

Rules on cross-border property regimes of spouses and registered partners

In March 2016 the Commission proposed, in parallel, two regulations implementing enhanced cooperation on cross-border aspects of property regimes of marriages and registered partnerships. They replace a pair of earlier proposals from 2011, which lacked unanimous support in the Council.

Background

The EU enjoys [competence](#) in the field of private international law under the heading 'judicial cooperation in civil matters'. Whilst as a general rule the ordinary legislative procedure is applicable, for family-law related matters, Article 81(3) of the Treaty on the Functioning of the European Union (TFEU) prescribes a special legislative procedure (i.e. unanimity in the Council, Parliament merely consulted). In 2011, the Commission tabled proposals on property regimes of [married couples](#) and on the property consequences of [registered partnerships](#). In the Council, 23 Member States reached a political agreement on both the [married couples](#) and [registered partnerships](#) proposals. However, certain Member States [indicated](#) they had difficulties in accepting the proposal on registered partnerships. As a result, on 3 December 2015 the Council [concluded](#) that unanimity was not attainable within a reasonable time. At the same time, many Member States indicated their willingness to go forward with the proposals under [enhanced cooperation](#).

The new proposals for enhanced cooperation

Between December 2015 and February 2016, 17 Member States indicated to the Commission that they would like to establish enhanced cooperation in this area. In March 2016, the Commission tabled two proposals: one for [matrimonial property](#) and another for property of [registered partnerships](#). The texts are not identical to the original 2011 proposals, but take on board many amendments suggested by the Parliament in 2013, as well as the political agreement reached in Council in November 2015. In particular, whilst they provide for automatic *recognition* of judgments, *enforcement* is not automatic (as under [Brussels I-bis](#)) but requires a declaration of enforceability in the Member State of enforcement. This can be refused, inter alia, if the decision violates the public policy of the latter state. Another important modification is the introduction of the principle of unity of legal regime applicable to property aspects of registered partnerships, regardless where the property is located. Both proposals allow the couple to choose the applicable legal regime: married couples may opt for the law of their nationality or habitual residence, whilst registered partners may also choose the law of the country where they registered their partnership. Following Parliament's consent, the decision to [authorise enhanced cooperation](#) was adopted unanimously on 9 June 2016, with 18 Member States (BE, BG, CZ, DE, EL, ES, FR, HR, IT, CY, LU, MT, NL, AT, PT, SI, SF, SE) subsequently reaching a [general approach](#) within Council. Estonia announced its intention to accede to the enhanced cooperation at a later date.

Position of the European Parliament

Within Parliament, the proposals were referred to the Committee on Legal Affairs, with Jean-Marie Cavada (ALDE, France) as rapporteur for both. On 14 June the Committee [adopted](#) both reports ([2016/0059\(CNS\)](#) and [2016/0060\(CNS\)](#)). Each contains only one amendment, namely a definition of 'Member State' indicating precisely that only Member States participating in the enhanced cooperation in question are to be understood as 'Member States' under the regulations. This amendment is in line with the approach taken in the [Rome III](#) Regulation on enhanced cooperation in the field of cross-border divorce and separation. The rapporteur concluded that both proposals are in the interest of international couples, that they take on board Parliament's amendments to the previous proposals and therefore did not recommend any further substantive amendments.

