

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0361/2008

19.9.2008

REPORT

on the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters
(COM(2006)0399 – C6-0305/2006 – 2006/0135(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Evelyne Gebhardt

Rapporteur for the opinion (*): Carlo Casini, Committee on Legal Affairs

(*): Associated committees – Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Associated committees – Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters

(COM(2006)0399 – C6-0305/2006 – 2006/0135(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2006)0399),
 - having regard to Article 61, point (c) and Article 67(1) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0305/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0361/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 6 a (new)

(6a) The possibility of choosing the law applicable to divorce and to legal separation should not harm the interests of the child.

Justification

Articles 12 and 13 of Regulation No 2201/2003 also apply to the choice of jurisdiction. Hence it is essential that the interests of the child be taken into consideration.

Amendment 2
RECITAL 6 b (new)

(6b) Before the competent jurisdiction and the applicable law are designated, it is important for the spouses to have access to up-to-date information concerning the essential aspects of national and Community law and of the procedures relating to divorce and legal separation. In order to safeguard such access to information of an appropriate quality, the Commission must regularly update the information contained in the public Internet-based information system set up by means of Council Decision No 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters¹.

OJ L 174, 27.6.2001, p. 25.

Justification

It must be ensured that the choice made by the parties is an enlightened one, i.e. that both spouses are duly informed of the practical implications of their choice. With this in mind, consideration should be given to the best way of ensuring that comprehensive, reliable information is made available to the signatories of the agreement on the assignment of competence before the act is signed.

Amendment 3
RECITAL 6 c (new)

(6c) The possibility of choosing by common agreement the jurisdiction and the applicable law should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the Member States should be aware of the importance of an

enlightened choice on the part of the two spouses concerning the legal implications of the agreement concluded.

Justification

It must be ensured that the choice made by the parties is an enlightened one, i.e. that both spouses are duly informed of the practical implications of their choice. All the authorities must ensure that both spouses are aware of the implications of their agreement.

Amendment 4
RECITAL 7 a (new)

(7a) The term “habitual residence” should be interpreted in accordance with the purposes of this Regulation. Its meaning should be determined by the judge in each individual case and on the basis of facts. The term does not refer to a concept of national law but, rather, to a separate concept established in Community law.

Amendment 5
RECITAL 9 a (new)

(9a) The enlightened agreement of the two spouses is a basic principle of this Regulation. Each partner in the couple should know exactly what legal and social implications follow from the choice of jurisdiction and of applicable law.

Justification

It is possible that, under the rule governing the conflict of laws, the law of another Member State may be designated. In such a case the judge must apply the foreign law, which may cause problems for the jurisdictions concerned. Provision must also be made for the judge to be able to consult an appropriate source.

Amendment 6
ARTICLE 1, POINT 1
Title (Regulation (EC) No 2201/2003)

“Council Regulation (EC) N° 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility as well as ***applicable law in matrimonial matters***”.

“Council Regulation (EC) N° 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, as well as ***the law applicable to divorce and legal separation***”.

Amendment 7

ARTICLE 1, POINT 1 A (new)

Article 2, point 11 a (new) (Regulation (EC) No 2201/2003)

(1a) In Article 2, the following point shall be inserted:

“11a. the term ‘habitual residence’ shall mean a person’s place of ordinary abode.”

Justification

A definition of the term habitual residence should be provided so as to avoid as much as possible arbitrary interpretations. The court, of course, has to examine all relevant facts before it applies the definition.

Amendment 8

ARTICLE 1, POINT 2

Article 3a, paragraph 1, point (a) (Regulation (EC) No 2201/2003)

(a) ***any of the grounds of jurisdiction listed in Article 3 applies***, or

(a) ***at the time when the agreement is concluded, the jurisdiction of that Member State is competent pursuant to Article 3***, or

Justification

The precise moment at which the criteria apply must be specified.

Amendment 9

ARTICLE 1, POINT 2

Article 3a, paragraph 1, point (b) (Regulation (EC) No 2201/2003)

(b) it is the ***place*** of the spouses’ ***last***

(b) ***at the time when the agreement is***

common habitual residence for a minimum period of three years, or

concluded, it is the *Member State in which* the spouses *have had their* habitual residence for a minimum period of three years, *provided that this situation did not come to an end more than three years before the jurisdiction was seized*, or

Justification

The precise moment at which the criteria apply must be specified.

Amendment 10

ARTICLE 1, POINT 2

Article 3a, paragraph 1, point (c) (Regulation (EC) No 2201/2003)

(c) one of the spouses is a national of that Member State or, in the case of the United Kingdom and Ireland, has his or her “domicile” in the territory of one of the latter Member States.

(c) *at the time when the agreement is concluded*, one of the spouses is a national of that Member State or, in the case of the United Kingdom and Ireland, has his or her “domicile” in the territory of one of the latter Member States.

Justification

The precise moment at which the criteria apply must be specified.

Amendment 11

ARTICLE 1, POINT 2

Article 3a, paragraph 1, point c a (new) (Regulation (EC) No 2201/2003)

“(ca) their marriage took place in that Member State.”

Justification

The choice by the parties of a country to celebrate their marriage should be reasonably presumed as implying possible acceptance of the jurisdiction of that country as well.

Amendment 12

ARTICLE 1, POINT 2

Article 3a, paragraph 2 (Regulation (EC) No 2201/2003)

2. An agreement conferring jurisdiction

2. An agreement conferring jurisdiction *may*

shall be expressed in writing and signed by both spouses at the latest at the time the court is seised.

be concluded or altered at any time, but at the latest at the time the court is seised. It shall apply to every level of judicial proceeding.

The agreement shall be expressed in writing, dated and signed by both spouses. If the law of the Member State in which one of the spouses has their habitual residence at the time the agreement is made provides for any additional formal requirements for such agreements, those requirements must be fulfilled. If the spouses have their habitual residence in different Member States whose respective laws provide for additional formal requirements, the agreement shall be valid if it complies with the requirements of one of those laws.

If the agreement forms part of a marriage contract, the formal requirements of that marriage contract must be fulfilled.

Amendment 13

ARTICLE 1, POINT 3

Articles 4 and 5 (Regulation (EC) No 2201/2003)

(3) In Articles 4 and 5, the terms “Article 3” are replaced by the terms “Articles 3 and 3a”.

(3) In Articles 4 and 5, the terms “Article 3” are replaced by the terms “Articles 3, 3a and 7”.

Amendment 14

ARTICLE 1, POINT 5

Article 7, point a (Regulation (EC) No 2201/2003)

(a) the spouses had their *common previous* habitual residence in the territory of that Member State for at least three years; or

(a) the spouses *previously* had their habitual residence in the territory of that Member State for at least three years, *provided that that period does not precede the seisure of the jurisdiction by more than three years*; or

Justification

'Forum shopping' must be avoided.

Amendment 15
ARTICLE 1, POINT 5 A (new)
Article 7 a (new) (Regulation (EC) No 2201/2003)

(5a) The following article is inserted:

“Article 7a

Forum necessitatis

Where the jurisdiction which is competent pursuant to this Regulation is located in a Member State under whose law there is no provision for divorce or the existence or the validity of the marriage in question is not recognised, jurisdiction shall be granted to:

(a) the Member State of which one of the spouses is a national; or

(b) the Member State in which the marriage took place.”

Justification

This amendment serves to regulate situations in which – pursuant to the criteria laid down in Articles 3, 3a and 7 of the Regulation – the jurisdiction granted does not provide for divorce or does not recognise the existence or the validity of the marriage in question.

Amendment 16
ARTICLE 1, POINT 6
Article 12, paragraph 1 (Regulation (EC) No 2201/2003)

(6) In Article 12 (1), the terms “Article 3” are replaced by the terms “Articles 3 ***and*** 3a”.

(3) In Article 12 (1), the terms “Article 3” are replaced by the terms “Articles 3, 3a ***and*** 7”.

Amendment 17
ARTICLE 1, POINT 7
Article 20a, title (Regulation (EC) No 2201/2003)

Choice of law by the parties

Choice of *applicable* law by the parties

Amendment 18

ARTICLE 1, POINT 7

Article 20a, paragraph 1, point -a (new) (Regulation (EC) No 2201/2003)

(-a) the law of the State in which the spouses have their habitual residence at the time when the agreement is concluded;

Justification

It seems rational that this criterion should be included with the others for the purpose of choosing the applicable law.

Amendment 19

ARTICLE 1, POINT 7

Article 20a, paragraph 1, point a (Regulation (EC) No 2201/2003)

(a) the law of the State of ***the last common*** habitual residence of the spouses insofar as one of them still resides there;

(a) the law of the State of habitual residence of the spouses insofar as one of them still resides there ***at the time when the agreement is concluded;***

Justification

The precise moment at which the criteria apply must be specified.

Amendment 20

ARTICLE 1, POINT 7

Article 20a, paragraph 1, point b (Regulation (EC) No 2201/2003)

(b) the law of the State of the nationality of either spouse, or, in the case of United Kingdom and Ireland, the “domicile” of either spouse;

(b) the law of the State of the nationality of either spouse, or, in the case of United Kingdom and Ireland, the “domicile” of either spouse ***at the time when the agreement is concluded;***

Justification

The precise moment at which the criteria apply must be specified.

Amendment 21
ARTICLE 1, POINT 7
Article 20a, paragraph 1, point c (Regulation (EC) No 2201/2003)

(c) the law of the State where the spouses have **resided** for at least **five** years;

(c) the law of the State where the spouses have **previously had their habitual residence** for at least **three** years;

Justification

It seems somewhat arbitrary to have criteria of different lengths stated in Article 20a(1)(c), Article 3a(1)(b) and Article 7(a). The rapporteur is proposing that the periods should all be three years in length.

Amendment 22
ARTICLE 1, POINT 7
Article 20a, paragraph 1, point c a (new) (Regulation (EC) No 2201/2003)

(ca) the law of the State in which the marriage took place;

Justification

It seems rational that this criterion should be included with the others for the purpose of choosing the applicable law.

Amendment 23
ARTICLE 1, POINT 7
Article 20a, paragraph 1, point d a (new) (Regulation (EC) No 2201/2003)

(da) the law of the State in which the marriage took place.

Justification

The choice by the parties of a country to celebrate their marriage should be reasonably presumed as implying possible acceptance of the law of that country as well.

Amendment 24
ARTICLE 1, POINT 7
Article 20a, paragraph 2 (Regulation (EC) No 2201/2003)

2. An agreement designating the applicable law shall be expressed in writing and be signed by both spouses at the latest at the

2. An agreement designating the applicable law shall be expressed in writing and be signed by both spouses at the latest at the

time the court is seised.

time the court is seised.

However, if the law of the Member State in which one of the spouses has his or her habitual residence at the time when the agreement is concluded stipulates additional formal requirements for such agreements, those requirements must be met. If the spouses have their habitual residence in different Member States whose respective laws stipulate additional formal requirements, the agreement shall be valid if it meets the requirements of one of those laws.

If the agreement forms part of a marriage contract, the formal requirements of that contract must be met.

Justification

This provides clarification in situations in which the law of a Member State or the marriage contract stipulates stricter requirements than those laid down in the Regulation.

Amendment 25

ARTICLE 1, POINT 7

Article 20a, paragraph 2 a (new) (Regulation (EC) No 2201/2003)

2a. Should the law indicated pursuant to the first paragraph of this article not recognise separation or divorce or do so in a form that is discriminatory as regards one of the spouses, the lex fori shall apply.

Justification

This amendment is intended to deal with the problems encountered by certain women from third countries who wish to obtain a separation or divorce in a Member State. The interest of the individual in obtaining a separation or divorce as an expression of personal autonomy should have priority over the application of national law. In such cases, the application of that national law tends to be an obstacle to certain persons resident in a Member State who seek a separation or divorce.

Amendment 26

ARTICLE 1, POINT 7

Article 20b, introductory part (Regulation (EC) No 2201/2003)

In the absence of choice pursuant to Article 20a, divorce and legal separation shall be subject to the law of the State:

In the absence of choice pursuant to Article 20a, divorce and legal separation shall be subject, ***in descending order***, to the law of the ***Member*** State:

Amendment 27

ARTICLE 1, POINT 7

Article 20b, point a (Regulation (EC) No 2201/2003)

(a) where the spouses have their ***common*** habitual residence, or failing that,

(a) where the spouses have their habitual residence ***at the time when the jurisdiction is seised***, or failing that,

Justification

The precise moment at which the criteria apply must be specified.

Amendment 28

ARTICLE 1, POINT 7

Article 20b, point b (Regulation (EC) No 2201/2003)

(b) where the spouse had their ***last common*** habitual residence insofar as one of them still resides there, or failing that,

(b) where the spouses had their habitual residence insofar as one of them still resides there ***at the time when the jurisdiction is seised***, or failing that,

Justification

The precise moment at which the criteria apply must be specified.

Amendment 29

ARTICLE 1, POINT 7

Article 20b, point c (Regulation (EC) No 2201/2003)

(c) of which both spouses are nationals, or, in the case of United Kingdom and Ireland, both have their “domicile”, or failing that,

(c) of which both spouses are nationals, or, in the case of *the* United Kingdom and Ireland, ***in which*** both ***wives*** have their “domicile” ***at the time at which the jurisdiction is seised***, or failing that,

Justification

The precise moment at which the criteria apply must be specified.

Amendment 30
ARTICLE 1, POINT 7
Article 20b, subparagraph 1 a (new) (Regulation (EC) No 2201/2003)

Should the law indicated pursuant to the first paragraph of this article not recognise separation or divorce or do so in a form that is discriminatory as regards one of the spouses, the lex fori shall apply.

Amendment 31
ARTICLE 1, POINT 7
Article 20e a (new) (Regulation (EC) No 2201/2003)

Article 20ea

Information from the Member States

1. By ... at the latest¹, the Member States shall notify the Commission of their national rules concerning the formal requirements applying to agreements relating to the choice of competent jurisdiction and of the law applicable to marriage contracts.

The Member States shall notify the Commission of any subsequent change to those rules.

2. The Commission shall make available to the public the information which has been notified to it pursuant to paragraph 1 by means of appropriate measures, in particular the European Judicial Network in civil and commercial matters.

¹ Three months after the date upon which this Regulation comes into force.

Justification

It must be ensured that the choice made by the parties is an enlightened one, i.e. that both spouses are duly informed of the practical implications of their choice. With this in mind, consideration should be given to the best way of ensuring that comprehensive, reliable

information is made available to the signatories of the agreement on the assignment of competence before the act is signed.

EXPLANATORY STATEMENT

The purpose of this proposal for a Regulation is to establish a clear, comprehensive legal framework covering *both* rules relating to jurisdiction and the recognition and enforcement of judgments in matrimonial matters *and* the rules relating to the applicable law, by allowing the parties a certain degree of autonomy.

An ‘international’ couple wishing to get divorced has hitherto been subject to the competence rules laid down in Council Regulation (EC) No 2201/2003¹ (known as ‘Brussels IIa’), pursuant to which spouses are able to choose amongst a number of different competence criteria. Once a divorce procedure comes before the courts of a Member State, the applicable law is determined in accordance with that State’s rules on conflicts of law. Those rules vary greatly from one Member State to another.

The disparate nature of those rules combined with the current Community provisions on the awarding of competence may give rise to a number of problems where ‘international’ divorces are concerned. In addition to the lack of legal certainty stemming from the difficulty which spouses have in determining which law will apply to their case², there is a risk (which the Commission regards as real) of a ‘dash to court’ – an expression denoting a situation in which the better informed spouse will attempt to seize the jurisdiction whose law best serves his or her interests. Furthermore, Community citizens resident in a non-EU country may have difficulty in finding a jurisdiction which is competent to deal with divorce and in securing recognition in their respective countries of origin of a divorce settlement granted in a non-EU country.

The purpose of a Commission proposal is to limit the above risks and to compensate for the above shortcomings, in particular by making it possible for the parties to choose by common agreement the competent jurisdiction and the applicable law.

Choice of Jurisdiction

Article 3a makes it possible for spouses to designate by common agreement the competent jurisdiction in their divorce procedure. It has the undoubted advantage of increasing the parties’ degree of autonomy and enabling them to seize freely (in accordance with certain competence criteria) the jurisdiction with which they have the most links. First and foremost, it must be ensured that the competence criterion is worded with sufficient strength and accuracy without becoming pointlessly restrictive. However, your rapporteur is proposing to add Article 7a, which governs situations in which (pursuant to the Article 3, 3a and 7 criteria) the jurisdiction assigned has no provision for divorce or does not recognise the existence or validity of the marriage in question.

¹ Council Regulation (EC) n° 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility and repealing Regulation (EC) n° 1347/2000, OJ L 338, 23.12.2003, page 1

² In this connection, see document SEC (2006) 949 of 17.7.2006, p. 5

Choice of applicable law

Article 20a constitutes an innovation in that for the first time, it allows the spouses to designate by common agreement the law applicable in their divorce procedure. According to the rapporteur it makes sense to allow the possibility of choosing the law of the State in which the spouses have their habitual residence at the time when the agreement is concluded, and also the law of the State in which the marriage took place.

Furthermore, the lack of correspondence between Article 20a and Articles 3, 3a and 7 in terms of duration criteria may be questioned. According to the rapporteur, extending the period of residence in Article 20a seems somewhat arbitrary, for which reason she is proposing to make three years the standard duration.

Enlightened choice

It then has to be ensured that the choice made by the parties is an enlightened one, i.e. that both spouses have been duly informed of the practical implications of their choice. In this regard, consideration needs to be given to the best way of ensuring that comprehensive reliable information is made available to the secretaries of the agreement on the assignment of competence before the act is signed. Access to information must also be provided, irrespective of each spouse's financial situation. It must be ensured that both spouses receive comprehensive accurate information concerning the implications of their choice of jurisdiction and the law applicable to divorce, especially since the Member States' laws differ considerably in a number of respects (such as the grounds for divorce, the forms which divorce takes, the terms and conditions for obtaining a divorce, the requisite separation period and other key aspects for the procedure). Furthermore, since laws do change, it may be that an agreement designating the applicable law which was signed at a given moment no longer meets the legitimate expectations of the parties at the time at which it should deploy its effects, since the legislation of the Member State in question has in the meantime been amended.

The rapporteur is proposing a mechanism under which the Commission would be responsible for a public Internet-based information system (operating in connection with the European Judicial Network in civil and commercial matters), where anyone may find up-to-date information concerning the basic aspects of national and Community law. Furthermore, the jurisdiction seized must realise how important an enlightened choice on the part of both spouses is.

11.9.2008

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS (*)

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM(2006)0399 – C6-0305/2006 – 2006/0135(CNS))

Rapporteur (*): Carlo Casini

(*) Procedure with associated committees – Rule 47

SHORT JUSTIFICATION

The Commission proposal deals solely with the question of determining the applicable law and jurisdiction in the case of applications for divorce or separation. It does not, therefore, cover marriage annulment or entitlement to maintenance. The proposal is presented as a partial amendment of existing Council Regulation (EC) No 2201/2003, whose scope is much broader, as it also covers grounds for marriage annulment, parental responsibility and the recognition of judgments in matrimonial matters in an interstate setting.

The proposal mainly relates to ‘international couples’, in other words spouses of different nationalities or who live in different Member States or in states of which they are not nationals. The main new feature of the regulation is that it offers spouses the possibility of choosing the competent court and the applicable law, albeit only from a limited range of options, namely the jurisdictions and laws which have an objective connection with the marriage in question. Under the proposal, the main ‘connecting factor’ is residence. It follows that, if both spouses have the same nationality and have both always lived in the state of which they are nationals, they have no other option than to apply to the courts of the state in which they live, which will apply the *lex loci*, in other words the *lex fori*.

Overall, the proposal seems to be reasonable. It is completely in tune with the free movement of persons, one of the fundamental freedoms on which the whole EU edifice is based, and upholds the principle of party autonomy by allowing parties to choose, if they wish, which courts and which law should govern the proceedings bringing their marriage to an end.

However, your rapporteur considers that some changes should be made to the proposal in order to make it even more effective.

First of all, it should be stipulated that the parties’ freedom of choice should be restricted to the courts and laws of other *Member States*, and that, more generally, in line with the

principle of subsidiarity, the proposal cannot oblige the authorities of a state which makes no provision for divorce, or which does not recognise the type of marriage in question, to dissolve a marriage.

Furthermore, under the Commission proposal spouses may choose any of the forums listed in Article 3 of Regulation 2201/2003. In this event, the more restrictive criterion set out in Article 3a(b) would be superfluous. The simplest solution in technical terms would be to delete the whole of point (b). However, it seems from the proposal that the Commission's intention is to establish a connection with the *lex fori* once the parties are given the possibility of deciding for themselves to which court they will apply. This intention is indicated by point (b). To maintain point (b) while bringing it into line with the substance of Article 3 (by enhancing the parties' autonomy), the rapporteur suggests that the whole of Article 3(a) should be reworded. Obviously, Article 3 will remain valid and applicable where parties do not exercise their freedom to choose the competent court.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1

ARTICLE 1, POINT 2

Article 3a, paragraph 1 (Regulation (EC) No 2201/2003)

1. The spouses may agree that ***a court or*** the courts of a Member State are to have jurisdiction in a proceeding between them relating to divorce or legal separation provided ***they have*** a substantial connection with that Member State by virtue of the fact that

(a) ***any of the grounds of jurisdiction listed in Article 3 applies,*** or

(b) ***it is the place of*** the spouses' last ***common*** habitual ***residence for a minimum period of three years,*** or

1. The spouses may agree that the courts of a Member State are to have jurisdiction in a proceeding between them relating to divorce or legal separation provided ***there is*** a substantial connection ***between their marriage and the chosen*** Member State by virtue of the fact that

(a) ***the spouses had their habitual residence in that State for a continuous period of at least three years, provided that period did not end more than three years before the application for a divorce or legal separation;*** or

(b) the spouses' last habitual residence ***was situated in that State, and the respondent is still residing there at the time the***

(c) *one of the spouses is a national of that Member State* or, in the case of the United Kingdom and Ireland, has his or her “domicile” *in the territory of one of the latter Member States*.

application is made; or

(c) *the applicant’s current habitual place of residence is in that State and he or she has resided there for a minimum period of six months if he or she is a national of that Member State or one year if he or she is not a national of that State*, or, in the case of the United Kingdom and Ireland, *the applicant* has his or her “domicile” *there; or*

(ca) their marriage took place in that Member State.

Justification

Rewording Article 3a makes it possible to list the following criteria for connecting factors on a more rational basis: prolonged residence; residence, albeit brief, provided it is the last place of residence of the couple and the current place of residence of the respondent; the current residence of the applicant for some time past; the place where the marriage was celebrated. This avoids any conflict between the criteria in question, or between those criteria and Article 3 of the regulation, which will continue to apply in the absence of any agreement between the parties.

Amendment 2

ARTICLE 1, POINT 2

Article 3 (a), paragraph 2 (Regulation (EC) No 2201/2003)

2. An agreement conferring jurisdiction *shall be expressed in writing and signed by both spouses* at the latest at the time the court is seised.

2. An agreement conferring jurisdiction *may be concluded or altered at any time, but* at the latest at the time the court is seised. *It shall apply to every level of judicial proceeding.*

The agreement shall be expressed in writing, *dated* and signed by both spouses. *If the law of the Member State in which one of the spouses has their habitual residence at the time the agreement is made provides for any additional formal requirements for such agreements, those requirements must be fulfilled. If the spouses have their habitual residence in different Member States whose respective laws provide for additional formal requirements, the agreement shall be valid if it complies with the requirements of one of those laws.*

If the agreement forms part of a marriage contract, the formal requirements of that marriage contract must be fulfilled.

Justification

It is appropriate to clarify the formal requirements governing the agreement, stipulate its effects and maintain the general rules governing jurisdiction in the absence of agreement.

Amendment 3

ARTICLE 1, POINT 5 A (new)

Article 7 a (new) (Regulation (EC) No 2201/2003)

(5a) The following article is inserted:

“Article 7a

Forum necessitatis

When the competent jurisdiction under this Regulation is situated in a Member State whose law makes no provision for divorce or does not recognise the existence or validity of the marriage in question, jurisdiction shall be allocated:

(a) to the Member State of the nationality of one of the spouses; or

(b) to the Member State in which the marriage was celebrated.”

Justification

A Member State cannot be required to recognise as marriage, even for the sole purpose of its dissolution, an act that is not considered to be such by the law of that state. In the same way, it would be contrary to the principle of subsidiarity to impose on a judge in a Member State whose law does not provide for such an act the requirement to pronounce the divorce.

Moreover, an international couple has the right to obtain a pronouncement of divorce by at least one EU judge if the marriage has some connection with EU territory; accordingly, in the absence of a choice by the parties, the jurisdiction of the Member State of the nationality of one of the two spouses or in which the marriage was celebrated should by default be competent.

Amendment 4

ARTICLE 1, POINT 7

Article 20 a, paragraph 1 (Regulation (EC) No 2201/2003)

1. The spouses may agree to designate the law applicable to divorce and legal separation. *The spouses may agree to designate one of the following laws:*

(a) the law of the State of the last common habitual residence of the spouses in so far as one of them still resides there;

(b) the law of the State of the nationality of either spouse, or, in the case of United Kingdom and Ireland, the “domicile” of either spouse;

(c) the law of the State where the spouses have resided for at least five years;

(d) the law of the Member State in which the application is lodged.

1. The spouses may agree to designate the law applicable to divorce and legal separation; *their choice shall be confined to the laws of the Member States having a substantial connection with the marriage as specified in Article 3a.*

Justification

The criterion proposed here is broader than that put forward in the Commission proposal, which rules out the law of the place of residence of the applicant or respondent alone (even though that law could, in principle, become applicable by virtue of the choice of court, pursuant to Article 20a(b)).

Amendment 5

ARTICLE 1 – POINT 7

Article 20 a – paragraph 2 (Regulation (EC) No 2201/2003)

2. An agreement designating the applicable law shall be expressed in writing and be signed by both spouses at the latest at the time the court is seised.

2. The parties’ choice shall be subject to the formal requirements set out in paragraph 2 of Article 3a.

Justification

The amendment seeks to ensure that the formal requirements applying to the agreement designating the applicable law correspond to those applying to the choice of law.

Amendment 6

ARTICLE 1, POINT 7

Article 20b, introductory part (Regulation (EC) No 2201/2003)

In the absence of choice pursuant to Article

In the absence of choice pursuant to Article

20a, divorce *and* legal separation shall be subject to the law of the State:

20a, divorce *or* legal separation shall be subject, *in descending order*, to the law of the *Member* State:

PROCEDURE

Title	Applicable law in matrimonial matters
References	COM(2006)0399 – C6-0305/2006 – 2006/0135(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 28.9.2006
Associated committee(s) – date announced in plenary	15.2.2007
Rapporteur Date appointed	Carlo Casini 2.10.2006
Discussed in committee	4.10.2007 19.12.2007
Date adopted	9.9.2008
Result of final vote	+: 25 –: 0 0: 0
Members present for the final vote	Carlo Casini, Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Othmar Karas, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitutes present for the final vote	Sharon Bowles, Vicente Miguel Garcés Ramón, Jean-Paul Gauzès, Georgios Papastamkos, Gabriele Stauner, József Szájer, Jacques Toubon, Ieke van den Burg
Substitutes under Rule 178(2) present for the final vote	Victor Boștinaru, Renate Weber

PROCEDURE

Title	Applicable law in matrimonial matters			
References	COM(2006)0399 – C6-0305/2006 – 2006/0135(CNS)			
Date of consulting Parliament	20.9.2006			
Committee responsible Date announced in plenary	LIBE 28.9.2006			
Committees asked for opinions Date announced in plenary	JURI 28.9.2006	FEMM 28.9.2006		
Not delivering opinions Date of decision	FEMM 13.9.2006			
Associated committee Date announced in plenary	JURI 15.2.2007			
Rapporteur Date appointed	Evelyne Gebhardt 13.9.2006			
Discussed in committee	24.1.2007	11.9.2007	3.10.2007	9.10.2007
	22.1.2008	15.9.2008		
Date adopted	15.9.2008			
Result of final vote	+ : 38 - : 2 0 : 1			
Members present for the final vote	Alexander Alvaro, Roberta Angelilli, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Panayiotis Demetriou, Bárbara Dührkop Dührkop, Urszula Gacek, Kinga Gál, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Magda Kósáné Kovács, Stavros Lambrinidis, Kartika Tamara Liotard, Viktória Mohácsi, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Renate Weber, Tatjana Ždanoka			
Substitutes present for the final vote	Edit Bauer, Frieda Brepoels, Simon Busuttil, Evelyne Gebhardt, Sophia in 't Veld, Iliana Malinova Iotova, Ona Juknevičienė, Sylvia-Yvonne Kaufmann, Antonio Masip Hidalgo, Bill Newton Dunn, Luca Romagnoli, María Isabel Salinas García, Eva-Britt Svensson			
Substitute under Rule 178(2) present for the final vote	Andres Tarand			
Date tabled	19.9.2008			