

Procedure file

Basic information		
CNS - Consultation procedure Regulation	2016/0059(CNS)	Procedure completed
Enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes		
Subject 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	Rapporteur	Appointed
	 Legal Affairs		15/03/2016
		 CAVADA Jean-Marie	
		Shadow rapporteur	
		 VOSS Axel	
		 GEBHARDT Evelyne	
		 DZHAMBAZKI Angel	
		 HAUTALA Heidi	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Civil Liberties, Justice and Home Affairs	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	Meeting	Date
	General Affairs	3478	24/06/2016
	Justice and Home Affairs (JHA)	3473	10/06/2016
European Commission	Commission DG	Commissioner	
	Justice and Consumers	JOUROVÁ Věra	

Key events			
02/03/2016	Legislative proposal published	COM(2016)0106	Summary
11/04/2016	Committee referral announced in		

	Parliament		
10/06/2016	Debate in Council	3473	
14/06/2016	Vote in committee		
16/06/2016	Committee report tabled for plenary, 1st reading/single reading	A8-0209/2016	Summary
22/06/2016	Debate in Parliament		
23/06/2016	Results of vote in Parliament		
23/06/2016	Decision by Parliament	T8-0288/2016	Summary
24/06/2016	Act adopted by Council after consultation of Parliament		
24/06/2016	End of procedure in Parliament		
08/07/2016	Final act published in Official Journal		

Technical information

Procedure reference	2016/0059(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 081-p3-a1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/05950

Documentation gateway

Legislative proposal	COM(2016)0106	02/03/2016	EC	Summary
Committee draft report	PE580.495	29/03/2016	EP	
Amendments tabled in committee	PE582.313	09/05/2016	EP	
Committee report tabled for plenary, 1st reading/single reading	A8-0209/2016	16/06/2016	EP	Summary
Text adopted by Parliament, 1st reading/single reading	T8-0288/2016	23/06/2016	EP	Summary

Final act

[Regulation 2016/1103](#)
[OJ L 183 08.07.2016, p. 0001](#) Summary

[Corrigendum to final act 32016R1103R\(01\)](#)
[OJ L 113 29.04.2017, p. 0062](#)

[Corrigendum to final act 32016R1103R\(02\)](#)
[OJ L 167 04.07.2018, p. 0036](#)

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

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.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: the increasing mobility of persons within an area without internal frontiers leads to a significant increase in the number of couples formed by nationals of different Member States who live in a Member State other than their own or acquire property in more than one Member State.

These transnational couples face practical and legal difficulties, 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 result from the great disparities between the applicable rules governing the property effects of marriage, both in substantive law and in private international law.

The European 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.

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 in 2011 a proposal for legislation to make it easier for international couples (either married or registered partners) to know which courts had jurisdiction to deal with their property rights and which law applied to their property rights

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. At its meeting of 3 December 2015, the Council concluded that no unanimity could be reached for the adoption of the proposals for 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.

17 Member States addressed a request to the Commission indicating that they wished to establish enhanced cooperation.

The [proposal for a Council Decision 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.

This proposal for a Council Regulation on matrimonial property regimes and the parallel proposal for a Council Regulation on the property consequences of registered partnerships, both of which implement the enhanced cooperation and were adopted by the Commission at the same time, are the Commission's response to the request by 17 Member States.

IMPACT ASSESSMENT: before the 2011 Commission proposal was drawn up, a broad consultation exercise took place with the Member States, other Union institutions and the public. The Commission conducted a joint impact study on the proposals for regulations on matrimonial property regimes and the property consequences of registered partnerships.

The two new proposals regarding matrimonial property regimes and the property consequences of registered partnerships contain solutions similar to those presented in the 2011 proposals taking into account the discussions in the Council and the European Parliament up to the end of 2015.

CONTENT: the aim of the proposal is to establish a comprehensive set of rules of international private law applicable to matrimonial property regimes. It therefore deals with matters of jurisdiction, applicable law and the recognition and enforcement of decisions in matrimonial property cases. The rules proposed are concerned only with cross-border cases.

Scope and definitions: according to the proposal, the notion of 'matrimonial property regime' must be given an autonomous interpretation and embrace considerations of both the spouses' daily management of their property and the liquidation of their property regime as a result of the couple's separation or the death of one of the spouses.

Matters already covered by existing EU regulations, such as maintenance obligations, especially between spouses, and matters arising from the law of succession, are excluded from the scope of the Regulation.

The Regulation does not affect the existence or validity of a marriage under national law or the recognition in one Member State of a marriage concluded in another Member State. It also does not affect matters of social security or the entitlement to rights to pension in case of divorce.

Jurisdiction: the aim of this Regulation is to enable citizens to have their various related procedures handled by the courts of the same Member State. To this end, the proposal seeks to ensure that the rules to determine the jurisdiction of the courts called on to deal with the property aspects of marriages are in line with existing rules in other Union instruments and, in particular, to concentrate jurisdiction on the matrimonial property regime in the Member State whose courts are handling the succession of a spouse or the divorce, legal separation or marriage annulment.

To ensure that, in the event of the death of one of the spouses, the competent court can handle both the succession of the deceased spouse and the liquidation of the matrimonial property regime, this article provides that the court having jurisdiction for the succession according to the rules laid down in [Regulation \(EU\) No 650/2012](#) should also have jurisdiction to rule on the liquidation of the matrimonial property regime linked to the succession.

Applicable law: the option proposed in the Regulation is that of a single scheme: all the property of the spouses, regardless of its nature (moveable or immoveable) and location, would be subject to the same law, namely the law applicable to the matrimonial property regime.

The spouses or future spouses may agree to designate, or to change, the law applicable to their matrimonial property regime, provided that it 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 celebration of the marriage or, failing that,
- of the spouses' common nationality at the time of the celebration of the marriage or, failing that,
- with which the spouses jointly have the closest connection at the time of the celebration of the marriage, taking into account all the circumstances.

However, exceptionally, one of the spouses can ask a court that the law applicable should be the law of the State where the spouses had their last common habitual residence.

The Regulation lists some of the matters that would be governed by the law applicable to the matrimonial property regime. Such matters include the liquidation of the property and also the effects of the matrimonial property regime on the relationships between a spouse and a third party.

To protect the family home, a Member State where the family home is located may apply its own rules for the protection of the family home. Exceptionally, this Member State may apply its own law to all persons living on its territory in 'preference' to the law normally applicable or that of a marriage agreement concluded in another Member State.

Recognition, enforceability and enforcement: the proposed Regulation provides for the free circulation 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 Union.

This free circulation 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. The grounds for non-recognition or refusal to enforce are also harmonised at Union level or reduced to the absolute minimum.

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

The Committee on Legal Affairs adopted, in the framework of a special legislative procedure (Parliaments consultation), the report by Jean-Marie CAVADA (ALDE, FR) 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 approved the Commission proposal subject to the introduction of a new definition of Member State so as to cover only Member States participating in the [Matrimonial Property Regulation](#), in line with the definition included in Article 3(1) of Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III).

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

The European Parliament adopted by 498 votes to 58, with 35 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 in matters of matrimonial property regimes.

Parliament approved the Commission proposal without amendment.

To recall, the draft Regulation seeks to establish a comprehensive set of rules of international private law applicable to matrimonial property regimes. It therefore deals with matters of jurisdiction, applicable law and the recognition and enforcement of decisions in matrimonial property cases. The rules proposed are concerned only with cross-border cases.

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

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.