



## EU COUNCIL SECRETARIAT

### *~FACTSHEET~*

## THE COUNCIL TO PROVIDE FOR CLEARER RULES FOR INTERNATIONAL COUPLES IN DIVORCE CASES

4 June 2010

### **Enhanced cooperation for the first time in EU history**

At its meeting on 3-4 June 2010 and after a public debate, the JHA Council reached agreement on a decision authorising the first enhanced cooperation<sup>1</sup> in the history of the EU. It concerns the law applicable to divorce and legal separation (Rome III). Ministers also requested the European Parliament to give its consent to proceed with the enhanced cooperation.

On the content of the legislation, a regulation implementing the enhanced cooperation, ministers agreed on a general approach on key elements.

The enhanced cooperation has been requested by 14 member states. Other EU countries that are still reflecting about whether to join this pioneer group will be able to do so.

### **Legal certainty for international couples**

There are around 122 million marriages in the EU of which around 16 million (13 %) are considered international in the sense that the spouses have a different nationality, are living apart in different countries or are living together in a country other than their country of origin. In 2007 there were more than 1 million divorces in the EU 27 member states of which 140.000 (13 %) had an international element.

Currently the member states have diverging ways of deciding which country's law applies to divorce in case of international couples.

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<sup>1</sup> EU rules governing enhanced cooperation are provided for in [Title IV, Article 20 TEU](#) as well as in [Title III, Articles 326-334 TFEU](#).

## P R E S S

The Council is negotiating a proposal that would increase legal certainty for spouses in international divorce cases. The proposal would allow them to know in advance which law is applicable to their divorce. It would increase flexibility and autonomy by giving spouses a possibility to choose the applicable law to their divorce or legal separation and it would set clear rules for cases where no law has been chosen.

### **Party autonomy and flexibility**

The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

- (a) the law of the state where the spouses are habitually resident at the time the agreement is concluded, or
- (b) the law of the state where the spouses were last habitually resident, insofar as one of them still resides there at the time the agreement is concluded, or
- (c) the law of the state of the nationality of either spouse at the time the agreement is concluded, or
- (d) the *lex fori*, i.e. the law of the state in which the spouses have gone to court.

Certain guarantees apply to make sure that the parties' choice is an informed one, thus, the agreement should at least be expressed in writing, dated and signed by both spouses.

### **Harmonised conflict-of-law rules**

Where no applicable law is chosen the regulation introduces harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned.

In the absence of a choice, divorce and legal separation shall be subject to the law of the state:

- (a) where the spouses are habitually resident at the time the court is seized; or, failing that,
- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized, in so far as one of the spouses still resides in that state at the time the court is seized; or, failing that,
- (c) of which both spouses are nationals at the time the court is seized; or, failing that,
- (d) where the court is seized.

### **Public policy**

In exceptional circumstances considerations of public interest should allow courts in the member states the opportunity to disregard the application of foreign law in a given case where it would be manifestly contrary to the public policy of the forum.

## **The next steps in the legislative procedure**

The European Parliament must give its consent on the decision to authorise enhanced cooperation and will be consulted on the regulation to implement the legislation. The European Economic and Social Committee will also be consulted on the regulation. The member states participating in the enhanced cooperation will, eventually, need to decide on the regulation unanimously.

Other EU member states are considering participation. According to Article 328(1) of the Treaty on the Functioning of the European Union, 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 history of the dossier**

On 17 July 2006 the Commission proposed a Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

At its meeting in Luxembourg on 5 and 6 June 2008, the Council concluded that there was a lack of unanimity on the proposal and that there were insurmountable difficulties that made unanimity impossible both then and in the near future. It established that the proposal's objectives could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

In these circumstances, Greece, Spain, Italy, Hungary, Luxembourg, Austria, Romania and Slovenia addressed a request to the Commission by letters dated 28 July 2008 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. Bulgaria addressed an identical request to the Commission by a letter dated 12 August 2008 and France by a letter dated 12 January 2009. On 3 March 2010, Greece withdrew its request.

Germany, Belgium, Latvia, Malta and Portugal joined the request in April, May and June 2010 respectively. In total, 14 member states are thus joining the enhanced cooperation, so far.

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