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**A7-0253/2013**

20.8.2013

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## **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

(COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS))

Committee on Legal Affairs

Rapporteur: Alexandra Thein

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

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

***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT 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 (COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2011)0126),
  - having regard to Article 81(3) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0093/2011),
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Italian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality (A7-0253/2013),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  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 substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Amendment 1**  
**Proposal for a regulation**  
**Recital 10**

*Text proposed by the Commission*

(10) This Regulation covers issues in connection with matrimonial property

*Amendment*

(10) This Regulation covers issues in connection with matrimonial property

regimes. It does not define 'marriage', which is defined by the national laws of the Member States.

regimes. It does not define 'marriage', which is defined by the national laws of the Member States. ***Rather, it adopts a neutral attitude towards that concept. This Regulation does not affect the definition of the concept of marriage in the national law of the Member States.***

## **Amendment 2**

### **Proposal for a regulation**

#### **Recital 11**

##### *Text proposed by the Commission*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital 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.

##### *Amendment*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property and the liquidation of the regime, in particular as a result of the couple's separation, ***or divorce*** or the death of one of the spouses.

*(Corresponds to recital 9 in Regulation (EU) No 650/2012.)*

## **Amendment 3**

### **Proposal for a regulation**

#### **Recital 11 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(11a) This Regulation should not, however, apply to areas of civil law concerning matters other than matrimonial property regimes. For reasons of clarity, therefore, a number of questions which could be seen as having a link with matters of matrimonial property regimes should be explicitly excluded from the scope of this Regulation.***

*(Corresponds to recital 11 in Regulation (EU) No 650/2012.)*

## Justification

*The new recital stresses that the scope must be defined precisely and that the demarcation between this and other fields of the law must be clear. Recital 11 of the Regulation on the law of succession has a similar purpose.*

### **Amendment 4** **Proposal for a regulation** **Recital 12**

#### *Text proposed by the Commission*

(12) *As* maintenance obligations between spouses are governed by Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, **they** should be excluded from the scope of this Regulation, as should issues relating to **the validity and effect of gifts** covered by Regulation (EC) No 593/2008 of the European Parliament and Council **of 17 June 2008 on the law applicable to contractual obligations (Rome I)**.

#### *Amendment*

(12) Maintenance obligations between spouses, **which** are governed by Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, should be excluded from the scope of this Regulation, as should issues relating to **legal succession in the event of death** covered by Regulation (EU) No 650/2012 of the European Parliament and **of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession**<sup>1</sup>.

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<sup>1</sup> OJ L 201, 27.7.2012, p. 107.

### **Amendment 5** **Proposal for a regulation** **Recital 13**

#### *Text proposed by the Commission*

(13) **Issues relating to the nature of** rights in rem **that may exist under** the national law of Member States, **and those linked to the disclosure of such rights, should also be excluded from the scope of this Regulation, as they are from Regulation**

#### *Amendment*

(13) **This Regulation – like Regulation (EU) No 650/2012 – should not affect the limited number ('numerus clausus') of** rights in rem **known in** the national law of **some** Member States. **A Member State should not be required to recognise a**

*(EU) No ... [of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession. This means that the courts of the Member State in which property of one or both spouses is located may take measures under property law, regarding such things as the recording of a transfer of the property in the public register, where the law of that Member State so provides.*

*right in rem relating to property located in that Member State if the right in rem in question is not known in its law.*

*(Corresponds in part to recital 15 in Regulation (EU) No 650/2012.)*

#### *Justification*

*The demarcation between this Regulation and property law is expressed more clearly here, in the same way as in the Regulation on succession. The new recital is based on Recital 15 in that Regulation.*

#### **Amendment 6 Proposal for a regulation Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them, for example in the context of a dispute concerning a matrimonial property regime, this Regulation should provide for the adaptation of an unknown right in rem to the closest equivalent right in rem under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right in rem and the effects attached to it. For the purposes of determining the closest equivalent national right in rem, the authorities or competent persons of the*

*State whose law applies to the matrimonial property regime may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used as well as any other available means facilitating the understanding of foreign law.*

*(Corresponds to recital 16 in Regulation (EU) No 650/2012.)*

*Justification*

*In cases concerning matrimonial property, a problem arises in relation to the recognition of rights in rem which is comparable to that in succession cases. The new recital corresponds to Recital 16 in the Regulation on succession.*

**Amendment 7**  
**Proposal for a regulation**  
**Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

***(13b) The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information.***

*(Corresponds in part to recital 18 in Regulation (EU) No 650/2012.)*

*Justification*

*As in the Regulation on succession, the requirements for the recording in a register of a right*



*in immovable or movable property should be excluded from the scope of this Regulation. The new recital corresponds to Recital 18 in the Regulation on succession.*

**Amendment 8**  
**Proposal for a regulation**  
**Recital 13 c (new)**

*Text proposed by the Commission*

*Amendment*

***(13c) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the erga omnes effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.***

*(Corresponds to recital 19 in Regulation (EU) No 650/2012.)*

*Justification*

*As in the Regulation on succession, the effects of the recording of a right in a register should also be excluded from the scope of this Regulation. The new recital corresponds to Recital 19 in the Regulation on succession.*

**Amendment 9**  
**Proposal for a regulation**  
**Recital 13 d (new)**

*Text proposed by the Commission*

*Amendment*

***(13d) The term ‘matrimonial property regime’, which determines the scope of this Regulation, should cover all rules concerning property relationships between spouses and in respect of third***

*parties arising from their marriage and after its termination. These include not only the compulsory provisions of the applicable law but also any optional arrangements which the spouses may have agreed in accordance with the applicable law.*

*Justification*

*Clarification.*

**Amendment 10**  
**Proposal for a regulation**  
**Recital 13 e (new)**

*Text proposed by the Commission*

*Amendment*

*(13e) Like Regulation (EU) No 650/2012, this Regulation should respect the different systems for dealing with property-regime issues applied in the Member States. For the purposes of this Regulation, the term ‘court’ should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of property regimes, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given property-regime matter by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term ‘court’ should not cover non-judicial authorities of a Member State empowered under national law to deal with property regimes, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.*

*(Corresponds to recital 20 in Regulation (EU) No 650/2012.)*

### *Justification*

*It seems worthwhile to adopt the definition of ‘court’ from the Regulation on succession in order to take into account the different models of organisation in the Member States in property matters as well. The new recital corresponds to Recital 20 in the Regulation on succession.*

#### **Amendment 11** **Proposal for a regulation** **Recital 14**

##### *Text proposed by the Commission*

(14) To reflect the increasing mobility of couples during their married life and facilitate the proper administration of justice, the rules on jurisdiction in this Regulation provide that matters of matrimonial property regimes, including liquidation of the regime as a result of divorce, legal separation or marriage annulment, are to be dealt with by the courts of the Member State having jurisdiction to deal with the divorce, separation or marriage annulment proceedings under Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

##### *Amendment*

(14) To reflect the increasing mobility of couples during their married life and facilitate the proper administration of justice, the rules on jurisdiction in this Regulation provide that matters of matrimonial property regimes, including liquidation of the regime as a result of divorce, legal separation or marriage annulment, are to be dealt with by the courts of the Member State having jurisdiction to deal with the divorce, separation or marriage annulment proceedings under Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, ***if the jurisdiction of the courts concerned has been expressly or in some other manner recognised by the spouses.***

#### **Amendment 12** **Proposal for a regulation** **Recital 16**

##### *Text proposed by the Commission*

(16) Where matters of matrimonial property regimes are not linked to a divorce, separation or marriage annulment or to the death of a spouse, the spouses

##### *Amendment*

(16) Where matters of matrimonial property regimes are not linked to a divorce, separation or marriage annulment or to the death of a spouse, the spouses

may decide to submit questions related to their matrimonial regime to the courts of the Member State of the law they chose as the law applicable to their matrimonial property regime. ***Such a decision is expressed by*** an agreement between the spouses which may be concluded ***at any moment, even during the proceedings.***

may decide to submit questions related to their matrimonial regime to the courts of the Member State of the law they chose as the law applicable to their matrimonial property regime. ***This requires*** an agreement between the spouses which may be concluded, ***at the latest, until the matter is put before the court and subsequently as provided for by the lex fori.***

**Amendment 13**  
**Proposal for a regulation**  
**Recital 17**

*Text proposed by the Commission*

(17) This Regulation must allow the territorial jurisdiction of a Member State's courts over applications concerning matrimonial property regimes to be determined in cases other than those of separation of the couple or death of a spouse, ***and must in particular have a forum necessitatis provision to prevent situations where justice is denied.***

*Amendment*

(17) This Regulation must protect the territorial jurisdiction of a Member State's courts over applications concerning matrimonial property regimes to be determined in cases other than those of separation of the couple or death of a spouse, ***in accordance with a set of criteria, listed in order of precedence, designed to ensure the existence of a close link between the spouses and the Member State whose courts have jurisdiction.***

**Amendment 14**  
**Proposal for a regulation**  
**Recital 17 a (new)**

*Text proposed by the Commission*

***(17a) In order to remedy, in particular, situations of denial of justice, this Regulation should provide a forum necessitatis allowing a court of a Member State, on an exceptional basis, to rule on a matrimonial property case which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a***

***beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on forum necessitatis should, however, be exercised only if the matrimonial property case has a sufficient connection with the Member State of the court seised.***

*(Corresponds to recital 31 in Regulation (EU) No 650/2012.)*

#### *Justification*

*The text makes it clear in what cases jurisdiction may be based on forum necessitatis and particularly that these are exceptional cases. It is based on Recital 31 of the Regulation on succession.*

### **Amendment 15** **Proposal for a regulation** **Recital 21**

#### *Text proposed by the Commission*

(21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of *the law of* the spouses' common nationality at the time of their marriage. If neither of *these* criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all the circumstances, ***including the place where the marriage was celebrated***, it being made clear that *these* links are to be considered as they were at the time the marriage was entered into.

#### *Amendment*

(21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. ***The common habitual residence of the spouses at the time of marriage or*** the first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of the spouses' common nationality at the time of their marriage. If neither of *those* criteria *applies*, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all the circumstances, it being made clear that *those* links are to be considered as they were at the time the marriage was entered into.

**Amendment 16**  
**Proposal for a regulation**  
**Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) For the purposes of the application of this Regulation, i.e. where it refers to nationality as a criterion for the application of the law of a State, the question of how to deal with cases of plural nationality and whether a person is to be regarded as a national of a State should be left to national law, or where appropriate also to international agreements, in full observance of the general principles of the European Union.***

*Justification*

*Clarification. The provision is based on Recital 22 in the Rome III Regulation and Recital 41 in the Regulation on succession.*

**Amendment 17**  
**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

*Amendment*

(24) Given the importance of choosing the law applicable to the matrimonial property regime, *the* Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice. *This* choice should ***be made in the form prescribed for the marriage contract by the law of the State chosen or by that of the State where the instrument is drawn up, and*** at least be in writing and dated and signed by the couple. ***Any additional formal requirements imposed by the law of the State chosen or that of the State where the instrument is drawn up concerning the***

(24) Given the importance of choosing the law applicable to the matrimonial property regime, *this* Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice. ***The agreement establishing that*** choice should at least be in writing and dated and signed by the couple. ***The choice should be made in the form prescribed by the law applicable to the matrimonial property regime or the law of the State where the agreement has been concluded.***

*validity, disclosure or registration of such contracts should be complied with.*

## Amendment 18

### Proposal for a regulation Recital 24 a (new)

*Text proposed by the Commission*

*Amendment*

*(24a) To take account of certain rules of the Member States, in particular those for protection of the family home and for assigning rights of use in relations between the spouses, this Regulation should not prevent the application of overriding mandatory rules by the court before which a matter is brought, and should therefore allow a Member State to set aside the application of a foreign law in favour of its own. For this purpose ‘overriding mandatory rules’ should refer to imperative provisions, the upholding of which is regarded as crucial by a Member State for safeguarding its public interests, particularly its political, social or economic organisation. In order, for example, to protect the family home, the Member State where the home is located should be permitted to apply its own law, without prejudice to the transaction protection provisions applicable in the Member State concerned, whose precedence is guaranteed by Article 35.*

## Amendment 19

### Proposal for a regulation Recital 27

*Text proposed by the Commission*

*Amendment*

(27) Since mutual recognition of decisions rendered in the Member States is one of the objectives of this Regulation, this Regulation must lay down rules on the

(27) Since mutual recognition of decisions rendered in the Member States **in matrimonial property cases** is one of the objectives of this Regulation, this

recognition and enforcement of decisions on the basis of **Regulation (EC) No 44/2001, adjusted where necessary to meet the specific requirements of matters covered by this Regulation.**

Regulation must lay down rules on the recognition, **enforceability** and enforcement of decisions on the basis of **other legal instruments of the Union in the field of judicial cooperation in civil matters.**

**Amendment 20**  
**Proposal for a regulation**  
**Recital 28**

*Text proposed by the Commission*

*Amendment*

(28) In order to take into account the different **methods of** dealing with **matters of** matrimonial property **regimes** in the Member States, this Regulation **must** guarantee the **recognition** and **enforcement** of authentic instruments. **Nevertheless, authentic instruments cannot be treated as court decisions with regard to their recognition. The recognition of authentic instruments means that they enjoy the same evidentiary effect with regard to their contents and the same effects as in their country of origin, and a presumption of validity which may be rebutted if they are contested.**

(28) In order to take into account the different **systems for** dealing with matrimonial property **cases** in the Member States, this Regulation **should** guarantee the **acceptance** and **enforceability in all Member States** of authentic instruments **in matrimonial property matters.**

*(Corresponds to recital 60 in Regulation (EU) No 650/2012.)*

**Amendment 21**  
**Proposal for a regulation**  
**Recital 28 a (new)**

*Text proposed by the Commission*

*Amendment*

**(28a) In terms of the recognition, enforceability and enforcement of judicial decisions and of the acceptance and enforceability of authentic instruments and the enforceability of court settlements, this Regulation should therefore lay down rules on the basis of, in particular, Regulation (EU) No**



**Amendment 22**  
**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

(29) *While* the law applicable to matrimonial property regimes must govern the legal relationship between a spouse and a third party, *the conditions for relying on that law should be regulated by the law of the Member State of habitual residence of the spouse or the third party*, in the interests of the third party's protection. *The law of that Member State may thus provide that the spouse may invoke the law of his or her matrimonial property regime against the third party only if the conditions of registration or disclosure laid down in that Member State have been complied with, unless the third party was aware of or ought to have been aware of the law applicable to the matrimonial property regime.*

*Amendment*

(29) The law applicable to matrimonial property regimes *under this Regulation* must govern the legal relationship between a spouse and a third party. *However*, in the interests of the third party's protection, *neither of the spouses should be able to invoke that law in a legal relationship between one of the spouses and a third party if the spouse who has a legal relationship with the third party, and the third party, are habitually resident in the same State, which is not the State whose law is applicable to the matrimonial property. Exceptions should apply if the third party does not merit protection, in other words if he or she was aware of, or ought to have been aware of, the law applicable or if the requirements applicable to registration or disclosure in the State were complied with.*

**Amendment 23**  
**Proposal for a regulation**  
**Recital 30 a (new)**

*Text proposed by the Commission*

*Amendment*

*(30a) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in*

*accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>1</sup>.*

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<sup>1</sup> *OJ L 55, 28.2.2011, p. 13.*

*(Corresponds to recital 78 in Regulation (EU) No 650/2012.)*

#### **Amendment 24**

##### **Proposal for a regulation Recital 30 b (new)**

*Text proposed by the Commission*

*Amendment*

*(30b) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.*

*(Corresponds to recital 79 in Regulation (EU) No 650/2012.)*

#### **Amendment 25**

##### **Proposal for a regulation Recital 32**

*Text proposed by the Commission*

*Amendment*

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, **20**, 21, **23** and 47 concerning, respectively, respect for private and family life, the right to marry

family according to national laws, property rights, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with *these* rights and principles.

and to found a family according to national laws, property rights, ***equality before the law***, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with *those* rights and principles.

*(Corresponds in part to recital 81 in Regulation (EU) No 650/2012.)*

#### *Justification*

*While acknowledging the results of the Commission's fundamental rights impact assessment, the rapporteur underlines that particular attention must be paid to the principles of equality before the law (Art. 20 of the Charter of Fundamental Rights), non-discrimination (Art. 21 of the Charter), and equality between women and men (Art. 23 of the Charter) when courts apply the Regulation.*

**Amendment 26**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) the capacity of spouses,

*Amendment*

(a) the ***general*** capacity of spouses,

**Amendment 27**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the existence, validity or recognition of a marriage,***

**Amendment 28**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) gifts between spouses,***

***deleted***

**Amendment 29**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) **the** succession **rights of a** surviving spouse,

*Amendment*

(d) **issues relating to** succession **due to death with reference to the** surviving spouse,

**Amendment 30**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point e**

*Text proposed by the Commission*

(e) **companies set up between spouses,**

*Amendment*

(e) **questions governed by the law of companies and other bodies, corporate or unincorporated,**

*(Corresponds to Article 1, point (h), of Regulation (EU) No 650/2012.)*

**Amendment 31**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point f**

*Text proposed by the Commission*

(f) the nature of rights in rem **relating to a property and the disclosure of such rights.**

*Amendment*

(f) the nature of rights in rem,

*(Corresponds to Article 1, point (k), of Regulation (EU) No 650/2012.)*

**Amendment 32**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

**(fa) any recording in a register of rights in movable or immovable property, including the legal requirements for such recording, and the effects of recording or**

*failing to record such rights in a register,  
and*

*(Corresponds to Article 1, point (l), of Regulation (EU) No 650/2012.)*

**Amendment 33**  
**Proposal for a regulation**  
**Article 1 – paragraph 3 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

*(fb) questions of entitlement to transfer or adjustment, in the case of a divorce, between spouses or former spouses, of rights to retirement or disability pensions accrued during marriage.*

*Justification*

*The system of pension rights adjustment under German law and other similar arrangements in other Member States, where they exist, should be excluded from the scope of the Regulation.*

**Amendment 34**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) ‘matrimonial property regime’: a set of rules *concerning* the property relationships of spouses, between the spouses and in respect of third parties;

(a) ‘matrimonial property regime’: a set of rules *applicable to* the property relationships of spouses, between the spouses and in respect of third parties, *as a result of marriage*;

**Amendment 35**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) 'marriage contract': any agreement by which spouses organise their property relationships *between themselves and in*

(b) 'marriage contract': any agreement by which spouses *or future spouses* organise their *matrimonial* property relationships;

*relation to third parties;*

**Amendment 36**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

*Amendment*

(c) 'authentic instrument': an instrument which has been **officially** drawn up or registered as an authentic instrument in **the** Member State **of origin** and the authenticity of which:

(c) 'authentic instrument': an instrument **in property matters** which has been **formally** drawn up or registered as an authentic instrument in **a** Member State and the authenticity of which:

*(Corresponds to Article 3(1), point (i), of Regulation (EU) No 650/2012.)*

**Amendment 37**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) 'decision': any decision given in a matter of a matrimonial property regime by a court of a Member State, whatever the decision may be called, **including the terms 'decree', 'judgment', 'order' or 'writ of execution'**, and the determination of costs or expenses by an officer of the court;

(d) 'decision': any decision given in a matter of a matrimonial property regime by a court of a Member State, whatever the decision may be called, and the determination of costs or expenses by an officer of the court;

*(Corresponds to Article 3(1), point (g), of Regulation (EU) No 650/2012.)*

**Amendment 38**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) 'Member State of origin': the Member State in which, **as the case may be**, the decision has been given, **the marriage contract concluded**, the authentic instrument **drawn up**, the court settlement approved or **the instrument liquidating the common property or any other instrument**

(e) 'Member State of origin': the Member State in which the decision has been given, the authentic instrument **established or** the court settlement approved or **concluded**;

*produced by or before the judicial authority or authority of delegation or designation;*

*(Corresponds to Article 3(1), point (e), of Regulation (EU) No 650/2012.)*

**Amendment 39**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) 'Member State *addressed*': the Member State in which *recognition and/or* enforcement of the decision, *marriage contract*, authentic instrument, *court settlement, instrument of liquidation of the common property or any other instrument produced by or before the judicial authority or authority of delegation or designation is requested;*

(f) 'Member State *of enforcement*': the Member State in which *the declaration of enforceability* or enforcement of the decision, *court settlement or* authentic instrument *is sought;*

*(Corresponds to Article 3(1), point (f), of Regulation (EU) No 650/2012.)*

**Amendment 40**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point g**

*Text proposed by the Commission*

*Amendment*

(g) *any competent judicial authority in the Member States which carries out a judicial function in matters of matrimonial property regimes, or any other non-judicial authority or person carrying out, by delegation or designation by a judicial authority of a Member State, the functions falling within the jurisdiction of the courts as provided for in this Regulation;*

*deleted*

**Amendment 41**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. For the purposes of this Regulation, the term ‘court’ means any judicial authority and all other authorities and legal professionals with competence in matters of matrimonial property regimes which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:***

***(a) may be made the subject of an appeal to or review by a judicial authority; and***

***(b) have a similar force and effect as a decision of a judicial authority on the same matter.***

***The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 37a.***

*(This provision corresponds to Article 3(2) of Regulation (EU) No 650/2012.)*

*Justification*

*It seems worthwhile to adopt the definition of ‘court’ from the Regulation on succession in order to take into account the different models of organisation in the Member States in property matters as well. The proposal is based on Article 3(2) of the Regulation on succession.*

**Amendment 42  
Proposal for a regulation  
Article -3 (new)**

*Text proposed by the Commission*

*Amendment*

***Article -3***



***Jurisdiction in matters of matrimonial  
property regimes within the Member  
States***

***This Regulation shall not affect domestic  
jurisdiction over matrimonial property  
cases in the Member States.***

*Justification*

*This provision is based on Article 2 of the Regulation on succession. It contains a clarification which will also be useful with regard to cases concerning matrimonial property regimes.*

**Amendment 43  
Proposal for a regulation  
Article 3**

*Text proposed by the Commission*

The courts of a Member State ***seised by an application concerning*** the succession of a spouse under Regulation (EC) ... ***[of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession]*** shall also have jurisdiction to rule on matters of the matrimonial property regime arising in connection with the ***application***.

*Amendment*

The courts of a Member State seised ***in matters of*** the succession of a spouse under Regulation (EU) No 650/2012 shall also have jurisdiction to rule on matters of the matrimonial property regime arising in connection with the ***succession case***.

**Amendment 44  
Proposal for a regulation  
Article 4**

*Text proposed by the Commission*

The courts of a Member State called upon to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003, shall also have jurisdiction, ***where the spouses so agree***, to rule on matters of the matrimonial property regime arising in connection with the application.

***Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties.***

Failing ***agreement between the spouses***, jurisdiction ***is*** governed by ***Articles 5*** et seq.

*Amendment*

The courts of a Member State called upon to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003 shall also have jurisdiction to rule on matters of the matrimonial property regime arising in connection with the application, ***if the jurisdiction of the courts concerned has been recognised, expressly or otherwise in an unequivocal manner by the spouses.***

Failing ***recognition of the jurisdiction of the court referred to in paragraph 1***, jurisdiction ***shall be*** governed by ***Article 5*** et seq.

*Justification*

*In divorce cases, it seems sensible not to provide for an automatic concentration of jurisdiction, including for associated issues of property rights, in order to preserve the interests of the parties concerned more effectively and to ensure that they accept the jurisdiction of the divorce court. The proposed provision corresponds to Article 12(1)(b) of the Brussels IIa Regulation.*

**Amendment 45**  
**Proposal for a regulation**  
**Article 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 4a***

***Choice-of-court agreement***

***1. The spouses may agree that the courts of the Member State whose law they have chosen as the law applicable to their matrimonial property regime in accordance with Article 16 are to have jurisdiction to rule on matters of their***

*matrimonial property regime. Such jurisdiction shall be exclusive.*

*Without prejudice to the third subparagraph, a choice-of-court agreement may be concluded or amended at any time, but no later than when the case is brought before the court.*

*If the law of the forum so provides, the spouses may also choose the court after the case has been brought before the court. In that event, such choice shall be recorded in court in accordance with the law of the forum.*

*If the agreement is concluded before the proceedings, it must be drawn up in writing and dated and signed by the spouses. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.*

*2. The spouses may also agree that, if no court has been chosen, the courts of the Member State whose law is applicable pursuant to Article 17 are to have jurisdiction.*

#### *Justification*

*Paragraph 1 reiterates a valuable provision from Article 5(2) and (3) of the Rome III Regulation. Paragraph 2 meets a practical need.*

**Amendment 46**  
**Proposal for a regulation**  
**Article 4 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 4b**

***Jurisdiction based on the appearance of the defendant***

***1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law has***

*been chosen under Article 16, or whose law is applicable under Article 17, and before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where an appearance was entered to contest the jurisdiction, or where another court has jurisdiction by virtue of Article 3, Article 4 or Article 4a.*

*2. Before assuming jurisdiction under paragraph 1, the court shall ensure that the defendant is informed of his or her right to contest the jurisdiction and of the consequences of entering or not entering an appearance.*

**Amendment 47**  
**Proposal for a regulation**  
**Article 5**

*Text proposed by the Commission*

*(1) In cases other than those provided for in Articles 3 and 4 jurisdiction to rule on proceedings in a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:*

*(a) of the spouses' common habitual residence, or failing that,*

*(b) of the last common habitual residence if one of them still resides there, or, failing that,*

*(c) of the defendant's habitual residence, or failing that,*

*(d) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of their common 'domicile'.*

*(2) Both parties may also agree that the courts of the Member State whose law*

*Amendment*

*Where no court has jurisdiction pursuant to Articles 3, 4 and 4a, jurisdiction to rule on proceedings in a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:*

*(a) in whose territory the spouses are habitually resident at the time when the court is seised, or failing that,*

*(b) in whose territory the spouses were last habitually resident, if one of them still resides there at the time when the court is seised, or, failing that,*

*(c) in whose territory the defendant is habitually resident at the time when the court is seised, or failing that,*

*(d) of the nationality of both spouses at the time when the court is seised or, in the case of the United Kingdom and Ireland, of their common 'domicile', or failing that,*

*(da) of the nationality of the defendant or, in the case of the United Kingdom and*

*they have chosen as the law applicable to their matrimonial property regime in accordance with Articles 16 and 18 shall also have jurisdiction to rule on matters of their matrimonial property regime.*

*Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties.*

*Ireland, of his or her domicile.*

*(With regard to paragraph 2, see amendment to Article 4a (new); the text has been altered.)*

**Amendment 48**  
**Proposal for a regulation**  
**Article 6**

*Text proposed by the Commission*

Where no court has jurisdiction according to Articles 3, 4 and 5, the courts of a Member State shall have jurisdiction in so far as property or *properties* of one or both spouses are located in the territory of that Member State, **but** in that event the court seised shall have jurisdiction to rule only in respect of the property or *properties* in question.

*Amendment*

Where no court **of a Member State** has jurisdiction pursuant to Articles 3, 4, **4a** and 5, the courts of a Member State shall have jurisdiction in so far as **immovable** property or **registered assets** of one or both spouses are located in the territory of that Member State; in that event the court seised shall have jurisdiction to rule only in respect of the **immovable** property or **registered assets** in question.

***In such cases the courts of a Member State shall have jurisdiction to rule only on immovable property or registered assets located in that Member State.***

**Amendment 49**  
**Proposal for a regulation**  
**Article 7**

*Text proposed by the Commission*

Forum necessitatis  
Where no court of a Member State has

*Amendment*

Forum necessitatis  
Where no court of a Member State has

jurisdiction *under* Articles 3, 4, 5 and 6, the courts of a Member State may, ***exceptionally and if the case has a sufficient connection with that Member State***, rule on a matrimonial property regime case if proceedings ***would be impossible or*** cannot reasonably be brought or conducted in a third State.

jurisdiction *pursuant to* Articles 3, 4, ***4a***, 5 and 6, the courts of a Member State may, ***on an exceptional basis***, rule on a matrimonial property regime case if proceedings cannot reasonably be brought or conducted, ***or would be impossible***, in a third State ***with which the case is closely connected***.

***The case must have a sufficient connection with the Member State of the court seised.***

*(Corresponds to Article 11 of Regulation (EU) No 650/2012.)*

**Amendment 50**  
**Proposal for a regulation**  
**Article 8**

*Text proposed by the Commission*

The court seised pursuant to Articles 3, 4, 5, 6 or 7 before which proceedings are pending shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

*Amendment*

The court seised pursuant to Articles 3, 4, ***4a***, 5, 6 or 7 before which proceedings are pending shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

***If the court has been seised pursuant to Article 6, its jurisdiction to rule on a counterclaim shall be limited to the immovable property or registered assets which form the subject-matter of the main proceedings.***

**Amendment 51**  
**Proposal for a regulation**  
**Article 9**

*Text proposed by the Commission*

A court shall be deemed to be seised:

(a) on the date when the document instituting the proceedings or an equivalent

*Amendment*

***For the purposes of this Chapter***, a court shall be deemed to be seised:

(a) on the date when the document instituting the proceedings or an equivalent

document is lodged with the court, provided that the **plaintiff** has not subsequently failed to take the steps he or she was required to take to have service effected on the defendant, **or**

(b) **where** the document has to be served before being lodged with the court, on the date on which it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have the document lodged with the court.

document is lodged with the court, provided that the **applicant** has not subsequently failed to take the steps he or she was required to take to have service effected on the defendant,

(b) **if** the document has to be served before being lodged with the court, on the date on which it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have the document lodged with the court, **or**

**(ba) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.**

*(Corresponds to Article 14 of Regulation (EU) No 650/2012.)*

#### *Justification*

*This provision is based on Article 14 of the Regulation on succession.*

### **Amendment 52 Proposal for a regulation Article 12 – paragraph 1**

#### *Text proposed by the Commission*

1. Where proceedings involving the same cause of action and between the **same parties** are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

#### *Amendment*

1. Where proceedings involving the same cause of action and between the **spouses** are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

*(Corresponds to Article 17 of Regulation (EU) No 650/2012.)*

**Amendment 53**  
**Proposal for a regulation**  
**Article 13 – title**

*Text proposed by the Commission*

*Amendment*

Related actions

*(Does not affect the English version.)*

**Amendment 54**  
**Proposal for a regulation**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Where *these* actions are pending at first instance, any court other than the court first seised may also, on the application of one of the *parties*, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

2. Where *those* actions are pending at first instance, any court other than the court first seised may also, on the application of one of the *spouses*, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

*(Corresponds to Article 18 of Regulation (EU) No 650/2012.)*

*Justification*

*This provision is based on Article 17 of the Regulation on succession.*

**Amendment 55**  
**Proposal for a regulation**  
**Article 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 13a***

***Provision of information to spouses***

***The competent authority shall be obliged to inform the spouse(s), within a reasonable time, of any matrimonial property regime proceedings which are initiated against them.***



**Amendment 56**  
**Proposal for a regulation**  
**Article 14**

*Text proposed by the Commission*

*Provisional*, including protective, measures **provided for by the law of** a Member State **may be requested from the courts** of that State, even *where*, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

*Amendment*

**Application may be made to the courts of** a Member State **for such provisional**, including protective, measures **as may be available under the law** of that State, even **if**, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

*(Corresponds to Article 19 of Regulation (EU) No 650/2012.)*

**Amendment 57**  
**Proposal for a regulation**  
**Article 15 – paragraph 1**

*Text proposed by the Commission*

The law applicable to a matrimonial property regime under **Article 16, 17 and 18** shall apply to all **the couple's property**.

*Amendment*

**1.** The law applicable to a matrimonial property regime under **Articles 16 and 17** shall apply to all **assets falling under that regime, regardless of their location**.

**Amendment 58**  
**Proposal for a regulation**  
**Article 15 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. The law applicable to a matrimonial property regime shall determine, without prejudice to points (f) and (fa) of Article 1(3), inter alia:**

**(a) the division of the spouses' property into different categories before and after the marriage;**

**(b) the transfer of property from one category to another;**

- (c) liability for the other spouse's debts, where necessary;*
- (d) the spouses' rights of disposal during the marriage;*
- (e) dissolution and liquidation of the matrimonial property regime and division of property in the event of dissolution of the marriage;*
- (f) the impact of the matrimonial property regime on a legal relationship between one of the spouses and a third party on the basis of Article 35;*
- (g) the material validity of a matrimonial property agreement.*

*Justification*

*A positive list, as provided in the Regulation on succession, will clarify the scope.*

**Amendment 59**  
**Proposal for a regulation**  
**Article 15 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 15a**

**Universal application**

***Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.***

*(See amendment to Article 21; the text has been altered.)*

*Justification*

*This general provision should be placed at the beginning of the chapter; the text previously formed part of Article 21.*

**Amendment 60**  
**Proposal for a regulation**  
**Article 16**

*Text proposed by the Commission*

The spouses or future spouses may **choose** the law applicable to their matrimonial property regime, as long as it is one of the following laws:

**(a) the law of the State of the habitual common residence of the spouses or future spouses, or**

**(b) the law of the State of habitual residence of one of the spouses at the time this choice is made, or**

**(c) the law of the State of which one of the spouses or future spouses is a national at the time this choice is made.**

*Amendment*

**1.** The spouses or future spouses may **agree to designate or to change** the law applicable to their matrimonial property regime, as long as it is one of the following laws:

**(a) the law of the State where the spouses or future spouses, or one of them, is/are habitually resident at the time when the agreement is concluded, or**

**(b) the law of a State of which one of the spouses or future spouses is a national at the time when the agreement is concluded.**

**1a. Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall have prospective effect only.**

**1b. If the spouses choose to make that change of applicable law retroactive, its retroactive effect shall not affect the validity of previous transactions entered into under the law hitherto applicable or the rights of third parties deriving from the law previously applicable.**

*Justification*

*Articles 16 and 18 have been combined in order to improve the structure and clarity of the provisions.*

**Amendment 61**  
**Proposal for a regulation**  
**Article 17 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. If **the spouses do not make a choice**, the law applicable to the matrimonial property

*Amendment*

1. If **no choice-of-law agreement is made pursuant to Article 16**, the law applicable

regime shall be:

to the matrimonial property regime shall be:

**Amendment 62**  
**Proposal for a regulation**  
**Article 17 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the law of the State of the spouses' first common habitual residence after their marriage or, failing that,

*Amendment*

(a) the law of the State of the spouses' ***common habitual residence at the time of marriage or of their*** first common habitual residence after their marriage or, failing that,

**Amendment 63**  
**Proposal for a regulation**  
**Article 17 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the law of the State with which the spouses jointly have the closest links, taking into account all the circumstances, ***in particular*** the place where the marriage was celebrated.

*Amendment*

(c) the law of the State with which the spouses jointly have the closest links ***at the time of*** the marriage, taking into account all the circumstances, ***regardless of*** the place where the marriage was celebrated.

*Justification*

*Clarifications.*

**Amendment 64**  
**Proposal for a regulation**  
**Article 18**

*Text proposed by the Commission*

***Article 18***

***Change of applicable law***

***The spouses may, at any time during the marriage, make their matrimonial property regime subject to a law other than the one hitherto applicable. They may designate only one of the following***

*Amendment*

***deleted***

laws:

*(a) the law of the State of habitual residence of one of the spouses at the time this choice is made;*

*(b) the law of a State of which one of the spouses is a national at the time this choice is made.*

*Unless the spouses desire otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.*

*If the spouses choose to make this change of applicable law retrospective, the retrospective effect may not affect the validity of previous transactions entered into under the law applicable hitherto or the rights of third parties deriving from the law previously applicable.*

**Amendment 65**  
**Proposal for a regulation**  
**Article 19**

*Text proposed by the Commission*

1. The choice of applicable law *shall be made in the way specified for the marriage contract, either by the law of the State chosen or by the law of the State in which the document is drawn up.*

2. *Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated and signed by both spouses.*

3. If the law of the *Member* State in which *the* spouses have their *common* habitual residence at the time of the choice *referred to in paragraph 1* provides for additional formal requirements for the marriage

*Amendment*

1. *The agreement on* the choice of applicable law *referred to in Article 16 shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.*

2. *That agreement shall comply with the formal requirements of the law applicable to the matrimonial property regime or of the law of the State in which the agreement was concluded.*

3. *However,* if the law of the State in which *both* spouses have their habitual residence at the time of *their agreement on* the choice *of applicable law* provides for additional formal requirements for

contract, *these requirements must be complied with.*

*agreements of that type or, failing that, for the marriage contract, those requirements shall apply.*

*3a. If the spouses are habitually resident in different States at the time of their agreement on the choice of the applicable law and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.*

*3b. If only one of the spouses is habitually resident in a Member State at the time when the agreement is concluded and that State lays down additional formal requirements for agreements of that type, those requirements shall apply.*

*(Similar to Article 5(2) of Regulation (EU) No 650/2012.)*

**Amendment 66**  
**Proposal for a regulation**  
**Article 20**

*Text proposed by the Commission*

*Amendment*

***Law applicable to the form of marriage contract***

***Formal requirements for a marriage contract***

***1. The form of the marriage contract shall be that prescribed by the law applicable to the matrimonial property regime or by the law of the State where the contract is drawn up.***

***The formal aspects of a marriage contract shall be governed mutatis mutandis by Article 19. Any additional formal requirements within the meaning of Article 19(3) shall for the purposes of this Article relate only to the marriage contract.***

***2. Notwithstanding paragraph 1, the marriage contract must at least be set out in a document dated and signed by both spouses.***

***3. If the law of the Member State in which the spouses have their common habitual residence at the time the marriage contract is concluded provides for additional formal requirements for that contract, these requirements must be***

*complied with.*

**Amendment 67**  
**Proposal for a regulation**  
**Article 20 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 20a**

***Adaptation of rights in rem***

***Where a person invokes a right in rem to which he or she is entitled under the law applicable to the matrimonial property regime and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.***

*(Corresponds to Article 31 of Regulation (EU) No 650/2012.)*

*Justification*

*In cases concerning matrimonial property, a problem arises in relation to the recognition of rights in rem which is comparable to that in succession cases. The new provision corresponds to Article 31 in the Regulation on succession.*

**Amendment 68**  
**Proposal for a regulation**  
**Article 21**

*Text proposed by the Commission*

*Amendment*

**Article 21**

***deleted***

***Universal nature of the conflict-of-law rule***

***Any law determined in accordance with the provisions of this Chapter shall apply even if it is not the law of a Member State.***

**Amendment 69**  
**Proposal for a regulation**  
**Article 22**

*Text proposed by the Commission*

*The provisions of this Regulation shall be without prejudice to the application of imperative provisions the upholding of which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime under this Regulation.*

*Amendment*

*1. Overriding mandatory provisions are provisions the disregard for which would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. The competent authorities should not interpret the public policy exception in a way that is contrary to the Charter of Fundamental rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.*

*1a. This Regulation shall not restrict the application of the overriding mandatory provisions of the law of the forum, without prejudice to the transaction protection provisions applicable pursuant to Article 35.*

**Amendment 70**  
**Proposal for a regulation**  
**Article 23**

*Text proposed by the Commission*

The application of a rule of the law determined by this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

*Amendment*

The application of a rule of the law *of any State* determined by this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

*(Corresponds to Article 35 of Regulation (EU) No 650/2012.)*

**Amendment 71**  
**Proposal for a regulation**  
**Article 24**



*Text proposed by the Commission*

Where this Regulation provides for the application of the law of a State, it **means** the rules of **substantive** law in force in that State other than its rules of private international law.

*Amendment*

Where this Regulation provides for the application of the law of a State, it **refers to** the rules of law in force in that State other than its rules of private international law.

*Justification*

*By analogy with Article 20 of the Rome I Regulation.*

**Amendment 72**  
**Proposal for a regulation**  
**Article 25**

*Text proposed by the Commission*

States with **two or more** legal systems — territorial conflicts of laws

Where a State comprises several territorial units each of which has its own **system** of law **or its own rules concerning matters governed by this Regulation**:

(a) any reference to the law of **that** State shall **be construed**, for the purposes of determining the law applicable **under this Regulation**, as **a reference** to the law **in force in** the **relevant** territorial unit;

(b) any reference to **habitual residence in that State** shall be construed as a reference to **habitual residence in a** territorial unit;

*Amendment*

States with **more than one** legal system — territorial conflicts of laws

**1.** Where **the law specified by this Regulation is that of** a State which comprises several territorial units each of which has its own **rules** of law **in respect of matrimonial property regimes, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.**

**1a. In the absence of such internal conflict-of-laws rules:**

(a) any reference to the law of **the** State **referred to in paragraph 1** shall, for the purposes of determining the law applicable **pursuant to provisions referring to the habitual residence of the spouses, be construed as referring** to the law **of** the territorial unit **in which the spouses have their habitual residence**;

(b) any reference to **the law of the State referred to in paragraph 1** shall, **for the purposes of determining the law**

*applicable pursuant to provisions referring to the nationality of the spouses, be construed as a reference to the law of the territorial unit with which the spouses have the closest connection;*

(c) any reference to *nationality shall refer to the territorial unit determined by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of such a choice, to the territorial unit with which the spouse or spouses has or have the closest connection.*

(c) any reference to *the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.*

*(Corresponds to Article 36 of Regulation (EU) No 650/2012.)*

*Justification*

*By analogy with Article 36 of the Regulation on succession.*

**Amendment 73**  
**Proposal for a regulation**  
**Article 25 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 25a*

*States with more than one legal system –  
inter-personal conflicts of laws*

*In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of matrimonial property regimes, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouses have the closest connection shall apply.*

*Justification*

*By analogy with Article 37 of the Regulation on succession.*

**Amendment 74**  
**Proposal for a regulation**  
**Article 25 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 25b**

***Non-application of this Regulation to  
internal conflicts of laws***

***A Member State which comprises several territorial units each of which has its own rules of law in respect of matrimonial property regimes shall not be required to apply this Regulation to conflicts of laws arising between such units only.***

*(Corresponds to Article 38 of Regulation (EU) No 650/2012.)*

*Justification*

*By analogy with Article 38 of the Regulation on succession.*

**Amendment 75**  
**Proposal for a regulation**  
**Article 26 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

(2) Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures set out in Articles **[38 to 56] of Regulation (EC) No 44/2001**, apply for **the** decision to be recognised.

(2) Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures set out in Articles **31b to 31o**, apply for **that** decision to be recognised.

*(Corresponds to Article 39 of Regulation (EU) No 650/2012.)*

**Amendment 76**  
**Proposal for a regulation**  
**Article 27 – point a**

*Text proposed by the Commission*

*Amendment*

(a) such recognition is manifestly contrary to public policy in the Member State **addressed**;

(a) such recognition is manifestly contrary to public policy in the Member State **in which recognition is sought**;

*(Corresponds to Article 40 of Regulation (EU) No 650/2012.)*

**Amendment 77**  
**Proposal for a regulation**  
**Article 27 – point b**

*Text proposed by the Commission*

*Amendment*

(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him or her to do so;

*(Does not affect the English version.)*

**Amendment 78**  
**Proposal for a regulation**  
**Article 27 – point c**

*Text proposed by the Commission*

*Amendment*

(c) it is irreconcilable with a decision given in **a matter** between the same parties in the Member State **addressed**;

(c) if it is irreconcilable with a decision given in **proceedings** between the same parties in the Member State **in which recognition is sought**;

*(Corresponds to Article 40 of Regulation (EU) No 650/2012.)*

**Amendment 79**  
**Proposal for a regulation**  
**Article 27 – point d**

*Text proposed by the Commission*

(d) it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State **addressed**.

*Amendment*

(d) if it is irreconcilable with an earlier decision given in another Member State or in a third State **in proceedings** involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State **in which recognition is sought**.

*(Corresponds to Article 40 of Regulation (EU) No 650/2012.)*

**Amendment 80**  
**Proposal for a regulation**  
**Article 29**

*Text proposed by the Commission*

Under no circumstances may a **foreign** decision be reviewed as to its substance.

*Amendment*

Under no circumstances may a decision **given in a Member State** be reviewed as to its substance.

*(Corresponds to Article 41 of Regulation (EU) No 650/2012.)*

**Amendment 81**  
**Proposal for a regulation**  
**Article 30**

*Text proposed by the Commission*

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged.

*Amendment*

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged **in the Member State of origin**.

*(Corresponds to Article 42 of Regulation (EU) No 650/2012.)*

**Amendment 82**  
**Proposal for a regulation**  
**Article 31**

*Text proposed by the Commission*

Decisions given in a Member State **where they are** enforceable shall be **enforced in the other Member States in accordance with Articles [38 to 56 and 58] of Regulation (EC) No 44/2001.**

*Amendment*

Decisions given in a Member State **and** enforceable **in that State** shall be **enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure laid down in Articles 31b to 31o.**

*(Corresponds to Article 43 of Regulation (EU) No 650/2012.)*

**Amendment 83**  
**Proposal for a regulation**  
**Article 31 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31a**

***Determination of domicile***

***To determine whether, for the purposes of the procedure provided for in Articles 31b to 31o, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.***

*(Corresponds to Article 44 of Regulation (EU) No 650/2012.)*

**Amendment 84**  
**Proposal for a regulation**  
**Article 31 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31b**

***Jurisdiction of local courts***

***1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to***

*the Commission in accordance with Article 37.*

*2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.*

*(Corresponds to Article 45 of Regulation (EU) No 650/2012.)*

**Amendment 85**  
**Proposal for a regulation**  
**Article 31 c (new)**

*Text proposed by the Commission*

*Amendment*

*Article 31c*

*Procedure*

*1. The application procedure shall be governed by the law of the Member State of enforcement.*

*2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.*

*3. The application shall be accompanied by the following documents:*

*(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;*

*(b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 37c(2), without prejudice to Article 31d.*

*(Corresponds to Article 46 of Regulation (EU) No 650/2012.)*

**Amendment 86**  
**Proposal for a regulation**  
**Article 31 d (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31d**

***Non-production of the attestation***

***1. If the attestation referred to in point (b) of Article 31c(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.***

***2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.***

*(Corresponds to Article 47 of Regulation (EU) No 650/2012.)*

**Amendment 87**  
**Proposal for a regulation**  
**Article 31 e (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31e**

***Declaration of enforceability***

***The decision shall be declared enforceable immediately on completion of the formalities in Article 31c without any review under Article 27. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.***

*(Corresponds to Article 48 of Regulation (EU) No 650/2012.)*

**Amendment 88**  
**Proposal for a regulation**  
**Article 31 f (new)**



*Text proposed by the Commission*

*Amendment*

**Article 31f**

***Notice of the decision on the application for a declaration of enforceability***

***1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.***

***2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.***

*(Corresponds to Article 49 of Regulation (EU) No 650/2012.)*

**Amendment 89**  
**Proposal for a regulation**  
**Article 31 g (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31g**

***Appeal against the decision on the application for a declaration of enforceability***

***1. The decision on the application for a declaration of enforceability may be appealed against by either party.***

***2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 37.***

***3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.***

***4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning***

*an appeal brought by the applicant, Article 11 shall apply, even where the party against whom enforcement is sought is not domiciled in any of the Member States.*

*5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him or her in person or at his or her residence. No extension may be granted on account of distance.*

*(Corresponds to Article 50 of Regulation (EU) No 650/2012.)*

**Amendment 90**  
**Proposal for a regulation**  
**Article 31 h (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31h**

***Procedure to contest the decision given on appeal***

***The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 37.***

*(Corresponds to Article 51 of Regulation (EU) No 650/2012.)*

**Amendment 91**  
**Proposal for a regulation**  
**Article 31 i (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31i**

***Refusal or revocation of a declaration of enforceability***

***The court with which an appeal is lodged under Article 31g or Article 31h shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 27. It shall give its decision without delay.***

*(Corresponds to Article 52 of Regulation (EU) No 650/2012.)*

**Amendment 92  
Proposal for a regulation  
Article 31 j (new)**

*Text proposed by the Commission*

*Amendment*

***Article 31j***

***Staying of proceedings***

***The court with which an appeal is lodged under Article 31g or Article 31h shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.***

*(Corresponds to Article 53 of Regulation (EU) No 650/2012.)*

**Amendment 93  
Proposal for a regulation  
Article 31 k (new)**

*Text proposed by the Commission*

*Amendment*

***Article 31k***

***Provisional, including protective, measures***

***1. When a decision must be recognised in accordance with this Section, nothing shall prevent the applicant from availing himself or herself of provisional, including protective, measures in accordance with the law of the Member***

*State of enforcement without a declaration of enforceability under Article 31e being required.*

*2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.*

*3. During the time specified for an appeal pursuant to Article 31g(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.*

*(Corresponds to Article 54 of Regulation (EU) No 650/2012.)*

**Amendment 94**  
**Proposal for a regulation**  
**Article 31 l (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31l**

***Partial enforceability***

*1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.*

*2. An applicant may request a declaration of enforceability limited to parts of a decision.*

*(Corresponds to Article 55 of Regulation (EU) No 650/2012.)*

**Amendment 95**  
**Proposal for a regulation**  
**Article 31 m (new)**

*Text proposed by the Commission*

*Amendment*

***Article 31m***

***Legal aid***

***An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.***

*(Corresponds to Article 56 of Regulation (EU) No 650/2012.)*

**Amendment 96**  
**Proposal for a regulation**  
**Article 31 n (new)**

*Text proposed by the Commission*

*Amendment*

***Article 31n***

***No security, bond or deposit***

***No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he or she is a foreign national or that he or she is not domiciled or resident in the Member State of enforcement.***

*(Corresponds to Article 57 of Regulation (EU) No 650/2012.)*

**Amendment 97**  
**Proposal for a regulation**  
**Article 31 o (new)**

*Text proposed by the Commission*

*Amendment*

**Article 31o**

***No charge, duty or fee***

***In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.***

*(Corresponds to Article 58 of Regulation (EU) No 650/2012.)*

**Amendment 98**  
**Proposal for a regulation**  
**Article 32**

*Text proposed by the Commission*

*Amendment*

***Recognition*** of authentic instruments

1. Authentic ***instruments drawn up*** in a Member State shall ***be recognised in the other Member States, unless their validity is disputed in accordance with the applicable law, and provided such recognition*** is not contrary to public policy ***in*** the Member State ***addressed***.

***Acceptance*** of authentic instruments

1. ***An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to the public policy (ordre public) of the Member State concerned.***

***A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 37c(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.***

***1a. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State.***

*The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.*

*1b. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III or the law referred to in Article 36. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.*

*1c. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument concerning a property regime, that court shall have jurisdiction over that question.*

*(2) The recognition of authentic instruments confers on them evidentiary effect with regard to their contents and a presumption of validity.*

*(Corresponds to Article 59 of Regulation (EU) No 650/2012.)*

**Amendment 99**  
**Proposal for a regulation**  
**Article 33**

*Text proposed by the Commission*

1. Authentic *instruments drawn up and* enforceable in *one* Member State shall, *on request*, be declared enforceable in another Member State *following* the procedure *set*

*Amendment*

1. *An* authentic *instrument which is* enforceable in *the* Member State *of origin* shall be declared enforceable in another Member State *on the application of any*

out in *Articles [38 to 57] of Regulation (EC) No 44/2001*.

*interested party in accordance with the procedure provided for in Articles 31b to 31o.*

2. The court with which an appeal is lodged under *Articles [43 and 44] of Regulation (EC) No 44/2001* may refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy *in* the Member State *addressed*.

*1a. For the purposes of point (b) of Article 31c(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 37c(2).*

2. The court with which an appeal is lodged under *Article 31g or Article 31h* shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to *the* public policy (*ordre public*) of the Member State *of enforcement*.

*(Corresponds to Article 60 of Regulation (EU) No 650/2012.)*

**Amendment 100**  
**Proposal for a regulation**  
**Article 34**

*Text proposed by the Commission*

*Amendment*

***Recognition and*** enforceability of court settlements

Enforceability of court settlements

Court settlements *that* are enforceable in the Member State of origin shall be ***recognised and*** declared enforceable in another Member State *at the request* of any interested party ***under the same conditions as authentic instruments***. The court with which an appeal is lodged under ***Article [42 or 44] of Regulation (EC) No 44/2001*** may refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy *in* the Member State *addressed*.

***1.*** Court settlements ***which*** are enforceable in the Member State of origin shall be declared enforceable in another Member State ***on the application*** of any interested party ***in accordance with the procedure provided for in Articles 31b to 31o.***

***1a.*** ***For the purposes of point (b) of Article 31c(3), the court which approved the settlement or before which it was***



*concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 37c(2).*

*Ib.* The court with which an appeal is lodged under **Article 31g or 31h shall** refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to **the public policy (ordre public) of the Member State of enforcement.**

*(Corresponds to Article 61 of Regulation (EU) No 650/2012.)*

**Amendment 101**  
**Proposal for a regulation**  
**Article 35 – title**

*Text proposed by the Commission*

*Amendment*

***Effects in respect*** of third parties

***Protection*** of third parties

**Amendment 102**  
**Proposal for a regulation**  
**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. However, ***the law of a Member State may provide that*** the law applicable to the matrimonial property regime ***may not be relied on by a spouse*** in dealings with a third party if ***one or other has*** their habitual residence ***in the territory of that Member State and the conditions of disclosure or registration provided for in the law of that State are not satisfied, unless the third party was aware of or ought to have been aware of the*** law applicable to the matrimonial property regime.

2. However, ***in a legal relationship between a spouse and a third party, neither of the spouses may rely on*** the law applicable to the matrimonial property regime if ***the spouse in a legal relationship with the third party and the third party have*** their habitual residence ***in the same State, which is not the State whose law is*** applicable to the matrimonial property regime. ***In such cases, the law of the Member State of the habitual residence of that spouse and the third party shall apply to the effects on the third party of the matrimonial property regime.***

**Amendment 103**  
**Proposal for a regulation**  
**Article 35 – paragraph 3**

*Text proposed by the Commission*

**3. The law of the Member State in which immovable property is located may provide for a similar rule to that laid down in paragraph 2 in respect of the legal relationship between a spouse and a third party in respect of that property.**

*Amendment*

**3. Paragraph 2 shall not apply if:**

**(a) the third party was aware, or ought to have been aware, of the legal order applicable to the matrimonial property regime, or**

**(b) the requirements concerning registration or disclosure of the matrimonial property regime in accordance with the law of the State of the habitual residence of the third party and the spouse dealing with the third party were fulfilled, or**

**(c) in dealings concerning immovable property, the requirements concerning registration or disclosure of the matrimonial property regime in respect of the immovable property in accordance with the law of the State of the location of the immovable property were fulfilled.**

**Amendment 104**  
**Proposal for a regulation**  
**Article -36 (new)**

*Text proposed by the Commission*

*Amendment*

**Article -36**

**Habitual residence**

**1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of their central administration.**

*The habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.*

*2. Where the legal relationship is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.*

*3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the legal relationship.*

*Justification*

*The provision seems useful, particularly with reference to the provisions on the protection of third parties. It is based on Article 19 of the Rome I Regulation.*

**Amendment 105**  
**Proposal for a regulation**  
**Article 37 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) the names and contact details of the courts and authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 31b(1) and with appeals against decisions on such applications in accordance with Article 31g(2);*

*(Corresponds to Article 78(1), point (a), of Regulation (EU) No 650/2012.)*

**Amendment 106**  
**Proposal for a regulation**  
**Article 37 – paragraph 1 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

***(bb) the procedures to contest the decision given on appeal referred to in Article 31h;***

**Amendment 107**  
**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

(2) Member States shall notify the Commission of any subsequent changes in this information.

*(Does not affect the English version.)*

**Amendment 108**

**Proposal for a regulation**  
**Article 37 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available by appropriate means, in particular through the multilingual internet site of the European Judicial Network in civil and commercial matters.

3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available ***in a simple manner*** by appropriate means, in particular, through the multilingual internet site of the European Judicial Network in civil and commercial matters.

***The Member States shall ensure that the information on that multilingual website is also accessible through any official website they set up, in particular by providing a link to the Commission website.***

*(Corresponds to Article 78(3) of Regulation (EU) No 650/2012.)*

## **Amendment 109**

### **Proposal for a regulation Article 37 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Commission shall introduce an information and training tool for the relevant court officials and legal practitioners by setting up an interactive portal in all official languages of the institutions of the Union, including a system for sharing professional expertise and practices.***

## **Amendment 110**

### **Proposal for a regulation Article 37 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 37a***

***Establishment and subsequent amendment of the list containing the information referred to in Article 2(1a)***

- 1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 2(1a).***
- 2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.***
- 3. The Commission shall publish the list and any subsequent amendments in the Official Journal of the European Union.***
- 4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial***

*Network in civil and commercial matters.*

*(Corresponds to Article 79 of Regulation (EU) No 650/2012.)*

**Amendment 111**  
**Proposal for a regulation**  
**Article 37 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 37b**

***Establishment and subsequent amendment of the attestations and forms referred to in Articles 31c, 32, 33 and 34***

***The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 31c, 32, 33 and 34. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 37c(2).***

*(Corresponds to Article 80 of Regulation (EU) No 650/2012.)*

**Amendment 112**  
**Proposal for a regulation**  
**Article 37 c (new)**

*Text proposed by the Commission*

*Amendment*

**Article 37c**

***Committee procedure***

***1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***

***2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.***

*(Corresponds to Article 81 of Regulation (EU) No 650/2012.)*

**Amendment 113**  
**Proposal for a regulation**  
**Article 39 – paragraph 3**

*Text proposed by the Commission*

3. Chapter III shall apply only to spouses who ***marry or who specify the law applicable to the matrimonial property regime*** after the date of application of this Regulation.

*Amendment*

3. Chapter III shall apply only to spouses who after the date of application of this Regulation:

***(a) marry, or***

***(b) specify the law applicable to the matrimonial property regime.***

***An agreement on the choice of applicable law concluded before [the time of application of this Regulation] shall likewise be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law in force at the time when the agreement on the choice of law is concluded.***

## EXPLANATORY STATEMENT

### **A. The problem**

In 2007<sup>1</sup>, just over one in seven marriages in the EU (16 million) involved nationals of more than one Member State<sup>2</sup>, with a similar figure for marriages solemnised (310 000) and for divorces (137 000). 390 000 international marriages ended with the death of a spouse. In total, there were about 637 000 cases in which marriages with a foreign dimension were ended by divorce or death.

In all these cases, assets have to be realised and settlements reached. The parties concerned face complex issues, especially in relation to applicable law and jurisdiction. Issues of property law also arise in connection with the administration of property during a marriage; third parties may be involved too, for example through real estate or credit transactions.

Matrimonial property law varies greatly between Member States, as do the rules on jurisdiction. In practice, therefore, it may be that the court which has jurisdiction in one Member State views one and the same case differently from the court which has jurisdiction in another Member State. Especially where larger assets are involved, this can lead to a ‘race to the courtroom’, with each party seeking to secure application of the property laws which he/she deems more advantageous to his/her cause. So the better advised party has a clear advantage here. There is also a large measure of legal uncertainty overall and thus a risk that costs may be incurred.

### **B. The Commission proposal**

In May 2011, the Commission submitted two parallel proposals concerning property issues in connection with marriage and registered partnerships, containing provisions on jurisdiction, the law applicable and the recognition and enforcement of authentic instruments.

Your rapporteur basically welcomes the Commission’s proposal on the law of matrimonial property. There is, indeed, considerable room for improvement of the legal position facing the married couples affected. This is consistent with Parliament’s demand for the creation of ‘simpler, clearer and more accessible procedures’ in the area of civil justice<sup>3</sup>. As mobility is increasing, even more married couples will be affected in future.

Of particular importance to your rapporteur are legal certainty and clarity and coherence with other legal acts of the Union, especially the regulation on wills and succession<sup>4</sup> and the ‘Brussels I’ Regulation<sup>5</sup>.

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<sup>1</sup> Figures from: Commission staff working document (Impact Assessment) of 16.3.2011, SEC(2011) 0327.

<sup>2</sup> Cf. SEC(2011) 0327, p. 12, Annex I.

<sup>3</sup> Resolution of 25.11.2009, OJ C 285E, 21.10.2010, p. 12.

<sup>4</sup> Legislative resolution of 13 March 2012 of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (P7\_TA-PRO(2012)0068; PE-CONS 14/12 of 23 May 2012.

<sup>5</sup> Council Regulation (EC) No 44/2001 of 22.12.2000 (OJ L 12, 16.1.2001, p. 1); Commission proposal of 14.12.2010 (recast) (COM(2010) 0748). Council doc. 10609/12 of 1 June 2012.



## **C. Draft report**

The draft report is based on the rapporteur's working document of 11 November 2011<sup>1</sup> and makes proposals for revision particularly in the light of the aforementioned civil-law instruments.

### **1. Scope and definitions**

The rapporteur proposes a series of amendments to clarify the scope of the regulation. In particular, the demarcation between this and other fields of the law must be clear. Specific points:

- 'personal aspects of [the] marriage' are not mentioned in the provisions concerning the scope of the Regulation, whereas they are expressly excluded from the proposal on registered partnerships. It is desirable to align the provisions so as to include these in the scope;
- 'gifts between spouses' should not be excluded, particularly as partial gifts, partially compensated transfers and transfers within a marriage are not excluded either;
- the demarcation with the law of succession is clarified by an amendment;
- the exception for company-law issues is based on the Regulation on succession;
- it is proposed that the system of maintenance settlements under German law and other similar arrangements in other Member States, where they exist, should be excluded from the scope of the Regulation, because of their complexity if for no other reason.

With regard to property-law issues, the rapporteur has very much been guided by the solution found for the Regulation on succession. The 'numerus clausus' for property rights should be a matter for the domestic law of the Member States and should therefore be excluded from the scope of the Regulation, as should issues relating to the registration of rights and their preconditions and effects, which should be subject to the *lex rei sitae*. The proposals concerning the adaptation of rights in rem are equally inspired by the Regulation on succession. Here there is a very similar need in property-law cases to that which exists in succession law. As in that case, it is conceivable that a right in rem, for example arising from a dispute over a property regime, may need to be enforced in a Member State where no such right is recognised in law. It seems desirable to apply to property-law cases the compromise solution found for the law of succession.

The rapporteur is glad to see that the proposal remains neutral in its definition of 'marriage', since, in some Member States, this covers same-sex partners as well as partners of the opposite sex. She proposes making this even clearer by reformulating the recital concerned.

### **2. Jurisdiction**

The amendments concerning jurisdiction are primarily of a technical nature.

The rapporteur is not proposing any changes to the conditions for consideration of property regime cases before the same court as succession cases. In divorce cases she proposes that recognition of jurisdiction by the spouses should be required, in order to preserve the interests of the parties concerned more effectively and to ensure that they accept the jurisdiction of the divorce court. The provisions concerning agreements on jurisdiction have also been

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<sup>1</sup> PE 475.882v01-00.

supplemented to lay down more complete details of how such agreements are to be concluded. It is also proposed, in accordance with a practical need, that spouses should be given the option of agreeing (in the abstract) that the courts of the Member State whose law is applicable will also have jurisdiction.

It is proposed that a provision on jurisdiction based on appearance should be inserted. In order to protect less well advised spouses against tacit consent to a jurisdiction unfavourable to them, which they therefore would not wish, it seems desirable at the same time to provide for instruction concerning jurisdiction based on appearance and its consequences in law.

A clearer formulation is proposed for the alternative jurisdiction rule in Article 6. With regard to the rule on forum necessitatis in Article 7, a recital makes it clear that this is intended only to cater for extreme exceptions.

It is proposed that the provisions of Articles 8 to 13 should largely be aligned with those of the Regulation on succession. But consistency should only be pursued as far as is sensible: if the same case is brought before courts in different Member States, Article 12(2) will be important for cases concerning property rights, because speed is often of the essence here. It is therefore proposed that this provision should be retained.

### 3. Applicable law

The rapporteur supports the principles of ‘unity of the applicable law’ and universal application, which are proposed by the Commission.

For the purpose of determining the scope of the applicable law, she proposes a positive list, which – like that in the Regulation on succession – enumerates by way of example issues which are subject to the law applicable as identified by the Regulation. This accords with a desire that has been widely expressed by practitioners, and will facilitate implementation.

#### a) Choice of applicable law

The amendments concerning agreements on the applicable law are intended to combine Articles 16 and 18 in order to eliminate the structural and systematic weaknesses in the Commission proposal.

The safeguards proposed in Article 18(2) and (3) to cover a later change in applicable law should be retained and formulated more clearly. In principle, they presuppose *ex nunc* application of any change in the applicable law and permit retrospective effect (including partial application of such effect) on the basis of agreements, a fact which, however, does not affect the validity of previous transactions or the rights of third parties. This is the solution that best guarantees flexibility for spouses and legal certainty for third parties.

#### b) Establishing the applicable law where no choice is made

The provision governing the applicable law in the event of no choice having been made has been revised with the aim, firstly, of clarifying it, for example with regard to the relevant points in time, and, secondly, of bringing it more into line with practical factors, for example by deleting the reference to the place where the marriage was celebrated as a means of determining the strongest common connecting factor, because in practice this is of no significance.

c) Miscellaneous

It is proposed that the provisions concerning formal requirements should be formulated more clearly and restructured. Article 19 now applies only to agreements on the choice of the applicable law; Article 20 only stipulates that marriage contracts as referred to in this Regulation – i.e. agreements between spouses or future spouses governing their matrimonial property regime – are subject to the same formal requirements.

It is also proposed that the provisions of Articles 20 (overriding mandatory provisions) and 23 ('ordre public') should be aligned with appropriate examples and thus formulated more clearly. A recital should make it clear that protection of the family home and assignment of rights of use in relations between the spouses are an important instance where overriding mandatory provisions should be applied.

3. Recognition, enforceability and enforcement

Here the rapporteur proposes, in view of the complexity of the procedures, to retain the exequatur procedure and hence to incorporate the corresponding provisions of the Regulation on succession. Property law provides for nothing corresponding to the certificate of succession, and it therefore seems all the more important to introduce appropriate provisions, based on practice, governing the recognition and enforceability of Member States' authentic instruments.

6.9.2012

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs

on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS))

Rapporteur: Evelyne Gebhardt

### **SHORT JUSTIFICATION**

The European Commission's proposal is designed to regulate jurisdiction and applicable law as they apply both to the daily management of the property of spouses and to how issues relating to the distribution of assets in cross-border situations are handled following the ending of a couple's relationship through divorce, separation or death. The Commission's objective is to ensure greater legal certainty for parties in order to prevent parallel proceedings, and to discourage the practice of plaintiffs seeking to have their dispute heard in the court thought most likely to provide a favorable judgment (forum shopping).

Divorce and death of a spouse are circumstances treated differently. While married couples must agree between themselves that the court with jurisdiction for divorce proceedings, legal separation or marriage annulment may also consider the property consequences following the divorce, the court with jurisdiction in succession matters will always have jurisdiction in such cases although it is somewhat unclear whether it has exclusive jurisdiction. Otherwise jurisdiction is based on a hierarchy of connecting factors.

Article 16 constitutes an innovation as it allows the spouses to designate by common agreement the law applicable to their matrimonial property regime. The rapporteur is in favour of allowing spouses to choose the law of the State in which they have or have had their habitual common residence or the law of the State of which one of the spouses is a national. Furthermore, the rapporteur wishes to provide spouses more possibilities to choose the applicable law for their property regime.

It then has to be ensured that the choice made by the parties is an informed 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 the law applicable to the matrimonial property regime especially since there are great disparities between the applicable Member States' laws.

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. Therefore, the Rapporteur welcomes the Commission proposal in that regard, as married couples can agree during the marriage to change the applicable law governing their property, and may make their choice retrospective. However, offering the same options as under Art.16 would be welcome.

Where no choice has been made, again a hierarchy will come into play starting with habitual residence, then common nationality and moving to the law of the country with which the couple has the strongest connection. The rapporteur considers that the place where the marriage was celebrated should be a distinct criterion, as the choice by the parties of a country to celebrate their marriage should be presumed as implying possible acceptance of the law of that country as well.

The Regulation provides that the law applicable to matrimonial property will apply to all the couple's property, movable or immovable, irrespective of their location.

The proposed Regulation provides for an uniform procedure for the recognition and enforcement of decisions, authentic acts and legal transactions concerning matrimonial property regimes originating in another Member State.

The rapporteur welcomes that the rules on jurisdiction, applicable law and recognition and enforcement follow the precedents of other instruments. Certain benefits are likely to accrue to European citizens as a result of the proposal, in terms of the predictability of the law that will apply to a property regime, and the ability to ensure recognition and enforcement of decisions on property matters that previously was a matter for the private international law rules of each Member State and could lead to extensive delay and expense in enforcing property rights.

Finally, the rapporteur very much regrets the fact that two separate proposals for Regulations on matrimonial property regimes and on property consequences of registered partnerships were issued, as well as the substantial differences between them. According to the rapporteur this separation constitutes discrimination on grounds of sexual orientation.

## **AMENDMENTS**

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

## Amendment 1

### Proposal for a regulation

#### Recital 11

*Text proposed by the Commission*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital 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.

*Amendment*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property, ***movables or immovables***, and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses.

## Amendment 2

### Proposal for a regulation

#### Recital 11

*Text proposed by the Commission*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital 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.

*Amendment*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property and the liquidation of the regime, in particular as a result of the couple's separation, ***an annulment or divorce*** or the death of one of the spouses.

## Amendment 3

### Proposal for a regulation

#### Recital 19

*Text proposed by the Commission*

(19) To facilitate spouses' management of their property, this Regulation will authorise them to choose the law applicable to all the property covered by their matrimonial property regime,

*Amendment*

(19) To facilitate spouses' management of their property, this Regulation will authorise them to choose the law applicable to all the property covered by their matrimonial property regime,

regardless of the nature or location of the property, among the laws with which they have close links because of residence or their nationality. This choice may be made at any moment, at the time of *the marriage* or during the course of the marriage.

regardless of the nature or location of the property, among the laws with which they have close links because of residence or their nationality. This choice may be made at any moment, at the time of, *after* or during the course of the marriage.

#### *Justification*

*As divorce proceedings and matrimonial property regime resolution do not necessarily have to take place at the same time, the choice of the law applicable should cover the time after the marriage as well.*

#### **Amendment 4**

##### **Proposal for a regulation Recital 21**

###### *Text proposed by the Commission*

(21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all the circumstances, ***including the place where the marriage was celebrated, it being made clear that these links are to be considered as they were at the time the marriage was entered into.***

###### *Amendment*

(21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all circumstances.

*Justification*

*For every individual case, individual circumstances should be taken into account in order to settle the spouses' closest links. Given that places where marriages are celebrated tend to be chosen for reasons other than the applicable law, there is no reason to emphasize the likelihood of this choice.*

**Amendment 5**

**Proposal for a regulation**  
**Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) The term “habitual residence” should be interpreted in accordance with the purpose of this Regulation. Its meaning should be determined by the judge in each individual case and on the basis of the facts. The term does not refer to a concept of national law but, rather, to a separate concept established in Union law.***

*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 6**

**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

*Amendment*

(24) Given the importance of choosing the law applicable to the matrimonial property regime, the Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice. This choice should be made in the form prescribed for the marriage contract by the law of the State chosen or by that of the State where the instrument is drawn up, and at least be

(24) Given the importance of choosing the law applicable to the matrimonial property regime, the Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice. This choice should be made in the form prescribed for the marriage contract ***either*** by the law of the State chosen or by that of the State where the instrument is drawn up, and at



in writing and dated and signed by the couple. Any additional formal requirements imposed by the law of the State chosen or that of the State where the instrument is drawn up concerning the validity, disclosure or registration of such contracts should be complied with.

least be in writing and dated and signed by the couple. Any additional formal requirements imposed by the law of the State chosen or that of the State where the instrument is drawn up concerning the validity, disclosure or registration of such contracts should be complied with.

## **Amendment 7**

### **Proposal for a regulation**

#### **Recital 32**

##### *Text proposed by the Commission*

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles.

##### *Amendment*

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, **20, 21, 23** and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, ***equality before the law***, the prohibition of any form of discrimination, ***equality between women and men*** and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles ***enshrined in the Charter of Fundamental Rights, in particular the principles of equality before the law, non-discrimination on grounds of sex or sexual orientation, and equality between women and men.***

##### *Justification*

*While acknowledging the results of the Commission's fundamental rights impact assessment, the rapporteur underlines that particular attention must be paid to the principles of equality before the law (Art. 20 of the Charter of Fundamental Rights), non-discrimination (Art. 21 of the Charter), and equality between women and men (Art. 23 of the Charter) when courts apply the Regulation.*

## **Amendment 8**

## Proposal for a regulation

### Recital 32

#### *Text proposed by the Commission*

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles.

#### *Amendment*

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, **20, 21, 23, 24** and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, ***equality before the law***, the prohibition of any form of discrimination, ***equality between women and men, the rights of the child*** and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles.

### Amendment 9

## Proposal for a regulation

### Article 4 – paragraph 1

#### *Text proposed by the Commission*

The courts of a Member State called upon to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003, shall also have jurisdiction, where the spouses so agree, to rule on matters of the matrimonial property regime ***arising in connection with the application***.

#### *Amendment*

The courts of a Member State called upon to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003, shall also have jurisdiction, where the spouses so agree, to rule on matters of the matrimonial property regime.

### Amendment 10

## Proposal for a regulation

### Article 4 – paragraph 1

#### *Text proposed by the Commission*

The courts of a Member State called upon

#### *Amendment*

The courts of a Member State called upon

to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003, shall also have jurisdiction, where the spouses so agree, to rule on matters of the matrimonial property regime arising in connection with the application.

to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003, shall also have jurisdiction, where the spouses so agree, to rule on matters of the matrimonial property regime arising in connection with the application. ***The agreement between the spouses on property matters shall not jeopardise the interests of the children.***

## **Amendment 11**

### **Proposal for a regulation Article 4 – paragraph 2**

#### *Text proposed by the Commission*

Such an agreement may be concluded at any time, even during the proceedings. ***If it is concluded before the proceedings, it*** must be drawn up in writing and dated and signed by both parties.

#### *Amendment*

Such an agreement may be concluded at any time, even during the proceedings. ***It*** must be drawn up in writing and dated and signed by both parties.

#### *Justification*

*As divorce proceedings and matrimonial property regime resolution do not necessarily have to take place at the same time, the choice of the law applicable should cover the time after the marriage as well.*

## **Amendment 12**

### **Proposal for a regulation Article 5 – paragraph 1 – introductory wording**

#### *Text proposed by the Commission*

1. In cases other than those provided for in Articles 3 and 4 jurisdiction to rule on proceedings in a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:

#### *Amendment*

1. In cases other than those provided for in Articles 3 and 4 jurisdiction to rule on proceedings in a matter of the spouses' matrimonial property regime shall lie, ***in descending order***, with the courts of the Member State:

## Amendment 13

### Proposal for a regulation

#### Article 5 – paragraph 1 – point d a (new)

*Text proposed by the Commission*

*Amendment*

***(da) of the nationality of the defendant or, in the case of the United Kingdom and Ireland, of his/her domicile.***

#### *Justification*

*Extending the jurisdiction in cases other than those provided for in Articles 3 and 4 to rule on proceedings in a matter of the spouses' matrimonial property regime leads to a less frequent application of Articles 6 and 7 of this proposal.*

## Amendment 14

### Proposal for a regulation

#### Article 5 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

Such an agreement may be concluded at any time, even during the proceedings. ***If it is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties.***

Such an agreement may be concluded at any time, even during the proceedings. ***It must be drawn up in writing and dated and signed by both parties.***

#### *Justification*

*For reasons of legal certainty, all agreements according to Article 5 of the proposal should be drawn up in writing, and dated and signed by both parties.*

## Amendment 15

### Proposal for a regulation

#### Article 15

*Text proposed by the Commission*

*Amendment*

The law applicable to a matrimonial property regime under Article 16, 17 and 18 shall apply to all the couple's property.

The law applicable to a matrimonial property regime under Article 16, 17 and 18 shall apply to all the couple's ***movable or immovable*** property, ***irrespective of its***

*location.*

*Justification*

*This refers to the choice made of a single scheme which enables all questions relating to the spouses' property to be dealt with in one single procedure.*

#### **Amendment 16**

##### **Proposal for a regulation**

##### **Article 16 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) the law of the State in which the marriage took place, or***

*Justification*

*The law of a country in which the marriage took place should be a recognised option of applicable law for matrimonial property regimes.*

#### **Amendment 17**

##### **Proposal for a regulation**

##### **Article 16 – paragraph 1 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

***(cb) the law of the State with which the spouses jointly have the closest links, or***

*Justification*

*Spouses should be given as wide a range of choices for the applicable law within the scope of this proposal.*

#### **Amendment 18**

##### **Proposal for a regulation**

##### **Article 16 – paragraph 1 – point c c (new)**

*Text proposed by the Commission*

*Amendment*

***(cc) the law of the State of the last***

*common habitual residence, or*

#### **Amendment 19**

##### **Proposal for a regulation**

##### **Article 16 – paragraph 1 – point c d (new)**

*Text proposed by the Commission*

*Amendment*

***(cd) the law of the State of the spouses’ first common habitual residence after their marriage.***

#### **Amendment 20**

##### **Proposal for a regulation**

##### **Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The term ‘habitual residence’ shall mean a person’s ordinary place of 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 21**

##### **Proposal for a regulation**

##### **Article 17 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

*Amendment*

1. If the spouses do not make a choice, the law applicable to the matrimonial property regime shall be:

1. If the spouses do not make a choice, the law applicable to the matrimonial property regime shall be, ***in descending order***:

## Amendment 22

### Proposal for a regulation

#### Article 17 – paragraph 1 – point c

*Text proposed by the Commission*

(c) the law of the State with which the spouses jointly have the closest links, taking into account all the circumstances, ***in particular the place where the marriage was celebrated.***

*Amendment*

(c) the law of the State with which the spouses jointly have the closest links, taking into account all circumstances ***or, if that law cannot be established,***

#### *Justification*

*For every individual case, individual circumstances should be taken into account in order to settle the spouses' closest links. Given that places where marriages are celebrated tend to be chosen for reasons other than the applicable law, there is no reason to emphasize the likelihood of this choice.*

## Amendment 23

### Proposal for a regulation

#### Article 17 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

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

#### *Justification*

*The choice by the parties of a country in which the marriage takes place should be reasonably presumed as implying possible acceptance of the law of that country as well.*

## Amendment 24

### Proposal for a regulation

#### Article 17 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The term ‘habitual residence’ shall mean a person’s ordinary place of 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 25**

#### **Proposal for a regulation Article 18 – paragraph 1**

##### *Text proposed by the Commission*

The spouses may, at any time during the marriage, make their matrimonial property regime subject to a law other than the one hitherto applicable. They may designate **only** one of the **following** laws:

***(a) the law of the State of habitual residence of one of the spouses at the time this choice is made;***

***(b) the law of a State of which one of the spouses is a national at the time this choice is made.***

##### *Amendment*

The spouses may, at any time during the marriage, make their matrimonial property regime subject to a law other than the one hitherto applicable. They may **only** designate one of the laws **listed under Article 16 of this Regulation**.

### *Justification*

*When changing the applicable law to their property regimes, spouses should have the same choices as laid out in Article 16 (on the initial choice of property regimes).*

### **Amendment 26**

#### **Proposal for a regulation Article 18 – paragraph 2**

##### *Text proposed by the Commission*

Unless the spouses **desire** otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.

##### *Amendment*

Unless the spouses **indicate** otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.



## Amendment 27

### Proposal for a regulation Article 19 – paragraph 2

*Text proposed by the Commission*

2. Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated and signed by both spouses.

*Amendment*

2. Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated and signed by both spouses ***and expressing their common wish.***

*Justification*

*To protect the interests of each party, there must be certainty that the decision is being taken by common accord.*

## Amendment 28

### Proposal for a regulation Article 19 – paragraph 3

*Text proposed by the Commission*

3. If the law of the Member State ***in which the spouses have their common habitual residence at the time of the choice*** referred to in paragraph 1 provides for additional formal requirements for the marriage contract, these requirements must be complied with.

*Amendment*

3. If the law of the Member State referred to in paragraph 1 provides for additional formal requirements for the marriage contract, these requirements must be complied with.

## Amendment 29

### Proposal for a regulation Article 20 – paragraph 2

*Text proposed by the Commission*

2. Notwithstanding paragraph 1, the marriage contract must at least be set out in a document dated and signed by both spouses.

*Amendment*

2. Notwithstanding paragraph 1, the marriage contract must at least be set out in a document dated and signed by both spouses ***and expressing their common wish.***

*Justification*

*To protect the interests of each party, there must be certainty that the decision is being taken by common accord.*

**Amendment 30**

**Proposal for a regulation**

**Article 22**

*Text proposed by the Commission*

*Amendment*

**Article 22**

**deleted**

**Overriding mandatory provisions**

*Justification*

*The scope of exceptions allowed by this article is virtually limitless, allowing Member States to disregard any provision contained in the Regulation. Since Article 23 already provides for a public policy exception in specific cases, this article should be deleted.*

**Amendment 31**

**Proposal for a regulation**

**Article 37 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The Commission shall make all information ***communicated in accordance with paragraphs 1 and 2*** publicly available by appropriate means, ***in particular*** through the multilingual internet site of the European Judicial Network in civil and commercial matters.

3. The Commission shall make all information publicly available ***in a simple manner*** by appropriate means, through ***a*** multilingual internet site ***complementing that*** of the European Judicial Network in civil and commercial matters, ***so as to ensure that all couples and spouses can exercise their rights in an informed way.***

**Amendment 32**

**Proposal for a regulation**

**Article 37 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Commission shall introduce an***

*information and training tool for the relevant court officials and legal practitioners by setting up an interactive portal in all official languages of the Union, including a system for sharing professional expertise and practices.*

## PROCEDURE

<b>Title</b>	Decisions in matters of matrimonial property regimes
<b>References</b>	COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS)
<b>Committee responsible</b> Date announced in plenary	JURI 10.5.2011
<b>Opinion by</b> Date announced in plenary	LIBE 10.5.2011
<b>Rapporteur</b> Date appointed	Evelyne Gebhardt 24.5.2011
<b>Discussed in committee</b>	21.3.2012          3.9.2012
<b>Date adopted</b>	3.9.2012
<b>Result of final vote</b>	+:                    45 -:                    4 0:                    0
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Edit Bauer, Simon Busuttil, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Véronique Mathieu, Anthea McIntyre, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Rui Tavares, Nils Torvalds, Axel Voss, Renate Weber, Josef Weidenholzer, Cecilia Wikström, Auke Zijlstra
<b>Substitute(s) present for the final vote</b>	Anna Maria Corazza Bildt, Cornelis de Jong, Evelyne Gebhardt, Monika Hohlmeier, Franziska Keller, Ádám Kósa, Marian-Jean Marinescu, Antonio Masip Hidalgo, Jan Mulder, Raúl Romeva i Rueda, Glenis Willmott
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Justas Vincas Paleckis, Iuliu Winkler

7.5.2012

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY**

for the Committee on Legal Affairs

on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS))

Rapporteur: Marina Yannakoudakis

### **SHORT JUSTIFICATION**

#### **Introduction**

With an increase in the mobility of people within the EU's Member States there comes a natural rise in the number of cross state marriages in which couples can own multiple properties. In addition, couples who are living in different Member States at the time of death may have complications with the positioning of their assets when spread over multiple legal jurisdictions.

It is estimated that "in 2007 cross border couple divorces stood at 140,000 (13%) of the 1,040,000 divorces that took place in the EU in the same year."<sup>1</sup> It is therefore vital that there is clarification on which Member State matrimonial property jurisdiction applies when such separations occur.

This opinion is from the FEMM committee, and looks towards the protection of the more vulnerable spouse, but also recognises that both men and women are equal in the eyes of the law. The opinion's main objective is to raise awareness for women, so that should they be faced with the legal consequences of a matrimonial property regime, they are in the position to make an informed and even handed decision in what is inevitably a difficult time. This opinion offers practical solutions to matrimonial property regimes, while upholding and respecting the sovereign jurisdiction of the Member States.

#### **Definition and scope**

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<sup>1</sup> "EU Citizen Report 2010 Dismantling the obstacles to EU citizens' rights", Page 5  
[http://ec.europa.eu/justice/citizen/files/com\\_2010\\_603\\_en.pdf](http://ec.europa.eu/justice/citizen/files/com_2010_603_en.pdf) " (27.10.2010)

The Rapporteur notes that the definition of "matrimonial property regime" varies across the EU. Therefore, it is vital to clearly delineate a scope of assets that should be included in the proposal. For example, maintenance payments in some Member States fall under the scope of the matrimonial property regime, while in others they do not.

The Rapporteur is mindful that the scope of the Commission draft text relates to matrimonial property only, and that registered partnerships are considered under a separate, but related Commission proposal.<sup>1</sup> However, the Rapporteur would like to emphasize that the same equalities and rights should be afforded to all EU citizens, regardless of the nature of a union, but with due consideration to the national laws of individual Member States.

### **Main challenges**

The main challenge within this opinion is dealing with two different scenarios. The first being the death of a spouse, and the second being matrimonial divorce. These two scenarios are complicated by the subsidiarity principle, where matrimonial property regimes are governed by individual Member States sometimes through bilateral or multilateral conventions. This has created diversity in the legal systems of the Member States which the Rapporteur asks are respected and upheld within the narrow scope of the Commission's proposal.

While drafting this opinion the Rapporteur was mindful that not all Member States had signed up to this draft directive, and therefore it was hoped that this proposal would be flexible in allowing those that had not to re-examine their position. Further, there was no clear agreement amongst the Member States on a related Commission proposal on "successions and wills"<sup>2</sup> which is at present being scrutinized in the Council.

### **Supporting a vulnerable spouse and/or third parties**

The Rapporteur understands that during divorce proceeding women are sometimes, but not necessarily in every case, the more vulnerable spouse due to men often being the main source of financial income for a marriage and/or family unit. Therefore, the Rapporteur asks that women be adequately supported during this difficult time. In addition, protection should be afforded to third parties, especially in the case of dependent children. In line with this approach, special consideration should be given to the family home through the protection from disposal of this asset until the competent court has made a ruling, so that the vulnerable spouse and their dependents will have a guaranteed home under which to live.

The European Commission's proposal addresses the issue of property rights in the case of divorce, and provides flexibility for divorcing couples to adopt the appropriate matrimonial regime where common agreement can be reached. However, in the scenario where there is no such agreement the proposal must be mindful in protecting the weaker party, and any changing circumstances within a marriage.

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<sup>1</sup> The proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011)127).

<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, (COM (2009)154)

### **In the event of a death of a spouse**

The Rapporteur takes the view that problems may occur when a spouse dies and the remaining spouse has no choice as to which rules and legal provisions must apply. This is covered in the "successions and wills" draft report, mentioned prior, but where there is no will in place one must try and ensure the remaining spouse is protected, and has the flexibility to administer the estate while taking account of the surviving spouse's wishes.

### **Taxation**

The issue of taxation on assets must fall under Member State jurisdiction as the habitual residence criteria governs the jurisdiction covered. However, not all Member States have bilateral or multilateral taxation agreements in place which means that in the event of a spouse dying there must be assurance that double taxation does not occur.

## **AMENDMENTS**

The Committee on Women's Rights and Gender Equality calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1 Proposal for a regulation Recital 11**

#### *Text proposed by the Commission*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital 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.

#### *Amendment*

(11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property and the liquidation of the regime, in particular as a result of the couple's separation **or divorce** or the death of one of the spouses.

## Amendment 2

### Proposal for a regulation

#### Recital 21

##### *Text proposed by the Commission*

(21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all the circumstances, ***including the place where the marriage was celebrated***, it being made clear that these links are to be considered as they were at the time the marriage was entered into.

##### *Amendment*

(21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all the circumstances, it being made clear that these links are to be considered as they were at the time the marriage was entered into.

##### *Justification*

*A number of couples may go abroad to marry which would have unclear implications for the application of a "closest link" clause.*

## Amendment 3

### Proposal for a regulation

#### Recital 21 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***(21a) It may be that a vulnerable spouse has been unable to make a free and fair***



***matrimonial property choice due to specific circumstances, such as a situation of economic or financial dependence, a pay gap, lack of access to information or to legal advice, or circumstances related to illness or to domestic violence.***

*Justification*

*The case of absence of choice of law is already dealt with in recital 21 of the matrimonial property proposal. Since the proposal provides for rules, when no choice for applicable law is made by the spouses, the proposed amendment only describes some of the circumstances under which a choice of law has not been made possible. For this reason the ‘in the absence of a choice of law’ has been removed from the original recital text.*

**Amendment 4**

**Proposal for a regulation**

**Recital 24**

*Text proposed by the Commission*

(24) Given the importance of choosing the law applicable to the matrimonial property regime, the Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice. This choice should be made in the form prescribed for the marriage contract by the law of the State chosen or by that of the State where the instrument is drawn up, and at least be in writing **and** dated and signed by the couple. Any additional formal requirements imposed by the law of the State chosen or that of the State where the instrument is drawn up concerning the validity, disclosure or registration of such contracts should be complied with.

*Amendment*

(24) Given the importance of choosing the law applicable to the matrimonial property regime, the Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice, ***including free legal aid when one of the spouses is in financial difficulties***. This choice should be made in the form prescribed for the marriage contract by the law of the State chosen or by that of the State where the instrument is drawn up, and at least be in writing, dated and signed by the couple ***and authenticated. In order to ensure adequate protection for the vulnerable spouse or prospective spouse before the choice of applicable law is made, each spouse should be individually informed in advance by a legal practitioner of the legal consequences of this choice.*** Any additional formal requirements imposed by the law of the State chosen or that of the State where the instrument is drawn up concerning the validity, disclosure or registration of such contracts should be

complied with.

*Justification*

*The spouses(s) access to independent legal advice from a legal practitioner should allow an autonomous and informed choice to be made that protects a spouse who may be in a situation of vulnerability.*

**Amendment 5**

**Proposal for a regulation  
Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24a) Spouses or prospective spouses whose union has an international dimension should have access in advance to information on the consequences of choosing a matrimonial property regime and on legal practitioners who can be consulted before a decision on a matrimonial property regime is adopted, in case of doubt or in a situation of vulnerability. Information on matrimonial property regimes can be included in a "welcome pack" that spouses can receive, if they so wish, when making contact with their embassy or national or local authorities, according to the national system. Spouses whose union has an international dimension should be informed individually in advance, when purchasing property abroad, of the benefits of choosing a matrimonial property regime. In all instances the gender equality legislation of the Member States should be upheld.***

## Amendment 6

### Proposal for a regulation Recital 25

#### *Text proposed by the Commission*

(25) Considerations of public interest dictate that courts in the Member States be given the possibility in exceptional circumstances of setting aside the foreign law in a given case where its application would be manifestly contrary to the public policy of the forum. However, the courts should not be able to apply the public policy exception in order to set aside the law of another Member State or to refuse to recognise or enforce a decision, authentic instrument or legal transaction drawn up in another State if the application of the public policy exception would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination.

#### *Amendment*

(25) Considerations of public interest dictate that courts in the Member States be given the possibility in exceptional circumstances of setting aside the foreign law in a given case where its application would be manifestly contrary to the public policy of the forum. However, the courts should not be able to apply the public policy exception in order to set aside the law of another Member State or to refuse to recognise or enforce a decision, authentic instrument or legal transaction drawn up in another State if the application of the public policy exception would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination, **and Article 23, which requires equality between men and women to be ensured in all areas.**

## Amendment 7

### Proposal for a regulation Article 1 – paragraph 3 – introductory wording

#### *Text proposed by the Commission*

3. The following are excluded from the scope of this Regulation:

#### *Amendment*

3. The following are excluded from the scope of this Regulation, ***without prejudice to considerations of balance and fairness:***

#### *Justification*

*In some Member States assets remaining are considered together and are dealt with as one issue with consideration to balance and intention of fairness in protecting both spouses, which in most instances is the female who is likely, where applicable, to be the primary caregiver to children. In other Member States such assets are ruled on separately.*

## Amendment 8

### Proposal for a regulation

#### Article 1 – paragraph 3 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(fa) pension rights, unless the applicable national law provides for pension rights acquired during marriage to be split in the event of divorce.***

*Justification*

*If assets are to be ruled on separately, as outlined in the Commission's proposal, it is important to also consider excluding from the scope of this proposed directive gifts from family members, pension rights, insurance policies and retirement funds.*

## Amendment 9

### Proposal for a regulation

#### Article 1 – paragraph 3 – point f b (new)

*Text proposed by the Commission*

*Amendment*

***(fb) insurance policies and retirement funds.***

*Justification*

*If assets are to be ruled on separately, as outlined in Commission's proposal, it is important to also consider excluding from the scope of this proposed directive gifts from family members, pension rights, insurance policies and retirement funds.*

## Amendment 10

### Proposal for a regulation

#### Article 2 – point b

*Text proposed by the Commission*

*Amendment*

(b) ‘marriage contract’: any agreement by which spouses organise their property relationships between themselves and in relation to third parties;

(b) ‘marriage contract’: any agreement by which spouses, ***on marrying or during their marriage***, organise their property relationships between themselves and in relation to third parties;

## Amendment 11

### Proposal for a regulation

#### Article 2 – point g

*Text proposed by the Commission*

(g) 'court': any **competent judicial authority in the Member States which carries out a judicial function** in matters of matrimonial property regimes, **or any other non-judicial authority or person carrying out, by delegation or designation by a judicial authority of a Member State, the functions falling within the jurisdiction of the courts as provided for in this Regulation;**

*Amendment*

(g) 'court': **includes any authorities and legal professionals with competence** in matters of matrimonial property regimes **which exercise judicial functions, act pursuant to a delegation of power by a court or act under the control of a court, provided that those authorities and legal professionals afford guarantees with regard to their impartiality and the right of all parties to be heard and that their decisions under the law of the Member State in which they operate:**

**– are subject to appeal to or review by a judicial authority; and**

**– have force and effect comparable to those of a decision of a judicial authority on the same matter;**

## Amendment 12

### Proposal for a regulation

#### Article 4 – paragraph 2

*Text proposed by the Commission*

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing **and** dated and signed by both parties. **Failing agreement between the spouses, jurisdiction is governed by Articles 5 et seq.**

*Amendment*

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing, dated and signed by both parties **and authenticated. Before the agreement is concluded each spouse should be individually informed by a legal practitioner of the legal consequences of this choice.**

### *Justification*

*The spouses(s) access to independent legal advice from a legal practitioner should allow an autonomous and informed choice to be made that protects a spouse who may be in a situation of vulnerability.*

#### **Amendment 13**

##### **Proposal for a regulation**

##### **Article 5 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing *and* dated and signed by both parties.

*Amendment*

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing, dated and signed by both parties, ***and registered in accordance with the procedure laid down in the Member State where it was concluded.***

#### **Amendment 14**

##### **Proposal for a regulation**

##### **Article 13 a (new)**

*Text proposed by the Commission*

*Amendment*

##### ***Article 13a***

##### ***Provision of information to spouses***

***The competent authority shall be obliged to inform the spouse(s), within a reasonable time, of any matrimonial property regime proceedings which are initiated against them.***

#### **Amendment 15**

##### **Proposal for a regulation**

##### **Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

##### ***Article 14a***

### *Special protective measures*

*Before any decision as to a competent court is taken, special protection shall be afforded to the family home through measures such as protection of that asset from disposal, in accordance with the law of the Member State addressed until the competent court has delivered its ruling.*

### *Justification*

*In order to protect the vulnerable spouse and third parties, such as dependents it is important that the family home is protected from rapid disposal until the competent court has ruled, and in accordance with the law of the Member State addressed. This will ensure that during court proceedings, if applicable, the vulnerable spouse and their dependents will have a guaranteed home under which to live.*

### **Amendment 16**

#### **Proposal for a regulation Article 15**

##### *Text proposed by the Commission*

The law applicable to a matrimonial property regime under Article 16, 17 and 18 shall apply to all the couple's property.

##### *Amendment*

The law applicable to a matrimonial property regime under Article 16, 17 and 18 shall apply to all the couple's **common** property.

### **Amendment 17**

#### **Proposal for a regulation Article 17 – paragraph 1 – point c**

##### *Text proposed by the Commission*

(c) the law of the State with which the spouses jointly have the closest links, taking into account all the circumstances, **in particular** the place where the marriage was celebrated.

##### *Amendment*

(c) the law of the State with which the spouses jointly have the closest links, taking into account all the circumstances, **regardless of** the place where the marriage was celebrated.

### *Justification*

*A number of couples may go abroad to marry which would have unclear implications for the*

*application of a "closest link" clause.*

## **Amendment 18**

### **Proposal for a regulation Article 17 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Notwithstanding paragraph 1, in the event of the death of a spouse, and where no choice of a matrimonial property regime has been made, the surviving spouse's wishes should where appropriate take priority and be upheld.***

## **Amendment 19**

### **Proposal for a regulation Article 18 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

If the spouses choose to make this change of applicable law retrospective, the retrospective effect ***may*** not affect the validity of previous transactions entered into under the law applicable hitherto or the rights of third parties deriving from the law previously applicable.

If the spouses choose to make this change of applicable law retrospective, the retrospective effect ***shall*** not affect the validity of previous transactions entered into under the law applicable hitherto or the rights of third parties deriving from the law previously applicable. ***Each of the spouses shall be individually informed in advance by a legal practitioner about the legal consequences of this choice.***

#### *Justification*

*Retrospective decisions will not lead to higher levels of legal certainty for third parties and may give rise to higher legal costs for spouses.*



## Amendment 20

### Proposal for a regulation Article 19 – paragraph 2

*Text proposed by the Commission*

2. Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated **and** signed by both spouses.

*Amendment*

2. Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated, signed by both spouses **and authenticated. Before the choice of applicable law is made each of the spouses shall be individually informed by a legal practitioner of the legal consequences of this choice.**

## Amendment 21

### Proposal for a regulation Article 20 – paragraph 2

*Text proposed by the Commission*

2. Notwithstanding paragraph 1, the marriage contract must at least be set out in a document dated **and** signed by both spouses.

*Amendment*

2. Notwithstanding paragraph 1, the marriage contract must at least be set out in a document dated, signed by both spouses **and authenticated.**

## Amendment 22

### Proposal for a regulation Article 27 – point d

*Text proposed by the Commission*

(d) it is irreconcilable with an earlier decision given in another Member State **or in a third State** involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State addressed

*Amendment*

(d) it is irreconcilable with an earlier decision given in another Member State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State addressed.

*Justification*

*There is no guarantee of reciprocal recognition with a third state. This will mean that EU*

*Member States judiciaries may have to train in and then apply the foreign law of non-EU third states which may lead to considerable costs, time delays and diminished legal certainty for applicants and third parties.*

## **Amendment 23**

### **Proposal for a regulation Article 35 – paragraph 2**

*Text proposed by the Commission*

2. However, the law of a Member State may provide that the law applicable to the matrimonial property regime may not be relied on by a spouse in dealings with a third party if one or other has their habitual residence in the territory of that Member State and the conditions of disclosure or registration provided for in the law of that State are not satisfied, unless the third party was aware of ***or ought to have been aware of*** the law applicable to the matrimonial property regime.

*Amendment*

2. However, the law of a Member State may provide that the law applicable to the matrimonial property regime may not be relied on by a spouse in dealings with a third party if one or other has their habitual residence in the territory of that Member State and the conditions of disclosure or registration provided for in the law of that State are not satisfied, unless the third party was aware of the law applicable to the matrimonial property regime.

#### *Justification*

*It may prove difficult to ascertain whether a third party "ought to have been aware" especially when considering the international nature of most matrimonial property disputes. This term has been removed as it is unclear in its scope.*

## **Amendment 24**

### **Proposal for a regulation Article 37 – paragraph 3**

*Text proposed by the Commission*

3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available by appropriate means, in particular through the multilingual internet site of the European Judicial Network in civil and commercial matters.

*Amendment*

3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available by appropriate means, in particular, ***though not exclusively***, through the multilingual internet site of the European Judicial Network in civil and commercial matters.

*Justification*

*Information can be communicated by other means, such as a multilingual telephone helpline.*

**Amendment 25**

**Proposal for a regulation**  
**Article 37 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Member States shall consider taking appropriate measures in order to ensure that spouses whose union has an international dimension have access to information on the consequences of choosing a matrimonial property regime and on legal practitioners who can be consulted.***

## PROCEDURE

<b>Title</b>	Decisions in matters of matrimonial property regimes
<b>References</b>	COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS)
<b>Committee responsible</b> Date announced in plenary	JURI 10.5.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	FEMM 10.5.2011
<b>Rapporteur(s)</b> Date appointed	Marina Yannakoudakis 19.4.2011
<b>Discussed in committee</b>	27.2.2012
<b>Date adopted</b>	24.4.2012
<b>Result of final vote</b>	+: 23 -: 0 0: 4
<b>Members present for the final vote</b>	Emine Bozkurt, Andrea Češková, Iratxe García Pérez, Zita Gurmai, Mikael Gustafsson, Mary Honeyball, Sophia in 't Veld, Livia Járóka, Nicole Kiil-Nielsen, Silvana Koch-Mehrin, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Barbara Matera, Elisabeth Morin-Chartier, Angelika Niebler, Siiri Oviir, Joanna Katarzyna Skrzydlewska, Marc Tarabella, Britta Thomsen, Marina Yannakoudakis, Anna Záborská, Inês Cristina Zuber
<b>Substitute(s) present for the final vote</b>	Franziska Katharina Brantner, Christa Klauß, Ana Miranda, Mariya Nedelcheva, Antigoni Papadopoulou

## PROCEDURE

<b>Title</b>	Decisions in matters of matrimonial property regimes			
<b>References</b>	COM(2011)0126 – C7-0093/2011 – 2011/0059(CNS)			
<b>Date of consulting Parliament</b>	7.4.2011			
<b>Committee responsible</b> Date announced in plenary	JURI 10.5.2011			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	LIBE 10.5.2011	FEMM 10.5.2011		
<b>Rapporteur(s)</b> Date appointed	Alexandra Thein 12.4.2011			
<b>Discussed in committee</b>	21.6.2011	21.11.2011	17.9.2012	11.10.2012
	18.12.2012			
<b>Date adopted</b>	20.6.2013			
<b>Result of final vote</b>	+: -: 0:	23 0 2		
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Tadeusz Zwiefka			
<b>Substitute(s) present for the final vote</b>	Sergio Gaetano Cofferati, Vytautas Landsbergis, Eva Lichtenberger, Angelika Niebler, Axel Voss			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Frédérique Ries, Nikolaos Salavrakos, Jacek Włosowicz			
<b>Date tabled</b>	21.8.2013			