






Procedure file

Basic information		
CNS - Consultation procedure Regulation	2011/0060(CNS)	Procedure lapsed or withdrawn
Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships		
Subject		
1.20 Citizen's rights		
7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs		
	Committee for opinion	Rapporteur for opinion	Appointed
	 Women's Rights and Gender Equality		
	 Civil Liberties, Justice and Home Affairs		
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	3354	04/12/2014
European Commission	Commission DG	Commissioner	
	Justice and Consumers	REDING Viviane	

Key events			
16/03/2011	Legislative proposal published	COM(2011)0127	Summary
10/05/2011	Committee referral announced in Parliament		
01/03/2012	Vote in committee		
20/06/2013	Vote in committee		
20/08/2013	Committee report tabled for plenary, 1st reading/single reading	A7-0254/2013	
09/09/2013	Debate in Parliament		
10/09/2013	Results of vote in Parliament		
10/09/2013	Decision by Parliament	T7-0337/2013	Summary
04/12/2014	Debate in Council	3354	
20/05/2017	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2011/0060(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 081-p3
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/7/05683

Documentation gateway					
Legislative proposal		COM(2011)0127	16/03/2011	EC	Summary
Document attached to the procedure		SEC(2011)0327	16/03/2011	EC	
Document attached to the procedure		SEC(2011)0328	16/03/2011	EC	
Committee draft report		PE494.575	25/07/2012	EP	
Committee opinion	LIBE	PE483.493	06/09/2012	EP	
Amendments tabled in committee		PE496.495	25/09/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0254/2013	21/08/2013	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0337/2013	10/09/2013	EP	Summary
Commission response to text adopted in plenary		SP(2013)774	06/12/2013	EC	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships

PURPOSE: to establish a clear legal framework in the European Union for determining jurisdiction and the law applicable to the property consequences of registered partnerships, and to facilitate the movement of decisions and instruments among the Member States.

PROPOSED ACT: Council Regulation.

BACKGROUND: the increased mobility of persons within an area without internal frontiers leads to a marked increase in the number of couples formed by nationals of different Member States who may live in a Member State of which they do not have the nationality and acquire property in more than one Union country.

A study carried out in 2003 showed the large number of transnational couples within the Union and the practical and legal difficulties such couples face, both in the daily management of their property and in its division if the couple separate or one of its members dies. These difficulties often arise from the great disparities between the applicable rules of substantive law and private international law governing the property effects of marriage.

Because of the distinctive features of registered partnerships and marriage, and of the different legal consequences resulting from these forms of union, the Commission is presenting two separate Regulations: one on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of [matrimonial property regimes](#), and the other on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

These proposals are part of the Commission's efforts to dismantle the obstacles faced by EU citizens in their daily lives when they try to exercise the rights the EU confers on them, as outlined in the 2010 [EU Citizenship Report](#).

IMPACT ASSESSMENT: 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 Commission has also conducted a joint impact study on the proposals for Regulations on matrimonial property regimes and the property consequences of registered partnerships. It is attached to this proposal.

LEGAL BASIS: Article 81(3) of the Treaty on the Functioning of the European Union (TFEU), which confers on the Council the power to adopt measures concerning family law having cross-border implications after consulting the European Parliament.

CONTENT: the aim of this proposal is to establish a comprehensive set of rules of international private law applicable to the property consequences of registered partnerships. It therefore touches on matters of legal jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of a registered partnership. The rules proposed are concerned only with cross-border cases.

The Regulation covers matters arising from the property consequences of registered partnerships. 'Registered partnership' is defined here solely for the purposes of this Regulation. The actual substance of the concept is defined in the national laws of the Member States.

The scope of the Regulation should extend to all civil matters in relation to the property consequences of registered partnerships, both the daily management of the partners' property and its liquidation, in particular as a result of the couple's separation or the death of one of the partners.

The main elements of the proposal are as follows:

Jurisdiction: the aim of this Regulation is to enable citizens to have the related procedures handled by the courts of the same Member State. To do this, the Regulation is designed to ensure that the rules for determining the jurisdiction of the courts called on to deal with the property aspects of registered partnerships are in line with the existing or proposed rules in other European legislation. The courts of a Member State with territorial jurisdiction to deal with the liquidation of the succession of a partner who has died should have their jurisdiction extended to include the liquidation of the property relationship of the registered partnership as a result of the opening of the succession.

Similarly, to ensure that if the partners separate a court seised in a Member State can deal with all aspects of this separation without forcing the partners to undertake different proceedings in different States, the jurisdiction of the court of a Member State dealing with the dissolution or annulment of a registered partnership may, if the partners agree, be extended to the property consequences of the registered partnership arising from the dissolution or annulment of the partnership.

Applicable law: the harmonisation of conflict-of-law rules will considerably simplify procedures by establishing which law is applicable.

In view of the differences between the national laws of those Member States that make provision for registered partnerships, the principle adopted in the Regulation is that the property consequences of registered partnerships should be governed by the law of the State of registration.

Recognition, enforceability and enforcement: the proposed Regulation provides for the free movement of decisions, authentic instruments and court settlements concerning matrimonial property regimes. It would thus introduce mutual recognition based on the mutual trust arising out of the integration of the Member States within the European Union.

This free movement would take the form of a uniform procedure for the recognition and enforcement of decisions, authentic acts and legal transactions originating in another Member State.

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships

The Committee on Legal Affairs adopted, in the framework of a special legislative procedure (Parliaments consultation), the report by Alexandra THEIN (ADLE, DE) on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

The report proposed parallel amendments to those in the report on the [proposal for a Council regulation](#) on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

The committee approves the Commission proposal subject to the following amendments:

Choice of law for registered partnerships: the Commission proposal does not allow registered partnerships the choice of law. Members propose a rule enabling registered partnerships to choose the applicable law for their property regime.

The opinion of the EU Agency for Fundamental Rights, consulted by the European Parliament on this issue, confirmed that the Commission proposal does not contain sufficient justification for treating marriage and registered partnerships in an unequal way in this respect and is therefore not in line with Articles 20 and 21 of the Charter of Fundamental Rights.

The amended text states that the partners or future partners may agree on or change the law applicable to the property regime of their registered partnership. The parties should be accorded a degree of freedom in choosing the applicable law for their property regime. This option must be based on:

- the law of habitual residence or on the nationality of one of the partners or future partners;
- the law is that of a State that recognises the institution of registered partnerships.

The choice of law shall be valid only if the partners or future partners can prove that, prior to making the choice, they have taken advice on its legal consequences.

As a further consequence of the new provision on the choice of law, Members propose a provision in line with that for matrimonial property regimes on the choice of jurisdiction, which is linked to the choice of law.

Property issues: Members propose extending the solutions which are appropriate for matrimonial property regimes to registered partnerships. This applies above all to integration of the new matrimonial property regime provisions into other EU legislation, in particular the new EU [Regulation No 650/2012](#) on wills and succession and the Brussels I Regulation.

In this context, the proposed amendments concern the following:

In terms of details, this objective of ensuring equality affects:

- the determination of the scope (e.g. excluding maintenance settlements from German law or similar structures in other Member States),
- reworking the rules on jurisdiction,
- the provisions on the adaptation of rights in rem and the recognition, enforceability and enforcement of judicial decision to be utilised from the Regulation on wills and succession, and the acceptance and enforceability of authentic instruments.

Recognition in a Member State of a decision relating to the property consequences of a registered partnership has as its only object to allow the enforcement of the property consequences determined in that decision. It does not imply recognition by that Member State of the partnership underlying the property consequences which gave rise to that decision.

Revision clause: the report proposes broadening the revision clause in order to examine in close detail, in particular, the practical impact of the individual points where matrimonial property regimes and property regimes of registered partnerships (still) differ and to use this as a basis for working towards harmonisation.

Judicial cooperation in civil matters: jurisdiction, applicable law and recognition and enforcement of decisions regarding property consequences of registered partnerships

The European Parliament adopted by 538 votes to 34, with 54 abstentions, in the framework of a special legislative procedure (Parliaments consultation), a legislative resolution on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

The report proposed parallel amendments to those in the report on the [proposal for a Council regulation](#) on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

Parliament approves the Commission proposal subject to the following amendments:

Choice of law for registered partnerships: the Commission proposal does not allow registered partnerships the choice of law. Members propose a rule enabling registered partnerships to choose the applicable law for their property regime.

Parliament approves the Commissions proposal subject to parallel amendments to those proposed in its report on the [proposed Council Regulation](#) concerning the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

Choice of law for registered partnerships: the Commission proposal does not allow registered partnerships the choice of law. Parliament proposes a rule enabling registered partnerships to choose the applicable law for their property regime.

The amended text states that the partners or future partners may agree on or change the law applicable to the property regime of their registered partnership. The parties should be accorded a degree of freedom in choosing the applicable law for their property regime. This option must be based on:

- the law of the State in which the partners or future partners, or one of them, is/are habitually resident at the time when the agreement is concluded, or
- the law of a State of which one of the partners or future partners is a national at the time when the agreement is concluded, or
- the law of a State in which the partnership is registered.

The choice of law shall be valid only if the partners or future partners can prove that, prior to making the choice, they have taken advice on its legal consequences.

If registered partnerships between the same persons exist in different States, the partnership which was most recently established, dating from the day on which it was established, shall be decisive for the purposes of determining the applicable law.

As a further consequence of the new provision on the choice of law, Parliament proposes a provision in line with that for matrimonial property regimes on the choice of jurisdiction, which is linked to the choice of law.

Property issues: Members propose extending the solutions which are appropriate for matrimonial property regimes to registered partnerships. This applies above all to integration of the new matrimonial property regime provisions into other EU legislation, in particular the new EU [Regulation No 650/2012](#) on wills and succession and the Brussels I Regulation.

In this context, the proposed amendments concern the following:

- the determination of the scope (e.g. excluding maintenance settlements from German law or similar structures in other Member States),
- reworking the rules on jurisdiction,
- maintaining (also proposed in the legislative resolution on matrimonial property regimes) the provisions on the adaptation of rights in rem and the recognition, enforceability and enforcement of judicial decision to be utilised from the Regulation on wills and succession,

and the acceptance and enforceability of authentic instruments.

Recognition in a Member State of a decision relating to the property consequences of a registered partnership has as its only object to allow the enforcement of the property consequences determined in that decision. It does not imply recognition by that Member State of the partnership underlying the property consequences which gave rise to that decision.

Revision clause: Parliament proposes broadening the revision clause in order to examine in close detail, in particular, the practical impact of the individual points where matrimonial property regimes and property regimes of registered partnerships (still) differ and to use this as a basis for working towards harmonisation.