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**A7-0360/2010**

7.12.2010

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## **REPORT**

on the proposal for a Council regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation  
(COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

### ***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 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation  
(COM(2010)0105 – C7-0102/2010 – 2010/0067(CNS))**

**(Special legislative procedure – consultation – enhanced cooperation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2010)0105),
  - having regard to Article 81(3) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0102/2010),
  - having regard to its position of 16 June 2010<sup>1</sup>, giving its consent to the draft Council decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation,
  - having regard to Council Decision 2010/405/EU of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation<sup>2</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 14 July 2010,
  - having regard to Rules 55 and 74g(3) 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 (A7-0360/2010),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Commission to submit a proposal for amendment of Regulation (EC) No 2201/2003, limited to the addition of a clause on *forum necessitatis*, as a matter of great urgency before the promised general review of that regulation;
  4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

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<sup>1</sup> Texts adopted, P7\_TA(2010)0216.

<sup>2</sup> OJ L 189, 22.7.2010, p. 12.

6. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

#### Proposal for a regulation

##### Citation 2

*Text proposed by the Commission*

Having regard to Council Decision [...] of [...] authorising enhanced cooperation in the area of the law applicable to divorce and legal separation<sup>7</sup>,

<sup>7</sup>OJ L [...], [...], p. [...].

*Amendment*

Having regard to Council Decision **2010/405/EU of 12 July 2010** authorising enhanced cooperation in the area of the law applicable to divorce and legal separation<sup>1</sup>,

<sup>1</sup>OJ L **189**, **22.7.2010**, p. **12**.

### Amendment 2

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, the Union **must** adopt measures relating to judicial cooperation in civil matters having cross-border implications.

*Amendment*

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, the Union **is to** adopt measures relating to judicial cooperation in civil matters having cross-border implications, **particularly when necessary for the proper functioning of the internal market.**

### Amendment 3

#### Proposal for a regulation

##### Recital 2

*Text proposed by the Commission*

(2) Pursuant to Article 81**(3)** of the Treaty on the Functioning of the European Union, the **Council is to adopt** measures

*Amendment*

(2) Pursuant to Article 81 of the Treaty on the Functioning of the European Union, the measures **in question are to include those**

*concerning family law with cross-border implications.*

*aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws.*

#### **Amendment 4**

##### **Proposal for a regulation Recital 6**

*Text proposed by the Commission*

(6) Bulgaria, Greece, Spain, France, Italy, Luxembourg, Hungary, Austria, Romania and Slovenia subsequently addressed a request to the Commission indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters **and asking the Commission to submit a proposal to the Council for that purpose.**

*Amendment*

(6) **Belgium**, Bulgaria, **Germany**, Greece, Spain, France, Italy, **Latvia**, Luxembourg, Hungary, **Malta**, Austria, **Portugal**, Romania and Slovenia subsequently addressed a request to the Commission indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters. **On 3 March 2010 Greece withdrew its request.**

#### **Amendment 5**

##### **Proposal for a regulation Recital 7**

*Text proposed by the Commission*

(7) On [...] the Council adopted Decision [...] authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

*Amendment*

(7) On **12 July 2010** the Council adopted Decision **2010/405/EU** authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

#### **Amendment 6**

##### **Proposal for a regulation Recital 8**

*Text proposed by the Commission*

(8) According to Article 328(1) of the Treaty on the Functioning of the European Union, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down

*Amendment*

(8) According to Article 328(1) of the Treaty on the Functioning of the European Union, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down

by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions.

by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. ***The Commission and the Member States participating in enhanced cooperation should ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the participating Member States in accordance with the Treaties.***

## Amendment 7

### Proposal for a regulation Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) The substantive scope and enacting terms of this Regulation should be consistent with Regulation (EC) No 2201/2003. However, it should not apply to marriage annulment. This Regulation should apply only to the dissolution or loosening of marriage ties. The law determined by the conflict-of-law rules of this Regulation should apply to the grounds for divorce and legal separation. Preliminary questions on issues such as legal capacity and the validity of a marriage, and on matters such as the effects of divorce or legal separation on property, name, parental responsibility, maintenance obligations or any other ancillary measures, should be determined by the conflict-of-law rules applicable in the participating Member State concerned.***



## Amendment 8

### Proposal for a regulation Recital 10

*Text proposed by the Commission*

(10) In order *to* clearly delimit the territorial scope of this Regulation, the Member States participating in the enhanced cooperation must be specified.

*Amendment*

(10) In order clearly *to* delimit the territorial scope of this Regulation, the Member States participating in the enhanced cooperation must be specified ***in accordance with Article 1(2)***.

## Amendment 9

### Proposal for a regulation Recital 10 a(new)

*Text proposed by the Commission*

*Amendment*

***(10a) This Regulation should be universal, in the sense that its uniform conflict-of-law rules may designate the law of a participating Member State, the law of a non-participating Member State or the law of a State which is not a member of the European Union.***

## Amendment 10

### Proposal for a regulation Recital 11

*Text proposed by the Commission*

(11) This Regulation should apply irrespective of the nature of the court or tribunal seised.

*Amendment*

(11) This Regulation should apply irrespective of the nature of the court or tribunal seised. ***Where applicable, a court should be deemed to be seised in accordance with Regulation (EC) No 2201/2003.***

## Amendment 11

### Proposal for a regulation Recital 12

*Text proposed by the Commission*

(12) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law *might* apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters<sup>10</sup> *can* play a part in assisting the courts with regard to the content of foreign law.

<sup>10</sup> OJ L 174, 27.6.2001, p. 25.

*Amendment*

(12) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law *may* apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters<sup>1</sup>, **as amended by Decision 568/2009/EC of 18 June 2009<sup>2</sup>**, *could* play a part in assisting the courts with regard to the content of foreign law.

<sup>1</sup> OJ L 174, 27.6.2001, p. 25.

<sup>2</sup> **OJ L 168, 30.6.2009, p. 35.**

## Amendment 12

### Proposal for a regulation Recital 13

*Text proposed by the Commission*

(13) Increasing the mobility of citizens calls for more flexibility and greater legal certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation. ***Such possibility should not extend to marriage annulment, which is closely linked to the conditions for the validity of marriage, and for which autonomy on the part of the parties is inappropriate.***

*Amendment*

(13) Increasing the mobility of citizens calls for more flexibility and greater legal certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation.

## Amendment 13

### Proposal for a regulation Recital 14

#### *Text proposed by the Commission*

(14) Spouses should be able to choose the law of a country with which they have a special connection or the *lex fori* as the law applicable to divorce and legal separation. The law chosen by the spouses must be consonant with the fundamental rights *enshrined* in the Treaties and the Charter of Fundamental Rights of the European Union. *The possibility of choosing the law applicable to divorce and legal separation should not harm the superior interests of the child.*

#### *Amendment*

(14) Spouses should be able to choose the law of a country with which they have a special connection or the *law of the forum* as the law applicable to divorce and legal separation. The law chosen by the spouses must be consonant with the fundamental rights *recognised* in the Treaties and the Charter of Fundamental Rights of the European Union.

## Amendment 14

### Proposal for a regulation Recital 15

#### *Text proposed by the Commission*

(15) Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by *Council* Decision 2001/470/EC.

#### *Amendment*

(15) Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Decision 2001/470/EC, *as amended by Decision 568/2009/EC.*

## Amendment 15

**Proposal for a regulation**  
**Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) If the spouses are unable to agree on the applicable law, they should complete a mediation procedure including at least one consultation with an authorised mediator.***

**Amendment 16**

**Proposal for a regulation**  
**Recital 16**

*Text proposed by the Commission*

*Amendment*

(16) The informed choice of the **two** spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the **two** spouses. Hence judges in the Member States should be aware of the importance of an informed choice on the part of the **two** spouses concerning the legal implications of the choice-of-law agreement concluded.

(16) The informed choice of the spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the spouses. Hence judges in the **participating** Member States should be aware of the importance of an informed choice on the part of the spouses concerning the legal implications of the choice-of-law agreement concluded.

**Amendment 17**

**Proposal for a regulation**  
**Recital 17**

*Text proposed by the Commission*

*Amendment*

(17) Certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law

***(17) Rules on material and formal validity should be defined so that the informed choice of the spouses is facilitated and that their consent is respected with a view***

should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence lays down additional formal rules, those rules **must** be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract.

***to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned,*** certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence ***at the time the agreement is concluded*** lays down additional formal rules, those rules ***should*** be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract. ***If, at the time the agreement is concluded, the spouses are habitually resident in different participating Member States which lay down different formal rules, compliance with the formal rules of one of those States would suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a participating Member State which lays down additional formal rules, those rules should be complied with.***

## Amendment 18

### Proposal for a regulation

#### Recital 18

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

(18) An agreement designating the applicable law should be able to be concluded and modified at the latest ***when*** the court is seised, and even during the course of the proceeding if the ***lex fori*** so provides. In that event, it should be sufficient for such designation to be recorded in court in accordance with the ***lex fori***.

##### *Amendment*

(18) An agreement designating the applicable law should be able to be concluded and modified at the latest ***at the time*** the court is seised, and even during the course of the proceeding if the ***law of the forum*** so provides. In that event, it should be sufficient for such designation to be recorded in court in accordance with the ***law of the forum***.

## Amendment 19

### Proposal for a regulation Recital 19

*Text proposed by the Commission*

(19) Where no applicable law is chosen, and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. ***These*** connecting factors ***have been*** chosen ***so that the*** divorce or legal separation ***proceeding is*** governed by a law with which the spouses have a close connection, ***and they are based first and foremost on the law of the spouses' habitual residence.***

*Amendment*

(19) Where no applicable law is chosen, and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests, this Regulation should introduce harmonised conflict-of-law rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. ***Such*** connecting factors ***should be*** chosen ***in such a way as to ensure that proceedings relating to*** divorce or legal separation ***are*** governed by a law with which the spouses have a close connection.

## Amendment 20

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) Where this Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be determined in accordance with national law, in full observance of the general principles of the European Union.***

## Amendment 21

### Proposal for a regulation Recital 19 b (new)

*Text proposed by the Commission*

*Amendment*

***(19b) Where the court is seised of an application to convert a legal separation into divorce and the parties have not made any choice as to the law applicable, the law which applied to the legal separation should also apply to the divorce. Such continuity would promote predictability for the parties and increase legal certainty. If the law applied to the legal separation does not provide for the conversion of legal separation into divorce, the divorce should be governed by the conflict-of-law rules which apply in the absence of a choice by the parties. This should not prevent the spouses from seeking divorce on the basis of other rules laid down in this Regulation.***

## Amendment 22

### Proposal for a regulation Recital 20

*Text proposed by the Commission*

*Amendment*

(20) In certain situations, such as where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the court seised should nevertheless apply.

(20) In certain situations, such as where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the court seised should nevertheless apply. ***This should, however, be without prejudice to the public policy clause (ordre public).***

## Amendment 23

### Proposal for a regulation Recital 21

*Text proposed by the Commission*

(21) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of foreign law in a given case where it 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 disregard the law of another *Member* State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

*Amendment*

(21) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of ***a provision of*** foreign law in a given case where it 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 disregard ***a provision of*** the law of another State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

## Amendment 24

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

*Text proposed by the Commission*

*Amendment*

***(21a) Where this Regulation refers to the circumstance that the law of the participating Member State whose court is seised does not provide for divorce, this should be interpreted as meaning that the law of that Member State does not encompass the institution of divorce. In such a case, the court should not be obliged to pronounce a decree of divorce by virtue of this Regulation. Where this Regulation refers to the circumstance that the law of the participating Member State whose court is seised does not deem the marriage in question valid for the purposes of divorce proceedings, this should be interpreted as meaning inter alia that such a marriage does not exist***



*under the law of that Member State. In such a case, the court should not be obliged to pronounce a decree of divorce or order a legal separation by virtue of this Regulation.*

## **Amendment 25**

### **Proposal for a regulation Recital 22**

*Text proposed by the Commission*

(22) Since there are States and participating Member States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States and participating Member States.

*Amendment*

(22) Since there are States and participating Member States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States and participating Member States, ***or the extent to which this Regulation applies to different categories of persons of those States and participating Member States.***

## **Amendment 26**

### **Proposal for a regulation Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) In the absence of rules designating the applicable law, spouses choosing the law of the State of the nationality of one of them should at the same time indicate, where the State whose law is chosen comprises several territorial units each of which has its own system of law or a set of rules in respect of divorce, which territorial unit's law they have agreed upon.***

## Amendment 27

### Proposal for a regulation Recital 24

*Text proposed by the Commission*

(24) This Regulation respects fundamental rights and observes the principles ***enshrined*** in the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. This Regulation must be applied by the courts of the participating Member States in observance of those rights and principles,

*Amendment*

(24) This Regulation respects fundamental rights and observes the principles ***recognised*** in the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. This Regulation must be applied by the courts of the participating Member States in observance of those rights and principles,

## Amendment 28

### Proposal for a regulation Article 1 – title

*Text proposed by the Commission*

***Material*** scope

*Amendment*

***Scope***

## Amendment 29

### Proposal for a regulation Article 1 – paragraph 1a (new)

*Text proposed by the Commission*

*Amendment*

***1a. This Regulation shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings:***

- (a) the legal capacity of natural persons;*
- (b) the existence, validity or recognition of a marriage;*
- (c) the annulment of a marriage;*
- (d) the name of the spouses;*
- (e) the property consequences of the marriage;*
- (f) parental responsibility;*
- (g) maintenance obligations;*
- (h) trusts or successions.*

*Justification*

*It is necessary to clarify the scope of the Regulation, both in a recital and in the enacting terms, at least in terms of what is excluded.*

**Amendment 30**

**Proposal for a regulation**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

2. For the purposes of this Regulation, 'participating Member State' means a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Council Decision [...] of [...] authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

*Amendment*

2. For the purposes of this Regulation, 'participating Member State' means a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Council Decision **2010/405/EU of 12 July 2010** authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, **or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union.**

**Amendment 31**

**Proposal for a regulation**  
**Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 1a**

**Relationship with Regulation (EC) No  
2201/2003**

***This Regulation shall not affect the  
application of Regulation (EC) No  
2201/2003.***

**Amendment 32**

**Proposal for a regulation**  
**Article 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 1b**

**Definition**

***For the purposes of this Regulation, the  
term "court" shall cover all authorities in  
the participating Member States having  
jurisdiction in the matters falling within  
the scope of this Regulation.***

**Amendment 33**

**Proposal for a regulation**  
**Article 2 – title**

*Text proposed by the Commission*

*Amendment*

***Universality***

***Universal application***

## Amendment 34

### Proposal for a regulation

#### Article 3 – paragraph 1 – introductory wording

*Text proposed by the Commission*

1. The spouses may ***choose by mutual agreement*** the law applicable to divorce and legal separation, provided that ***such law is in conformity with the fundamental rights defined in the Treaties and in the Charter of Fundamental Rights of the European Union and with the principle of public policy, from among*** the following laws:

*Amendment*

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

## Amendment 35

### Proposal for a regulation

#### Article 3 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the law of the State ***of the spouses' last habitual residence if*** one of them still ***lives*** there at the time ***of conclusion of*** the agreement;

*Amendment*

(b) the law of the State ***where the spouses were last habitually resident, in so far as*** one of them still ***resides*** there at the time ***when*** the agreement ***is concluded; or***

## Amendment 36

### Proposal for a regulation

#### Article 3 – paragraph 1 – point c

*Text proposed by the Commission*

(c) the law of the State of nationality of ***one of the spouses*** at the time ***of conclusion of*** the agreement;

*Amendment*

(c) the law of the State of nationality of ***either spouse*** at the time ***when*** the agreement ***is concluded; or***

## Amendment 37

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

*Text proposed by the Commission*

(d) the *lex fori*.

*Amendment*

(d) the *law of the forum*.

**Amendment 38**

**Proposal for a regulation**  
**Article 3 – paragraph 2**

*Text proposed by the Commission*

2. Without prejudice to paragraph 4, an agreement designating the applicable law may be concluded and modified at any time, but at the latest when the court is seised.

*Amendment*

2. Without prejudice to paragraph 3, an agreement designating the applicable law may be concluded and modified at any time, but at the latest *at the time* when the court is seised.

**Amendment 39**

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

*Text proposed by the Commission*

**3. The agreement referred to in paragraph 2 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.**

***However, if the law of the participating Member State in which the two spouses have their habitual residence at the time of conclusion of the agreement lays down additional formal requirements for this type of agreement, those requirements shall apply. If the spouses are habitually resident in different participating Member States and the laws of those Member***

*Amendment*

**3. If the law of the forum so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the forum .**

*States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.*

#### **Amendment 40**

##### **Proposal for a regulation Article 3 – paragraph 4**

*Text proposed by the Commission*

*4. If the lex fori so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the lex fori.*

*Amendment*

*deleted*

#### **Amendment 41**

##### **Proposal for a regulation Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 3a**

##### **Consent and material validity**

*1. The existence and validity of an agreement on choice of law or of any term thereof shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.*

*2. Nevertheless, a spouse, in order to establish that he or she did not consent, may rely on the law of the country in which he or she has his or her habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his or her conduct in accordance with the law specified in paragraph 1.*

## Amendment 42

### Proposal for a regulation Article 3 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 3b*

##### *Formal validity*

- 1. The agreement referred to in Article 3(1) and (2) 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. However, if the law of the participating Member State in which the spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for agreements of that type, those requirements shall apply.*
- 3. If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States lay down different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.*
- 4. If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for agreements of that type, those requirements shall apply.*

## Amendment 43



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

*Text proposed by the Commission*

*Amendment*

**Article 4a**

**Conversion of legal separation into  
divorce**

**1. Where a legal separation is converted into a divorce, the law applicable to the divorce shall be the law applied to the legal separation, unless the parties have agreed otherwise in accordance with Article 3.**

**2. However, if the law applied to the legal separation does not provide for the conversion of legal separation into divorce, Article 4 shall apply, unless the parties have agreed otherwise in accordance with Article 3.**

**Amendment 44**

**Proposal for a regulation**  
**Article 5**

*Text proposed by the Commission*

*Amendment*

Application of the ***lex fori***

Where the law applicable pursuant to Article 3 or Article 4 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the ***lex fori*** shall apply.

Application of the ***law of the forum***

Where the law applicable pursuant to Article 3 or Article 4 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the ***law of the forum*** shall apply.

## Amendment 45

### Proposal for a regulation Article 7 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 7a*

#### *Differences in national law*

***Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce, or does not deem the marriage in question valid for the purposes of divorce proceedings, to pronounce a decree of divorce by virtue of the application of this Regulation.***

## Amendment 46

### Proposal for a regulation Article 8

*Text proposed by the Commission*

*Amendment*

States with ***more than one legal system***

States with ***two or more legal systems – territorial***

1. Where a State comprises several territorial units each of which has its own rules of law in respect of divorce and legal separation, each territorial unit shall be considered a State for the purpose of determining the law applicable under this Regulation.

1. Where a State comprises several territorial units each of which has its own rules of law in respect of divorce and legal separation, each territorial unit shall be considered a State for the purpose of determining the law applicable under this Regulation.

#### ***1a. In relation to such a State:***

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

***(b) any reference to nationality shall be construed as a reference to the territorial unit designated by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the spouses or, in the absence of such a choice, to the***

*territorial unit with which the spouse or spouses has or have the closest connection.*

**Amendment 47**

**Proposal for a regulation  
Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 8a**

*States with two or more legal systems –  
inter-personal conflicts*

*In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons concerning matters governed by this Regulation, any reference to the law of such a State shall be construed as a reference to the legal system 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 spouse or spouses has or have the closest connection applies.*

**Amendment 48**

**Proposal for a regulation  
Article 8 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 8b**

*Non-application of this Regulation to  
internal conflicts*

*A participating Member State in which different systems of law or sets of rules apply to matters governed by this Regulation shall not be required to apply this Regulation to conflicts of law arising solely between such different systems of*

*law or sets of rules.*

#### **Amendment 49**

##### **Proposal for a regulation Article 9 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the formal **rules** applicable to agreements on the choice of applicable law; and

*Amendment*

(a) the formal **requirements** applicable to agreements on the choice of applicable law **pursuant to Article 3b (2) to (4)**; and

#### **Amendment 50**

##### **Proposal for a regulation Article 10 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. This Regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 3 concluded **after** its date of application pursuant to Article 13.

*Amendment*

1. This Regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 3 concluded **as from** its date of application pursuant to Article 13.

#### **Amendment 51**

##### **Proposal for a regulation Article 10 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

However, effect shall also be given to an agreement on the choice of the applicable law concluded **in accordance with the law of a participating Member State** before the date of application of this Regulation, provided that it **fulfils the conditions set out in the first paragraph of Article 3(3)**.

*Amendment*

However, effect shall also be given to an agreement on the choice of the applicable law concluded before the date of application of this Regulation, provided that it **complies with Articles 3a and 3b**.

## Amendment 52

### Proposal for a regulation Article 11 – paragraph 1

*Text proposed by the Commission*

1. ***Without prejudice to the obligations of the participating Member States pursuant to Article 351 of the Treaty on the Functioning of the European Union, this Regulation shall not affect the application of **bilateral or multilateral** conventions to which one or more participating Member States are party at the time **of adoption of this** Regulation and which **relate to the subjects covered by it.*****

*Amendment*

1. ***This*** Regulation shall not affect the application of ***international*** conventions to which one or more participating Member States are party at the time ***when this*** Regulation ***is adopted or when the decision referred to in Article 1(2) is adopted*** and which ***lay down conflict-of-law rules relating to divorce or separation.***

## Amendment 53

### Proposal for a regulation Article 11 – paragraph 2

*Text proposed by the Commission*

2. ***Notwithstanding paragraph 1***, this Regulation shall ***take precedence*** as between participating Member States over conventions ***which relate to subjects governed by this Regulation and to which the participating Member States are party.***

*Amendment*

2. ***However***, this Regulation shall, as between participating Member States, ***take precedence*** over conventions ***concluded exclusively between two or more of them in so far as such conventions concern matters*** governed by this Regulation.

## Amendment 54

### Proposal for a regulation Article 12 – paragraph 1

*Text proposed by the Commission*

By ~~/~~five years after the entry into force of this Regulation/ at the latest, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report

*Amendment*

***1.*** By five years after the entry into force of this Regulation at the latest, ***and every five years thereafter***, the Commission shall present to the European Parliament, the Council and the European Economic and

on the application of this Regulation. The report shall be accompanied, where appropriate, by *proposed amendments*.

Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by *proposals to adapt this Regulation*.

#### **Amendment 55**

##### **Proposal for a regulation Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. To that end, the participating Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.***

#### **Amendment 56**

##### **Proposal for a regulation Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***For those Member States participating pursuant to a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union, this Regulation shall apply as from the date indicated in the decision concerned.***

## EXPLANATORY STATEMENT

The rapporteur appreciates the need for this regulation, even though he realises that there will be much disappointment among citizens and practitioners about its limited scope. One of the reasons for this is the constraints imposed by recourse to the enhanced cooperation procedure. The rapporteur trusts that when the regulation has been adopted, other Member States will join in.

By and large, the rapporteur considers that the changes discussed by the Council to the Commission's proposal are sensible and he has therefore taken most of them over, albeit with some changes. He has also put forward a certain number of amendments of his own.

First, he considers that the idea of leaving the scope virtually undefined is undesirable. He has therefore set out what does not fall within the Regulation in both a recital and an article.

Secondly, he considers that before parties decide to make a choice of law or to forgo making a choice of law, the court seised should satisfy itself that they have had the benefit of proper legal advice.

Thirdly, the rapporteur agrees that a Member State cannot be required to recognise as a marriage, even for the sole purpose of its dissolution, an act that is not considered to be such by the law of that State and that, in the same way, it would be contrary to the principle of subsidiarity to impose on a judge in a Member State whose law does not provide for such an act a requirement to pronounce the divorce. For this reason, he commends the addition of Article 7a by the Council.

However, without a provision on *forum necessitatis* (which it would be impossible to include in this regulation adopted under the enhanced cooperation procedure), the provision set out in Article 7a, whereby nothing in the regulation is to oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of the regulation, is extremely problematic. This is because the jurisdiction rules with regard to divorce and legal separation in Regulation No 2201/2003 are preemptory. The relevant articles of that regulation read as follows:

### *SECTION 1*

#### *Divorce, legal separation and marriage annulment*

##### *Article 3*

##### *General jurisdiction*

*1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State*

*(a) in whose territory:*

- *the spouses are habitually resident, or*
- *the spouses were last habitually resident, insofar as one of them still resides there, or*
- *the respondent is habitually resident, or*
- *in the event of a joint application, either of the spouses is habitually resident, or*
- *the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or*
- *the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;*

*(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.*

*2. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.*

#### *Article 4*

##### *Counterclaim*

....

#### *Article 5*

##### *Conversion of legal separation into divorce*

...

#### *Article 6*

##### *Exclusive nature of jurisdiction under Articles 3, 4 and 5*

##### *A spouse who:*

*(a) is habitually resident in the territory of a Member State; or*

*(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her "domicile" in the territory of one of the latter Member States,*

*may be sued in another Member State only in accordance with Articles 3, 4 and 5.*

#### *Article 7*

##### *Residual jurisdiction*

....

The difficulty is best illustrated by an example. The new regulation on applicable law is in force. A and B are nationals of different Member States who entered into a same-sex marriage in one of the Member States which have introduced legislation to permit such marriages. They have been habitually resident for three years in a Member State which does not permit same-



sex marriages but participated in the adoption of the regulation on applicable law under the enhanced cooperation procedure. A and B wish to dissolve their marriage. Under the rules of Regulation No 2201/2003, the only courts having jurisdiction in those circumstances are the courts of the Member State in which they are habitually resident. If they apply to the local court for a divorce, that court has to accept jurisdiction but Article 7a will apply and no divorce will be granted. It is noted that, in the case of divorce, Regulation No 2201/2003 does not provide for prorogation of jurisdiction or for the transfer of the case to a court better placed to hear the proceedings.

This is patently not fair on the couple concerned, who would be put to a considerable amount of inconvenience and loss of time in order to bring their divorce proceedings within the jurisdiction of another court within the meaning of Article 3.

The best way of dealing with this would be to provide for a *forum necessitatis*, which can be done only by amending Regulation No 2201/2003, given the strictures of the enhanced cooperation procedure and the fact that the proposal for a regulation under consideration relates only to the determination of the applicable law.

Parliament's legislative resolution of 21 October 2008 on the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM(2006)0399 – C6-0305/2006 – 2006/0135(CNS))<sup>1</sup> contains a proposal for an article on *forum necessitatis*, which reads as follows:

*Article 7a*

*Forum necessitatis*

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

- (a) the Member State of which one of the spouses is a national; or*
- (b) the Member State in which the marriage took place.*

Given that the Commission is not under a duty to review Regulation No 2201/2003 until 2012 and will in fact not do so until much later, the rapporteur proposes that, without impinging upon the Commission's right of initiative, that institution should be pressed to come forward as a matter of great urgency with a proposal for amending that regulation solely in order to introduce a clause on *forum necessitatis*.

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<sup>1</sup> A6 - 0361/2008.

29.11.2010

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

for the Committee on Legal Affairs

on the proposal for a Council regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation  
(COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS))

Draftsperson: Evelyne Gebhardt

### **SHORT JUSTIFICATION**

The purpose of this proposal for a Regulation is to establish a clear, comprehensive legal framework covering rules relating applicable law, by allowing the parties a certain degree of autonomy. An ‘international’ couple wishing to get divorced has hitherto being subject to the competence rules laid down in Council Regulation (EC) No 2201/2003<sup>1</sup> (known as ‘Brussels IIa’), pursuant to which spouses are able to choose amongst a number of different competence criteria. Once a divorce procedure comes before the courts of a Member State, the applicable law is determined in accordance with that State’s rules on conflicts of law. Those rules vary greatly from one Member State to another. The disparate nature of those rules may give rise to a number of problems where ‘international’ divorces are concerned. In addition to the lack of legal certainty stemming from the difficulty which spouses have in determining which law will apply to their case, there is a risk (which the Commission regards as real) of a ‘dash to court’ – an expression denoting a situation in which the better informed spouse will attempt to seize the jurisdiction whose law best serves his or her interests. The purpose of the Commission proposal is to limit the above risks and to compensate for the above shortcomings, in particular by making it possible for the parties to choose by common agreement the applicable law, and taking into account the Parliament's legislative resolution of 21 October 2008 on the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in

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

matrimonial matters<sup>1</sup>.

Article 3 constitutes an innovation in that for the first time, it allows the spouses to designate by common agreement the law applicable in their divorce procedure. According to the Draftsperson it makes sense to allow the possibility of choosing the law of the State in which the spouses have their habitual residence at the time when the agreement is concluded, and also the law of the State in which the marriage took place.

The rule on the application of *lex fori*, when the law applicable does not grant divorce or legal separation, should be complemented by a *forum necessitatis* rule granting jurisdiction, in transborder cases under certain conditions, to a court in another Member State.

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 divorce, especially since the Member States' laws differ considerably in a number of respects (such as the grounds for divorce, the forms which divorce takes, the terms and conditions for obtaining a divorce, the requisite separation period and other key aspects for the procedure). Furthermore, since laws do change, it may be that an agreement designating the applicable law which was signed at a given moment no longer meets the legitimate expectations of the parties at the time at which it should deploy its effects, since the legislation of the Member State in question has in the meantime been amended. Therefore, the Draftsperson welcomes the Commission proposal in that regard.

## 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 9

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

(9) This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal

##### *Amendment*

(9) This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal

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<sup>1</sup> Texts Adopted, P6\_TA(2008)0502.

separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses ***or registered partners*** applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

## Amendment 2

### Proposal for a regulation Recital 12

#### *Text proposed by the Commission*

(12) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law might apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters can play a part in assisting the courts with regard to the content of foreign law.

#### *Amendment*

(12) In order to allow the spouses ***or registered partners*** to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law might apply to their divorce or legal separation ***or to the dissolution of their registered partnership***, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters can play a part in assisting the courts with regard to the content of foreign law.

## Amendment 3

### Proposal for a regulation Recital 13

#### *Text proposed by the Commission*

(13) Increasing the mobility of citizens calls for more flexibility and greater legal

#### *Amendment*

(13) Increasing the mobility of citizens calls for more flexibility and greater legal

certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation. Such possibility should *not* extend to marriage annulment, *which is closely linked to the conditions for the validity of marriage, and for which autonomy on the part of the parties is inappropriate.*

certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation. Such possibility should *also* extend to marriage annulment *and registered partnership, so as to avoid discriminating against the various forms in which the right to respect for private and family life is exercised.*

#### Amendment 4

##### Proposal for a regulation Recital 14

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

(14) Spouses should be able to choose the law of a country with which they have a special connection or the lex fori as the law applicable to divorce and legal separation. The law chosen by the spouses must be consonant with the fundamental rights enshrined in the Treaties and the Charter of Fundamental Rights of the European Union. The possibility of choosing the law applicable to divorce and legal separation should not harm the superior interests of the child.

###### *Amendment*

(14) Spouses *or registered partners* should be able to choose the law of a country with which they have a special connection or the lex fori as the law applicable to divorce and legal separation *or to the dissolution of a registered partnership*. The law chosen by the spouses *or registered partners* must be consonant with the fundamental rights enshrined in the Treaties and the Charter of Fundamental Rights of the European Union. The possibility of choosing the law applicable to divorce and legal separation *or to the dissolution of a registered partnership* should not harm the superior interests of the child. *In particular, when the divorce or the separation involves any children of the spouses, the law applicable to the divorce and legal separation can take into consideration the principles laid down in Article 24 of the Charter, placing emphasis on the best interests of the children, the duty to hear their opinion in decisions which concern them and the right to maintain regular personal relations and direct contact with both parents, unless it is against their interest*

*to do so.*

## Amendment 5

### Proposal for a regulation

#### Recital 15

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

(15) Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Council Decision 2001/470/EC.

##### *Amendment*

(15) Before designating the applicable law, it is important for spouses ***or registered partners*** to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation ***and the dissolution of a registered partnership, including the option of mediation. Spouses should be informed about the different forms of divorce and the conditions for obtaining a divorce that exist in the laws of the Member States concerned.*** To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Council Decision 2001/470/EC, ***while the Member State in which the divorce proceedings take place should make available to the spouses all the information they need.***

## Amendment 6

### Proposal for a regulation

#### Recital 16

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

(16) The informed choice of the two spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the

##### *Amendment*

(16) The informed choice of the two spouses ***or registered partners*** is a basic principle of this Regulation. Each spouse/***registered partner*** should know exactly what are the legal and social implications of the choice of applicable

applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the Member States should be aware of the importance of an informed choice on the part of the two spouses concerning the legal implications of the choice-of-law agreement concluded.

law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses *or registered partners*. Hence judges in the Member States should be aware of the importance of an informed choice on the part of the two spouses/*registered partners* concerning the legal implications of the choice-of-law agreement concluded.

## **Amendment 7**

### **Proposal for a regulation**

#### **Recital 17**

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

(17) Certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence lays down additional formal rules, those rules must be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract.

##### *Amendment*

(17) Certain safeguards should be introduced to ensure that spouses *or registered partners* are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses/*registered partners* have their habitual residence lays down additional formal rules, those rules must be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract.

## **Amendment 8**

### **Proposal for a regulation**

#### **Recital 19**

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

(19) Where no applicable law is chosen,

##### *Amendment*

(19) Where no applicable law is chosen,

and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. These connecting factors have been chosen so that the divorce or legal separation **proceeding** is governed by a law with which the spouses have a close connection, and they are based first and foremost on the law of the spouses' habitual residence.

and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses **or registered partners** applies for divorce **or legal separation or dissolution of their partnership** before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses/**registered partners** and the law concerned. These connecting factors have been chosen so that the **proceeding for divorce or legal separation, or for dissolution of the registered partnership,** is governed by a law with which the spouses/**registered partners** have a close connection, and they are based first and foremost on the law of the spouses'/**registered partners'** habitual residence.

## Amendment 9

### Proposal for a regulation

#### Recital 20

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

(20) In certain situations, such as where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of **their sex**, the law of the court seised should nevertheless apply.

##### *Amendment*

(20) In certain situations, such as where the applicable law makes no provision for divorce or **legal separation or for the dissolution of a registered partnership, or** where it does not grant one of the spouses/**registered partners** equal access to divorce or legal separation, **or dissolution of a registered partnership** on grounds **prohibited by Article 21 of the Charter of Fundamental Rights of the European Union**, the law of the court seised should nevertheless apply.



## Amendment 10

### Proposal for a regulation Recital 22 a (new)

*Text proposed by the Commission*

*Amendment*

***(22a) The term ‘habitual residence’ should be interpreted in line 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.***

## Amendment 11

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

*Text proposed by the Commission*

*Amendment*

1. This Regulation shall apply, in situations involving a conflict of laws, to divorce ***and*** legal separation.

1. This Regulation shall apply, in ***international*** situations involving a conflict of laws, to divorce, legal separation, ***annulment of marriage or the dissolution of registered partnerships.***

## Amendment 12

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

*Text proposed by the Commission*

*Amendment*

1. The spouses may choose by mutual agreement the law applicable to divorce and legal separation, provided that such law is in conformity with the fundamental rights defined in the Treaties and in the Charter of Fundamental Rights of the

1. The spouses ***or registered partners*** may choose by mutual agreement the law applicable to divorce and legal separation ***or to the dissolution of a registered partnership***, provided that such law is in conformity with the fundamental rights

European Union and with the principle of public policy, from among the following laws:

defined in the Treaties and in the Charter of Fundamental Rights of the European Union and with the principle of public policy, from among the following laws:

### Amendment 13

#### Proposal for a regulation

#### Article 3 – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

b) the law of the State of the spouses' last habitual residence if one of them still lives there at the time of conclusion of the agreement;

(b) the law of the State of the spouses'/**registered partners**' last habitual residence if one of them still lives there at the time of conclusion of the agreement, **provided that the application of that law does not penalise the weaker spouse or partner**;

### Amendment 14

#### Proposal for a regulation

#### Article 3 – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

(d) the *lex fori*.

(d) the **law of the State in which the marriage or registered partnership took place**.

#### *Justification*

*It seems rational that this criterion should be included with the others for the purpose of choosing the applicable law and that the lex fori criteria should be withdrawn to better protect the weaker party.*

## Amendment 15

### Proposal for a regulation

#### Article 3 – 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 16

### Proposal for a regulation

#### Article 3 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Without prejudice to paragraph 4, an agreement designating the applicable law may be concluded and modified at any time, but at the latest when the court is seised.

2. Without prejudice to paragraph 4, an agreement designating the applicable law may be concluded and modified at any time, but at the latest when the court is seised. ***The agreement must consider the option of recourse to mediation in order to settle any disagreements concerning the divorce or separation.***

## Amendment 17

### Proposal for a regulation

#### Article 3 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

However, if the law of the participating Member State in which the two spouses have their habitual residence at the time of conclusion of the agreement lays down additional formal requirements for this type of agreement, those requirements shall

However, if the law of the participating Member State in which the two spouses/***registered partners*** have their habitual residence at the time of conclusion of the agreement lays down additional formal requirements for this type of

apply. If the spouses are habitually resident in different participating Member States and the laws of those Member States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

agreement, those requirements shall apply. If the spouses/*registered partners* are habitually resident in different participating Member States and the laws of those Member States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

## **Amendment 18**

### **Proposal for a regulation**

#### **Article 3 – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*This provides clarification in situations in which the law of a Member State or the marriage contract stipulates a marriage contract.*

## **Amendment 19**

### **Proposal for a regulation**

#### **Article 3 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. If the lex fori so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the lex fori.

4. If the lex fori so provides, the spouses/*registered partners* may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the lex fori.

## Amendment 20

### Proposal for a regulation

#### Article 4 – introductory wording

*Text proposed by the Commission*

In the absence of a choice pursuant to Article 3, divorce and legal separation shall be subject to the law of the State:

*Amendment*

In the absence of a choice pursuant to Article 3, divorce and legal separation, ***annulment of marriage and the dissolution of a registered partnership*** shall be subject, ***in descending order***, to the law of the State:

## Amendment 21

### Proposal for a regulation

#### Article 4 – point a

*Text proposed by the Commission*

(a) where the spouses are habitually resident at the time the court is seised; or, failing that,

*Amendment*

(a) where the spouses/***registered partners*** are habitually resident at the time the court is seised; or, failing that,

## Amendment 22

### Proposal for a regulation

#### Article 4 – point b

*Text proposed by the Commission*

(b) where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seised, in so far as one of the spouses still resides in that State at the time the court is seised; or, failing that,

*Amendment*

(b) where the spouses/***registered partners*** were last habitually resident, provided that the period of residence did not end more than one year before the court was seised, in so far as one of the spouses ***or partners*** still resides in that State at the time the court is seised; or, failing that,

## Amendment 23

**Proposal for a regulation**  
**Article 4 – point c**

*Text proposed by the Commission*

c) of which both spouses are nationals at the time the court is seised; or, failing that,

*Amendment*

(c) of which both spouses/**registered partners** are nationals at the time the court is seised, **provided that the application of that law does not penalise the weaker spouse or partner**; or, failing that,

**Amendment 24**

**Proposal for a regulation**  
**Article 4 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) in which the marriage or registered partnership took place; or, failing that,**

*Justification*

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

**Amendment 25**

**Proposal for a regulation**  
**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 26**

**Proposal for a regulation**  
**Article 5**

*Text proposed by the Commission*

*Amendment*

Application of the lex fori

Application of the **principles of** lex fori

*and of forum necessitatis*

Where the law applicable pursuant to Article 3 or Article 4 makes no provision for divorce or ***does not grant*** one of the spouses ***equal access to divorce or legal separation*** on grounds ***of their sex***, the lex fori shall apply.

***1. Where the law applicable pursuant to Article 3 or Article 4 makes no provision for divorce or legal separation or dissolution of a registered partnership, or the access to divorce or legal separation or dissolution of a registered partnership, is discriminatory as regards one of the spouses or registered partners on grounds prohibited by Article 21 of the Charter of Fundamental Rights of the European Union, the lex fori shall apply.***

***2. Where the court of competent jurisdiction is located in a Member State whose law does not provide for divorce or legal separation, or dissolution of a registered partnership, jurisdiction shall be conferred on:***

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

***(b) the Member State in which the marriage or registered partnership took place.***

*Justification*

*In some cases, the application of a national law could be an obstacle to certain persons resident in a Member State who seek a separation or divorce. Therefore, the interest of the individuals in obtaining a separation or divorce as an expression of personal autonomy should have priority over the application of national law by applying the lex fori principle. If the law of the competent court does not allow divorce or legal separation, jurisdiction could be granted to a court of another Member State if certain conditions relating to some transborder cases are fulfilled.*

## PROCEDURE

<b>Title</b>	Implementation of enhanced cooperation procedure regarding law applicable to divorce and legal separation		
<b>References</b>	COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS)		
<b>Committee responsible</b>	JURI		
<b>Opinion by</b> Date announced in plenary	LIBE 7.10.2010		
<b>Rapporteur</b> Date appointed	Evelyne Gebhardt 10.5.2010		
<b>Discussed in committee</b>	23.6.2010	15.11.2010	25.11.2010
<b>Date adopted</b>	25.11.2010		
<b>Result of final vote</b>	+: 28	–: 4	0: 16
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Sonia Alfano, Roberta Angelilli, Rita Borsellino, Simon Busuttil, Carlos Coelho, Rosario Crocetta, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Hélène Flautre, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Clemente Mastella, Véronique Mathieu, Louis Michel, Claude Moraes, Jan Mulder, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Renate Sommer, Wim van de Camp, Axel Voss, Manfred Weber, Renate Weber, Tatjana Ždanoka		
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Anna Maria Corazza Bildt, Anne Delvaux, Ioan Enciu, Evelyne Gebhardt, Ana Gomes, Stanimir Ilchev, Ádám Kósa, Petru Constantin Luhan, Marie-Christine Vergiat, Cecilia Wikström		



30.11.2010

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

for the Committee on Legal Affairs

on the proposal for a Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation  
(COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS))

Rapporteur for the opinion: Angelika Niebler

### **SHORT JUSTIFICATION**

#### Background:

One of the EU's main objectives is to maintain and develop an area of freedom, security and justice, in which freedom of movement of persons is guaranteed. The legal situation at European level regarding the law applicable to the divorce and legal separation of spouses of different nationalities is currently very confusing. This often leads to a 'rush to court' where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she regards as more favourable to his or her own interests. The purpose of the proposal for a regulation is to create legal certainty for the couples concerned and guarantee predictability and flexibility.

Given that family law is a particularly sensitive area of national legislation, the Commission's proposal for a regulation does not advocate any harmonisation of divorce law, let alone of family law, but puts forward a common set of rules for determining which country's law should apply in the event of a divorce between spouses of different nationalities. At present, some 300 000 marriages take place each year between partners of different nationalities in the EU, bringing the total number of international marriages to 16 million. Of these marriages, in the EU as a whole, 140 000 - 170 000 per year end in divorce. These figures, together with the widely divergent substantive rules of divorce law which exist in the EU as a whole, make clear the urgency of creating greater legal certainty in the event of divorce or separation.

The Commission therefore proposes to enhance the parties' autonomy in the event of divorce and legal separation by giving them the option, within a given framework, to choose the law applicable to their divorce or legal separation. Within this framework the spouses should have the right to opt for the law of a country with which they have particular links. The law chosen

must be one which is compatible with the common values of the European Union.

#### Rapporteur's view

The rapporteur for the opinion supports in principle the substance of the rules for determining the law applicable to divorce and legal separation.

The amendments in this opinion seek to adjust the Commission proposal so as to clearly rule out any discrimination on the grounds of gender, guarantee equal opportunities for both spouses and give central priority to the welfare of the children.

Finally, however, the rapporteur takes the view that a uniform pan-European system of rules governing the applicable law in the event of divorce and legal separation ought not to be the last word, but that in a second stage rules ought also to be adopted to cover the consequences of divorce (property rights, maintenance, apportionment of pension rights). The rules in the proposed regulation do not cover the consequences of divorce.

### **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 suggestions in its motion for a resolution:

#### **Amendment 1**

##### **Proposal for a regulation Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) Pursuant to Article 8 of the Treaty on the Functioning of the European Union, in all its activities the Union is to aim to eliminate inequalities, and to promote equality, between men and women.***

#### **Amendment 2**

##### **Proposal for a regulation Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) If the spouses are unable to agree on the applicable law, they should complete a mediation procedure including at least one consultation with an authorised mediator.***

### **Amendment 3**

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

##### **Recital 16**

*Text proposed by the Commission*

*Amendment*

(16) The informed choice of the two spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the Member States should be aware of the importance of an informed choice on the part of the two spouses concerning the legal implications of the choice-of-law agreement concluded.

(16) The informed choice of the two spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the Member States should be aware of the importance of an informed choice on the part of the two spouses concerning the legal implications of the choice-of-law agreement concluded. ***When the choice-of-law agreement is authenticated, each of the spouses should be individually informed of the legal consequences of the choice of applicable law. National provisions whereby spouses may be granted legal aid should be applied accordingly.***

## Amendment 4

### Proposal for a regulation Recital 17

#### *Text proposed by the Commission*

(17) Certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should **at least** be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence lays down additional formal rules, those rules must be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract.

#### *Amendment*

(17) Certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should be expressed in writing, dated and signed by both parties **and authenticated by a notary**. However, if the law of the participating Member State in which the two spouses have their habitual residence lays down additional formal rules, those rules must be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract.

## Amendment 5

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

(20) **In certain situations, such as** where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the court seised should nevertheless apply.

#### *Amendment*

(20) Where the applicable law makes no provision for divorce **or for legal separation** or where it does not grant one of the spouses equal access **and ensure equal treatment relating** to divorce or legal separation on grounds of their sex, the law of the court seised should nevertheless apply.

#### *Justification*

*To protect the fundamental rights of both women and men, equal access and equal treatment must be guaranteed during divorce or legal separation.*

## Amendment 6

### Proposal for a regulation Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

***(20a) Member States should consider the possibility of applying the provisions of this Regulation to the separation of couples in registered partnerships in the event of divergent rules on the conflict of laws until such time as specific rules for such cases exist, taking into account the different legal systems in the Member States. This would not create a legal obligation to recognise registered partnerships.***

*Justification*

*The scope of the regulation is confined to divorces and legal separations between married couples and does not extend to the termination of registered partnerships. This scope should be broadened to prevent discrimination against other registered life partnerships.*

## Amendment 7

### Proposal for a regulation Recital 21

*Text proposed by the Commission*

*Amendment*

(21) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of foreign law in a given case where it 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 disregard the law of another Member State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

(21) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of foreign law in a given case where it 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 disregard the law of another Member State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination, ***and Article 23 thereof, which requires***

***equality between men and women to be ensured in all areas.***

*Justification*

*In order to respect the fundamental rights of European citizens, it is important to limit the public-policy exception.*

**Amendment 8**

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

*Text proposed by the Commission*

1. This Regulation shall apply, in situations involving a conflict of laws, to divorce ***and*** legal separation.

*Amendment*

1. This Regulation shall apply in situations involving a conflict of laws, to divorce, legal separation ***and annulment of marriage.***

*Justification*

*There are certain situations where it is important for the woman that she is not yet divorced. A broadening of the scope would therefore be welcome. (The next sentence does not apply to the English text).*

**Amendment 9**

**Proposal for a regulation  
Article 3 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. The agreement referred to in paragraph 2 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.***

*Amendment*

3. The agreement referred to in paragraph 2 shall be expressed in writing, dated and signed by both spouses ***and authenticated by a notary.***

**Amendment 10**

**Proposal for a regulation  
Article 5**

*Text proposed by the Commission*

Where the law applicable pursuant to Article 3 or Article 4 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the *lex fori* shall apply.

*Amendment*

Where the law applicable pursuant to Article 3 or Article 4 makes no provision for divorce ***or for legal separation*** or does not grant one of the spouses equal access ***or ensure equal treatment relating to*** divorce or legal separation on grounds of their sex, the *lex fori* shall apply.

*Justification*

*To protect the fundamental rights of both women and men, equal access and equal treatment must be guaranteed during divorce or legal separation.*

**Amendment 11**

**Proposal for a regulation**  
**Article 7**

*Text proposed by the Commission*

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

*Amendment*

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum. ***However, the courts should not be able to apply the public-policy exception in order to disregard the law of another Member State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination, and Article 23 thereof, which requires equality between men and women to be ensured in all areas.***

*Justification*

*In order to respect the fundamental rights of European citizens, it is important to limit the public-policy exception.*

## PROCEDURE

<b>Title</b>	Implementation of enhanced cooperation procedure regarding law applicable to divorce and legal separation
<b>References</b>	COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS)
<b>Committee responsible</b>	JURI
<b>Opinion by</b> Date announced in plenary	FEMM 7.10.2010
<b>Rapporteur</b> Date appointed	Angelika Niebler 4.5.2010
<b>Discussed in committee</b>	28.10.2010      30.11.2010
<b>Date adopted</b>	30.11.2010
<b>Result of final vote</b>	+:            20 -:            0 0:            2
<b>Members present for the final vote</b>	Andrea Češková, Marije Cornelissen, Tadeusz Cymański, Edite Estrela, Ilda Figueiredo, Iratxe García Pérez, Livia Járóka, Philippe Juvin, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Elisabeth Morin-Chartier, Siiri Oviir, Nicole Sinclair, Joanna Katarzyna Skrzydlewska, Eva-Britt Svensson, Marc Tarabella, Britta Thomsen, Anna Záborská
<b>Substitute(s) present for the final vote</b>	Izaskun Bilbao Barandica, Vilija Blinkevičiūtė, Antigoni Papadopoulou, Sirpa Pietikäinen



## PROCEDURE

<b>Title</b>	Implementation of enhanced cooperation procedure regarding law applicable to divorce and legal separation		
<b>References</b>	COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS)		
<b>Date of consulting Parliament</b>	28.4.2010		
<b>Committee responsible</b> Date announced in plenary	JURI 7.10.2010		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	LIBE 7.10.2010	FEMM 7.10.2010	
<b>Rapporteur(s)</b> Date appointed	Tadeusz Zwiefka 28.4.2010		
<b>Discussed in committee</b>	31.5.2010	23.6.2010	28.10.2010
<b>Date adopted</b>	2.12.2010		
<b>Result of final vote</b>	+: -: 0:	17 0 0	
<b>Members present for the final vote</b>	Raffaele Baldassarre, Sebastian Valentin Bodu, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Evelyn Regner, Dimitar Stoyanov, Alexandra Thein, Tadeusz Zwiefka		
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Sergio Gaetano Cofferati, Luis de Grandes Pascual, Vytautas Landsbergis, Kurt Lechner, Angelika Niebler		
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Oreste Rossi		