

P7_TA(2010)0477

Law applicable to divorce and legal separation *

European Parliament legislative resolution of 15 December 2010 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))

(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 (C7-0315/2010),
 - having regard to its position of 16 June 2010¹, 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 separation²,
 - 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;

¹ Texts adopted, P7_TA(2010)0216.

² 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 separation⁷,

⁷ 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 separation¹,

¹ 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 **concerning family law with cross-border implications.**

Amendment

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

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. **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

Amendment

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

(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

Amendment

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

(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

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 *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 matters¹ ***can*** play a part in assisting the courts with regard to the content of foreign law.

(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 matters¹, ***as amended by Decision No 568/2009/EC of 18 June 2009², could*** play a part in assisting the courts with regard to the content of foreign law.

¹ OJ L 174, 27.6.2001, p. 25.

¹ OJ L 174, 27.6.2001, p. 25.

² 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 No 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

(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.

agreement concluded.

Amendment 17

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) **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 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 19

Proposal for a regulation

Recital 19

Text proposed by the Commission

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.***

Amendment 20

Proposal for a regulation Recital 19 a (new)

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-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

(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

(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 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,

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

which prohibits all forms of discrimination.

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

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.

(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 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.*

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

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 .

Amendment 40

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*.

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 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

Amendment

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

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

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*

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*

the participating Member States are party.

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

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 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.