

**Key features of COUNCIL REGULATION (EU) 2016/1104 of 24 June 2016  
implementing enhanced cooperation in the area of jurisdiction, applicable law and  
the recognition and enforcement of decisions in matters of the property  
consequences of registered partnerships**

On 24 June 2016, the EU Council, following certain Member States' wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences and to exercise those competences by applying the relevant provisions of the Treaties, adopted two Regulations<sup>1</sup> aimed at adopting common rules on jurisdiction, applicable law and the recognition and enforcement of decisions in the area of the property regimes of international couples, covering both marriages and registered partnerships, which will enter into application on 29 January 2019.

These common rules fill an important gap in the area of Union private international law. They complement and allow the full operation of other Union instruments applicable within the private international family law area, in particular those dealing with succession and divorce.

The policy objective is to clarify the rules applicable to property regimes for international married couples and registered partnerships in order to avoid parallel and possibly conflicting procedures in different EU Member States, for instance on property or bank accounts.

For the sake of answering to some topics highlighted in the questionnaire circulated by the HccH Permanent Bureau, the EU common reply will focus only on the Regulation concerning the property consequences of registered partnerships (hereinafter referred to as 'Regulation').

#### **A. The enhanced cooperation**

The Regulation has been adopted under the special regime of enhanced cooperation, as provided for by Article 20 of the Treaty on European Union (TEU) and Articles 326 to 334 of the Treaty on the functioning of the European Union (TFEU).

This means that only the EU Member States which have declared their wish to participate to the enhanced cooperation are bound by the Regulation. The others will continue to apply their national law (including their rules on private international law). Enhanced cooperation acts are not regarded as part of the acquis which has to be accepted by candidate countries for accession to the Union.<sup>2</sup>

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<sup>1</sup> Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes; Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, OJ L 183, 8.7.2016.

<sup>2</sup> Article 20 paragraph 4 of the Treaty on European Union: "*Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the acquis which has to be accepted by candidate countries for accession to the Union*".

To date, 18 Member States<sup>3</sup> are participating in the enhanced cooperation; however, Member States can join it any time.

## B. Scope of the Regulation

- The Regulation clarifies which national court is competent to help them manage their property or distribute it between them in case of dissolution or annulment of the partnership or death of one of the partners (**jurisdiction rules**);
- It clarifies which law shall apply when the laws of several countries could potentially apply to the case (**rules on applicable law**);
- It facilitates the **recognition** and **enforcement** in one Member State of a judgment on property matters given in another Member State.
- The Regulation does not deal with **substantive rules** on the definition of a registered partnership, the requirements to conclude a registered partnership, or the rights and obligations derived from a registered partnership. It does not concern the recognition of the civil status of the partners as such.

These issues will continue to be governed by the **national law of each Member State**. The regulations also do not require a Member State to recognise a registered partnership concluded in another Member State as appropriate safeguard to take into account the legal traditions of the different Member States.

## C. Jurisdiction

The main principle is the unity of the court: various related procedures are handled by one court

- In case of death: the court having jurisdiction over the property consequences of the registered partnership is the same court as that having jurisdiction under Regulation (EU) No 650/2012 on the succession of the deceased partner (Art. 4)
- In case of dissolution/annulment of the registered partnership: the court having jurisdiction is the same court as the court having jurisdiction over the dissolution or annulment of the partnership (Art.5)
- In other cases (e.g. change of the property regime of the registered partnership): a list of connecting factors will apply in order of precedence (Art.6)
  - common habitual residence of the partners
  - last common habitual residence
  - habitual residence of respondent
  - common nationality of the partners
  - place where the registered partnership was created

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<sup>3</sup> Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria, Finland and Cyprus.

In order to increase legal certainty, predictability and the autonomy of the parties, in cases covered by Article 6, Article 7 of the Regulation gives the parties the possibility to agree that the courts of the Member States whose law is applicable in accordance with the Regulation or under whose law the registered partnership was created shall have exclusive jurisdiction to rule on the property consequences of their registered partnership. Such an agreement should be expressed in writing, dated and signed by the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

### **Alternative jurisdiction (Article 9)**

As specified above, the Regulation does not impose the recognition of a registered partnership concluded in another EU Member State. The existence, validity and recognition of a partnership fall outside the scope of the Regulation.

Member States that do not know registered partnerships may not want to deal with the property consequences of couples bound by such institutions. The Regulation provides that the courts of a Member State which does not recognise a registered partnership may decline jurisdiction to hear disputes about the property consequences of such couples.

This accommodates those Member States but also avoids a couple from finding itself before an authority which may either refuse to admit its request or which may rule on its property disregarding the status of their property as property in a registered partnership (thus treating the couple as ordinary citizens that have joint ownership of the property).

In order to ensure that such couples have access to justice, the Regulation provides that they can go to any other court which would have jurisdiction in accordance with the Regulation.

The possibility to decline jurisdiction for MS which do not know the institution of registered partnership is balanced by the obligation on those Member States to recognise and enforce in their territory a decision obtained by the couple in another Member State (e.g. because the couple may have assets in the Member State where recognition or enforcement is sought).

A specific reference to the Charter of Fundamental Rights recalls that a Member State cannot discriminate when the couple requests the recognition and enforcement of a decision given in another Member State.

## **D. Rules on applicable law:**

### **Choice of the applicable law (Article 22)**

To facilitate partners' management of their property, the Regulation authorises them to choose the law applicable to the property consequences of their registered partnership, regardless of the nature or location of the property, among the laws with which they have close links:

(a) the law of the State where the partners or future partners, or one of them, is habitually resident at the time the agreement is concluded

(b) the law of a State of nationality of either partner or future partner at the time the agreement is concluded, or

(c) the law of the State under whose law the registered partnership was created.

However, in order to avoid depriving the choice of law of any effect and thereby leaving the partners in a legal vacuum, such choice of law should be limited to a law that attaches property consequences to registered partnerships. This choice may be made at any moment, before the registration of the partnership, at the time of the registration of the partnership or during the course of the registered partnership.

### **Applicable law in the absence of choice by the parties**

- In the absence of any agreement pursuant to Article 22, and with a view to reconciling the need for predictability and legal certainty with the consideration of the life actually lived by the couple, the law applicable to the property consequences of registered partnerships shall be the law of the State under whose law the registered partnership was created.

Nevertheless, one of the partners can ask a court that the law applicable should be the law of another State where (a) the partners had their last common habitual residence for a significantly long period of time; and (b) both partners had relied on the law of that other State in arranging or planning their property relations.

### **E. Recognition, enforcement and enforceability of decisions:**

In line with the other EU instruments in the field of judicial cooperation in civil matters, the aim of these provisions is to ensure the free circulation of decisions, authentic instruments and court settlements concerning matrimonial property regimes.

The Regulation establishes a uniform procedure based on the rules of Regulation No 650/2012 on succession and wills. There is no special procedure required for the recognition in the other Member States of a decision given in a Member State.

**Limited grounds for the refusal of recognition** (Article 37) - In line with other EU instruments in civil matters, a limited number of grounds for refusal exists.

**No review as to substance** (Article 40)

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

### **Enforcement of decisions**

A unilateral procedure to obtain the declaration of enforceability governed by the law of the Member State of enforcement is provided; this procedure is initially limited to the verification of documents.

Appeal is possible for both parties only on the grounds specified in Article 37

### **Authentic instruments and court settlements**

In order to take into account the different systems for dealing with matters of the property consequences of registered partnerships in the Member States, the Regulation guarantees the acceptance and enforcement in all Member States of authentic instruments and the enforcement of court settlements in matters of the property consequences of registered partnerships.

The basic rules are as follows (Articles 58-60):

- authentic instruments shall have the same evidentiary effect as in the court of origin
- the enforcement of authentic instruments and court settlements is the same as for decisions.