



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2010/0067(CNS)

15.11.2010

AMENDMENTS

45 - 52

Draft report

Tadeusz Zwiefka

(PE450.583v01-00)

on the proposal for a Council regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

Proposal for a regulation

(COM(2010)0105 – C7-0315/2010 – 2010/0067(CNS))

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Amendment 45
Tadeusz Zwiefka

Proposal for a regulation
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The Commission and the Member States participating in enhanced cooperation undertake, pursuant to the second subparagraph of Article 328(1) of the Treaty on the Functioning of the European Union, to ensure that they promote participation in the enhanced cooperation by as many Member States as possible.

Or. en

Amendment 46
Eva Lichtenberger

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.

Or. en

Amendment 47
Sebastian Valentin Bodu

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 ***transborder element***, to divorce and legal separation.

Or. ro

Justification

The transborder element is what creates the conflict of laws.

Amendment 48
Françoise Castex

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

Text proposed by the Commission

Amendment

1b. For the purposes of this regulation, ‘divorce’ shall mean breach of the contract joining the two persons under law.

Or. fr

Amendment 49
Sebastian Valentin Bodu

Proposal for a regulation
Article 2

Text proposed by the Commission

The law designated by this Regulation shall ***apply*** whether or not it is the law of a

Amendment

The law designated by this Regulation shall ***be binding*** whether or not it is the law

participating Member State.

of a participating Member State.

Or. ro

Justification

There is a need to emphasise the mandatory nature of the application of the law in question, in order to avoid a conflict of law and ensure uniform application of European legislation.

Amendment 50
Sebastian Valentin Bodu

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 4 an agreement designating the applicable law may be concluded and modified at any time, *including during the procedure, and at the latest prior to the handing down of a judicial decision.*

Or. ro

Amendment 51
Sebastian Valentin Bodu

Proposal for a regulation
Article 6

Text proposed by the Commission

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

Amendment

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

Or. ro

Justification

The regulation contains clauses in conflict with direct and priority application. They should be complementary to the provisions of private international law of each Member State.

Amendment 52

Sebastian Valentin Bodu

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 ***contrary to*** with the public policy of the forum.

Or. ro

Justification

Public policy takes priority where there is contravention of a fundamental principle of the lex fori. Public policy priority is extraordinary in nature, which also means that there is substitution of the lex fori with foreign law where the judge called on to settle the dispute feels that the substantive law infringement concerns one of its fundamental provisions. Hence, the phrase ‘manifestly incompatible with public policy’ would create confusion in a field in which the concept of public policy is very well defined in case law.