

DECISIONS

COUNCIL DECISION

of 12 July 2010

authorising enhanced cooperation in the area of the law applicable to divorce and legal separation

(2010/405/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 329(1) thereof,

Having regard to the requests made by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Republic of Austria, the Portuguese Republic, Romania and the Republic of Slovenia,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The 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. For the progressive establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters with cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) Pursuant to Article 81 of the Treaty on the Functioning of the European Union, those measures are to include promoting the compatibility of the rules applicable in the Member States concerning conflict of laws, including measures concerning family law with cross-border implications.
- (3) 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 (hereinafter referred to as 'the proposed Regulation').
- (4) At its meeting on 5 and 6 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. 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.

- (5) 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.
- (6) 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'.
- (7) The conditions laid down in Article 20 of the Treaty on European Union and in Articles 326 and 329 of the Treaty on the Functioning of the European Union are fulfilled.
- (8) The area of the enhanced cooperation, namely the law applicable to divorce and legal separation, is identified by Article 81(2)(c) and Article 81(3) of the Treaty on the Functioning of the European Union as one of the areas covered by the Treaties.
- (9) The requirement of last resort in Article 20(2) of the Treaty on European Union is fulfilled in that the Council established in June 2008 that the objectives of the proposed Regulation cannot be attained within a reasonable period by the Union as a whole.

- (10) 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.
- (11) Enhanced cooperation in the area of the law applicable to divorce and legal separation complies with the Treaties and Union law, and it does not undermine the internal market or economic, social and territorial cohesion. It does not constitute a barrier to or discrimination in trade between Member States and does not distort competition between them.
- (12) Enhanced cooperation in the area of the law applicable to divorce and legal separation 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.
- (13) In particular, enhanced cooperation in the area of the law applicable to divorce and legal separation complies with Union law on judicial cooperation in civil matters, in that enhanced cooperation does not affect any pre-existing *acquis*.

- (14) This Decision respects the rights, principles and freedoms recognised in the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof.
- (15) 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,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Republic of Austria, the Portuguese Republic, Romania and the Republic of Slovenia are hereby 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.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 12 July 2010.

For the Council
The President
S. LARUELLE