who are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

There are approximately 122 million marriages in the EU, about 16 million (13%) are assumed to be international. Thereby enhanced cooperation in this field aims to:

- improve legal certainty, predictability and flexibility for citizens;
- protect weaker partners during divorce disputes and prevents the so-called "rush to court", i.e. situations where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests; and
- lessens the burden on children in international divorce disputes.

## Enhanced cooperation in the area of the law applicable to divorce and legal separation. Council Decision

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The European Parliament adopted, by 615 votes to 30 with 33 abstentions, a legislative resolution on the proposal for a Council decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

The Parliament consents to the draft Council Decision. It calls on the Council to adopt a decision pursuant to Article 333(2) of the Treaty on the Functioning of the European Union stipulating that, when it comes to the proposal for a Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, it will act under the ordinary legislative procedure.

## Enhanced cooperation in the area of the law applicable to divorce and legal separation. Council Decision

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PURPOSE: to authorise enhanced cooperation between several Member States in the law regarding divorce and legal separation.

LEGISLATIVE ACT: Council Decision 2010/405/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

CONTENT: on 17 July 2006, the Commission adopted a [proposal for a Council Regulation](#) amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

In 2008 the Council adopted political guidelines which recorded that there was no unanimity to go ahead with the proposed Regulation and insurmountable difficulties existed, making unanimity impossible at the time and in the foreseeable future. It established that the objectives of the proposed Regulation could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

In these circumstances, Greece, Spain, Italy, Luxembourg, Hungary, Austria, Romania and Slovenia addressed a request to the Commission by letters dated 28 July 2008 indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters and that the Commission should submit a proposal to the Council to that end. Bulgaria addressed an identical request to the Commission by letter dated 12 August 2008. France joined the request by a letter dated 12 January 2009, Germany by a letter dated 15 April 2010, Belgium by a letter dated 22 April 2010, Latvia by a letter dated 17 May 2010, Malta by a letter dated 31 May 2010 and Portugal during the Council meeting of 4 June 2010. On 3 March 2010, Greece withdrew its request. In total, fourteen Member States have requested enhanced cooperation.

Enhanced cooperation in the area of the law applicable to divorce and legal separation aims to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments, and to ensure the compatibility of the rules applicable in the Member States concerning conflict of laws. Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process as required by Article 20(1) of the Treaty on European Union. Furthermore, enhanced cooperation in this area does not undermine the internal market or economic, social and territorial cohesion, nor constitute a barrier to or discrimination in trade between Member States and does not distort competition between them. It respects the competences, rights and obligations of those Member States that do not participate in it. The common conflict-of-law rules in the participating Member States do not affect the rules of the non-participating Member States. The courts of the non-participating Member States continue to apply their existing domestic conflict-of-law rules to determine

the law applicable to divorce or legal separation. Enhanced cooperation in the area of the law applicable to divorce and legal separation is open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union,

Accordingly, Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia are authorised to establish enhanced cooperation between themselves in the area of the law applicable to divorce and legal separation by applying the relevant provisions of the Treaties.

The enhanced cooperation should provide a clear and comprehensive legal framework in the area of divorce and legal separation in the participating Member States and ensure adequate solutions for citizens in terms of legal certainty, predictability and flexibility and prevent a "rush to court". It aims to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments, and to ensure the compatibility of the rules applicable in the Member States concerning conflict of laws.

Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process as required by the Treaty on European Union.

This Decision respects the rights, principles and freedoms recognised in the Charter of Fundamental Rights of the European Union.

ENTRY INTO FORCE: 12/07/2010.