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PROPOSAL

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dated:	18 March 2011
Subject:	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Jordi AYET PUIGARNAU, Director, to Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 126 final¹

¹ Commission staff working document Impact Assessment can be found in 8253/11 JUSTCIV 69 and Commission staff working document Summary of the Impact Assessment can be found in 8253/11 ADD 1 JUSTCIV 69.



EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

{COM(2011) 125 final}

{COM(2011) 127 final}

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{SEC(2011) 328 final}

EXPLANATORY MEMORANDUM

1. BACKGROUND TO THE PROPOSAL

1.1. General background

Article 67(1) of the Treaty on the Functioning of the European Union provides that the Union is to constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. Paragraph 4 of that article lays down that the Union is to facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. Article 81 of the Treaty explicitly refers to measures aimed at ensuring 'the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases' and 'the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction'. Many instruments have already been adopted on this basis, in particular Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. None of them, however, cover matrimonial property regimes.

The adoption of European legislation on matrimonial property regimes was among the priorities identified in the 1998 Vienna Action Plan. The programme on mutual recognition of decisions in civil and commercial matters adopted by the Council on 30 November 2000² provided for the drafting of an instrument on jurisdiction and the recognition and enforcement of decisions as regards 'rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple'. The Hague programme³, which was adopted by the European Council on 4 and 5 November 2004, set the implementation of the mutual recognition programme as a top priority and called on the Commission to submit a Green Paper on 'the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition', and stressed the need to adopt legislation by 2011.

The Stockholm Programme, which was adopted by the European Council on 11 December 2009, also states that mutual recognition must be extended to matrimonial property regimes and the property consequences of the separation of unmarried couples.

In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010⁴, the Commission identified uncertainty surrounding the property rights of international couples as one of the main obstacles faced by EU citizens in their daily lives when they tried to exercise the rights the EU conferred on them across national borders. To remedy this, it announced that it would adopt in 2011 a proposal for legislation to make it easier for international couples (either married or registered partners) to know which courts had jurisdiction and which law applied to their property rights.

² OJ L 12, 15.1.2001, p. 1.

³ OJ L 53, 3.3.2005, p. 1.

⁴ COM(2010) 603.

1.2. Grounds for and objectives of the proposal

The increased mobility of persons within an area without internal frontiers leads to a marked increase in the number of couples formed by nationals of different Member States who may live in a Member State of which they do not have the nationality and acquire property in more than one Union country. A study carried out by the consortium ASSER-UCL in 2003⁵ showed the large number of transnational couples within the Union and the practical and legal difficulties such couples face, both in the daily management of their property and in its division if the couple separate or one of its members dies. These difficulties often arise from the great disparities between the applicable rules of substantive law and private international law governing the property effects of marriage.

Because of the distinctive features of marriage and registered partnerships, and of the different legal consequences resulting from these forms of union, the Commission is presenting two separate Regulations: one on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, and the other on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

The purpose of this proposal is to establish a clear legal framework in the European Union for determining jurisdiction and the law applicable to matrimonial property regimes and facilitating the movement of decisions and instruments among the Member States.

2. RESULT OF THE CONSULTATIONS – IMPACT ASSESSMENT

Before this proposal was drawn up, a broad consultation exercise took place with the Member States, the other institutions and the public. Following the 2003 study, on 17 July 2006 the Commission published a Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition⁶, that launched wide-ranging consultations on the subject. A group of experts, PRM/III, was set up by the Commission to draw up the proposal. The group was made up of experts representing the range of professions concerned and the different European legal traditions; it met five times between 2008 and 2010. The Commission also held a public hearing on 28 September 2009 involving some hundred participants; the debates confirmed the need for an EU instrument for matrimonial property regimes that covered in particular applicable law, jurisdiction and the recognition and enforcement of decisions. A meeting with national experts was held on 23 March 2010 to discuss the thrust of the proposal being drafted.

Finally, the Commission conducted a joint impact study on the proposals for Regulations on matrimonial property regimes and the property consequences of registered partnerships. It is attached to this proposal.

⁵ ASSER-UCL Consortium, *Study in comparative law on the rules governing conflicts of jurisdiction and laws on matrimonial property regimes and the implementation for property issues of the separation of unmarried couples in the Member States*. See:

⁶ http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm
COM(2006) 400.

3. LEGAL ASPECTS OF THE PROPOSAL

3.1. Legal basis

The legal basis for this proposal is Article 81(3) of the Treaty on the Functioning of the European Union, which confers on the Council the power to adopt measures concerning family law having cross-border implications after consulting the European Parliament.

A matrimonial property regime derives from the existence of a family relationship between the individuals involved. Matrimonial property regimes are so closely linked with marriage that, even though they concern property relationships between spouses and between spouses and third parties, they must be considered part of family law. They exist where a marriage exists and disappear when the marriage is dissolved (following the death of one of the spouses, or a divorce or legal separation).

The aim of the proposal is to establish a comprehensive set of rules of international private law applicable to matrimonial property regimes. It therefore touches on matters of legal jurisdiction, applicable law and the recognition and enforcement of decisions in matrimonial property cases. The rules proposed are concerned only with cross-border cases.

3.2. Subsidiarity principle

The only way of achieving the proposal's objectives is through common rules on matrimonial property regimes, which must be identical in order to guarantee legal certainty and predictability for citizens. Unilateral action by Member States would therefore run counter to this objective. There are two international conventions of the Hague Conference on Private International Law relevant to this issue, namely the Convention of 17 July 1905 on conflict of laws relating to the effects of marriage on the rights and duties of spouses in their personal relationships and with regard to their estates, and the Convention of 14 March 1978 on the law applicable to matrimonial property regimes. However, only three Member States have ratified them and they do not offer the solutions needed to deal with the scale of the problems covered by this proposal, as revealed in the impact study and the public hearing. Given the nature and the scale of the problems experienced by European citizens, the objectives can be achieved only at Union level.

3.3. Proportionality principle

The proposal complies with the principle of proportionality in that it is strictly limited to what is necessary to achieve its objectives. It does not try to harmonise the Member States' laws concerning matrimonial property regimes. Nor does it affect the way in which the ending of matrimonial property regimes is taxed by Member States. This proposal will not entail any financial or administrative burdens on citizens and only a very limited additional burden on national authorities.

3.4. Impact on fundamental rights

In accordance with the strategy for the effective implementation of the Charter of Fundamental Rights by the European Union⁷, the Commission has checked that the proposal complies with the rights set out in the Charter.

⁷ Communication from the Commission, COM(2010) 573 of 19.10.2010.

It does not affect the right to respect for private and family life nor the right to marry and to found a family according to national laws, as provided for in Articles 7 and 9 of the Charter.

The right to property referred to in Article 17 of the Charter is strengthened. The predictability of the law applicable to all the couple's property will in fact enable spouses to exercise their property rights more fully.

The Commission has also checked that the proposal complies with Article 21, prohibiting any discrimination.

Finally, the proposal would increase citizens' access to justice in the EU, in particular for married couples. It would facilitate implementation of Article 47 of the Charter of Fundamental Rights, which guarantees the right to an effective remedy and to a fair trial. By setting out objective criteria for determining the court having jurisdiction, parallel proceedings and appeals precipitated by the most active party can be avoided.

3.5. Choice of instrument

The need for legal certainty and predictability calls for clear and uniform rules and requires that the legislation take the form of a regulation. The proposed rules on jurisdiction, applicable law and free movement of decisions are set out clearly and in detail, requiring no transposition into national law. The objectives of legal certainty and predictability would be compromised if the Member States had discretion with regard to implementing the rules.

4. BUDGETARY IMPACT, SIMPLIFICATION AND CONSISTENCY WITH OTHER UNION POLICIES

4.1. Budgetary impact

The proposal will have no impact on the Union budget.

4.2. Simplification

The harmonisation of the rules on jurisdiction will greatly simplify procedures by making it possible to establish the court with jurisdiction over a matrimonial property case on the basis of common rules. If courts seised with divorce proceedings, legal separations, annulments of marriage and succession cases in application of existing or future EU legislation have their jurisdiction extended to any related matrimonial property regime proceedings, citizens will be able to have the same court deal with all aspects of their situation.

The harmonisation of conflict-of-law rules will considerably simplify procedures by enabling citizens to determine which law is applicable on the basis of a single set of rules replacing the existing national conflict-of-law rules of the participating Member States.

Finally, the rules proposed for the recognition and enforcement of court decisions will facilitate their movement between different Member States.

4.3. Consistency with other Union policies

This proposal is part of the Commission's efforts to dismantle the obstacles faced by EU citizens in their daily lives when they try to exercise the rights the EU confers on them, as outlined in the 2010 EU Citizenship Report referred to earlier.

5. COMMENTS ON THE ARTICLES

5.1. Chapter I: Scope and definitions

Article 1

The notion of 'matrimonial property regime' must be given an autonomous interpretation and embrace considerations of both the spouses' daily management of their property and the liquidation of the property regime as a result of the couple's separation or the death of one of the partners.

To determine the areas that will be covered it proved preferable to compile a comprehensive list of matters excluded from the Regulation. Thus, matters already covered by existing EU regulations, such as maintenance obligations⁸, especially between spouses, and issues concerning the validity and effect of gifts⁹, will be excluded from the scope of the Regulation. Matters arising from the law of succession are also excluded.

The Regulation does not affect the nature of rights in rem relating to property, the classification of property and of rights, nor the determination of the prerogatives of the holder of such rights.

The disclosure of property rights, in particular the functioning of the land register and the effects of an entry or failure to make an entry in this register, is also excluded from the scope of the Regulation.

Article 2

For the sake of consistency and to facilitate understanding and implementation, some definitions of terms appearing in this Regulation are common to other EU instruments currently in force or under negotiation.

The proposed definition of a 'court' is drafted so as to include authorities and persons who exercise functions by delegation or designation of a court, so that they are to be treated as court decisions for purposes of recognition and enforcement in a Member State other than the State where they were delivered.

5.2. Chapter II: Jurisdiction

Legal proceedings in connection with matrimonial property regimes often arise from the liquidation of the property when the couple ceases to exist, either as a result of the death of one of them or of their separation.

⁸ Governed by Regulation (EC) No 4/2009, OJ L 7, 10.1.2009, p. 1.

⁹ Governed by Regulation (EC) No 593/2008, OJ L 177, 04/07/2008, p. 6.

The aim of this Regulation is to enable citizens to have the various related procedures handled by the courts of the same Member State. To this end, the Regulation seeks to ensure that the rules for establishing the jurisdiction of the courts called on to handle the property aspects of marriages are in line with the existing or proposed rules in other European legislation.

Article 3

To ensure that in the event of the death of one of the spouses the competent court can handle both the succession of the deceased spouse and the liquidation of the matrimonial property, this article provides that the court having jurisdiction for wills and successions according to the rules laid down in the proposed Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, should have its jurisdiction enlarged to include the liquidation of the matrimonial property resulting from the succession or will in question.

Article 4

Similarly, the court with jurisdiction for divorce proceedings, legal separation or marriage annulment in accordance with Regulation (EC) 2201/2003 may, if the spouses agree, extend its jurisdiction to the liquidation of the matrimonial property following the separation procedure and to other matters concerning the matrimonial property arising from this procedure.

Article 5

This article provides for rules governing jurisdiction that would apply independently of any succession or separation proceedings (for example, a change of matrimonial regime at the initiative of the spouses). A list of connecting factors, in order of precedence, would make it possible to establish the Member State whose courts have jurisdiction to deal with such proceedings.

The proposed criteria include the habitual residence of the spouses, their last habitual residence if one of them still resides there or the habitual residence of the defendant; these widely used criteria frequently coincide with the location of the spouses' property.

Article 6

Where no Member State has jurisdiction in application of the previous articles, this article makes provision for establishing the Member State whose courts may handle the case by way of exception. This rule ensures access to justice for spouses and interested third parties when the property or properties of either spouse or of both spouses is located on the territory of a particular Member State, and also where both spouses have the nationality of a particular Member State. property or properties of either spouse or of both spouses is located on the territory of a particular Member State, and also where both spouses have the nationality of a particular Member State.

5.3. Chapter III: Applicable law

Article 15

The option proposed in the Regulation is that of a single scheme: all the property of the spouses would be subject to the same law, the law applicable to the matrimonial property regime.

Immovable property has a special place in the property of couples, and one of the possible options would be to make it subject to the law of the country in which it is located (*lex situs*), thus allowing a measure of dismemberment of the law applicable to the matrimonial property regime. This solution is, however, fraught with difficulties, particularly when it comes to the liquidation of the matrimonial property, in that it would lead to an undesirable fragmentation of the unity of the matrimonial property (while the liabilities would remain in a single scheme), and to the application of different laws to different properties within the matrimonial property regime. The Regulation therefore provides that the law applicable to matrimonial property, whether chosen by the spouses or, in the absence of any such choice, determined under other provisions, will apply to all the couple's property, movable or immovable, irrespective of their location.

Article 16

During the consultations a broad consensus emerged in favour of according the parties a degree of freedom in choosing the applicable law for the matrimonial property regime. This option should be clearly regulated to prevent choice of a law having little relation to the couple's real situation or past history: it must be based on the law of habitual residence or on the nationality of one of the spouses or future spouses.

Article 17

In most Member States spouses do not usually expressly choose the law applicable to their matrimonial property regime, hence the importance of common rules in all the Member States to determine what law is applicable in these situations. The applicable law would be identified using a list of objective connecting factors in order of precedence, which would ensure predictability both for the spouses and for third parties. These criteria are designed to reconcile the life actually lived by the couple, especially the establishment of their first common habitual residence, and the need to be able to easily determine the law applicable to their matrimonial property regime.

Article 18

In addition to the possibility of spouses' choosing the law applicable at the time of the marriage (Article 16), this article makes provision for making such a choice later. Similarly, spouses having chosen the applicable law at the time of their marriage may later decide to change it.

Only a voluntary change of applicable law is possible. The Regulation does not provide for any automatic change of applicable law without the parties expressing their consent to such a change or without their having been notified in order to avoid producing any legal uncertainty.

Furthermore, to prevent a change of the law applicable to the matrimonial property regime having undesirable effects for the spouses, such a change is effective only in the future, unless the spouses expressly decide to make it retrospective.

The rights of third parties whose interests might be prejudiced by a change of the couple's matrimonial property regime are protected: the Regulation provides that the effects of a change of matrimonial property regime are confined to the parties and do not affect the rights of third parties.

Articles 19-20

These provisions set out rules on the official procedures for choosing the applicable law and on the form of the marriage contract. They are also designed to help protect vulnerable persons: where there is a vulnerable person in a married couple, it will often be the wife.

Article 22

To take account of national rules, in particular those for protection of the family home, this provision allows a Member State to set aside the application of a foreign law in favour of its own. Accordingly, to protect the family home, a Member State where the home is located may apply its own rules for the protection of the family home. Exceptionally, this Member State may apply its own law to all persons living on its territory in 'preference' to the law normally applicable or that of a marriage contract concluded in another Member State.

5.4. Chapter IV: Recognition, enforceability and enforcement

The proposed Regulation provides for the free movement of decisions, authentic instruments and court settlements concerning matrimonial property regimes. It would thus introduce mutual recognition based on the mutual trust arising out of the integration of the Member States within the European Union.

This free movement would take the form of a uniform procedure for the recognition and enforcement of decisions, authentic acts and legal transactions originating in another Member State. The procedure replaces the national procedures currently in force in the different Member States. The grounds for non-recognition or refusal to enforce are also harmonised at European level or reduced to the absolute minimum. They replace the varied, and often broader, grounds that exist at national level at present.

Decisions

The proposed rules on the recognition and enforcement of decisions are in line with those proposed for successions. They therefore refer to the exequatur procedure existing in civil and commercial matters. So any decision of a Member State would be recognised in other Member States without any special procedure. To have a decision enforced, applicants would have to follow a uniform procedure in the State of enforcement to obtain a declaration of enforceability. The procedure is unilateral and is initially confined to a verification of documents. Only at a later stage, if the defendant objects, would the judge proceed to consider possible grounds for refusal. This offers adequate protection of the rights of defendants.

These rules are a major step forward compared with the present situation. At present, the recognition and enforcement of decisions is governed by the Member States' national laws or bilateral agreements between some Member States. The procedures to be followed vary with the Member States concerned, as do the documents required for obtaining a declaration of enforceability and the grounds on which foreign decisions may be rejected.

As was explained earlier, this Regulation is a first step in the area of matrimonial property regimes and it concerns family law (see point 3.1). Given the specific circumstances, the free movement of decisions is subject to the exequatur procedure as currently laid down in the Brussels I Regulation¹⁰.

¹⁰ OJ L 12, 16.1.2001, p. 1.

Nevertheless, the removal of intermediate proceedings (exequatur) could, as in other areas, be considered at a later stage, after an evaluation of the rules in this Regulation and the development of judicial cooperation on matrimonial property regimes and related areas, notably the Brussels IIa Regulation¹¹.

The acts of authorities exercising their powers by delegation or designation in accordance with the definition of a court in Article 2 of this Regulation will be treated as court decisions and thus covered by the provisions on recognition and enforcement under this chapter

Authentic instruments

Given the practical importance of authentic instruments for matrimonial property regimes and in order to ensure the consistency of this Regulation with other EU instruments, this Regulation must ensure their recognition for the purposes of their free movement.

This recognition means that they will enjoy the same evidentiary effect in respect of the contents of the registered instrument and the facts contained therein and the same presumption of authenticity and enforceability as in the country of origin.

5.5. Chapter V: Effects in respect of third parties

These provisions are designed to reconcile legal certainty for the spouses with the protection of third parties against the application of a rule they could not have known or foreseen. Member States are therefore given the possibility, in cases of transactions between a spouse and a third party residing on their territory, of providing that the spouse may not rely on the rules of the matrimonial regime unless it has been disclosed there or the third party was aware of it or ought to have been aware of it.

¹¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003.

Proposal for a

COUNCIL REGULATION

on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹²,

Having regard to the opinion of the European Economic and Social Committee¹³,

Having regard to the opinion of the Committee of the Regions¹⁴,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The European 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 ensured. For the gradual establishment of such an area, the Union must adopt measures relating to judicial cooperation in civil matters having cross-border implications.
- (2) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (3) On 30 November 2000 the Council adopted a draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters¹⁵. The programme identifies measures relating to the harmonisation of conflict-of-law rules that will facilitate the mutual recognition of judgments. It provides for the

¹² OJ C [...], [...], p. [...].

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ C [...], [...], p. [...].

¹⁵ OJ L 12, 15.1.2001, p. 1.

development of one or more mutual-recognition instruments in matters of matrimonial property regimes and the property consequences of the separation of unmarried couples.

- (4) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme entitled 'The Hague Programme: strengthening freedom, security and justice in the European Union'¹⁶. In this programme the Council asked the Commission to present a Green Paper on conflicts of law in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area by 2011.
- (5) On 17 July 2006 the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition¹⁷. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available.
- (6) The Stockholm programme of December 2009, which sets justice, freedom and security priorities for 2010 to 2014¹⁸, also stated that mutual recognition should be extended to matrimonial property regimes and the property consequences of the separation of couples.
- (7) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010¹⁹, the Commission announced it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.
- (8) To provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.
- (9) In order to achieve the desired objectives, this Regulation brings together in one instrument the provisions on legal jurisdiction, applicable law, the recognition and enforcement of decisions and authentic instruments, and reliance on matrimonial property regimes in dealings with third parties.
- (10) This Regulation covers issues in connection with matrimonial property regimes. It does not define 'marriage', which is defined by the national laws of the Member States.
- (11) The scope of this Regulation should extend to all civil matters in relation to matrimonial property regimes, both the daily management of marital property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses.
- (12) As maintenance obligations between spouses are governed by Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations²⁰, they should be excluded from the scope of this Regulation, as should issues relating to the validity and

¹⁶ OJ L 53, 3.3.2005, p. 1.

¹⁷ COM(2006) 400.

¹⁸ OJ L 115, 4.5.2010, p. 1.

¹⁹ COM(2010) 603.

²⁰ OJ L 7, 10.1.2009, p. 1.

effect of gifts covered by Regulation (EC) No 593/2008 of the European Parliament and Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)²¹.

- (13) Issues relating to the nature of rights in rem that may exist under the national law of Member States, and those linked to the disclosure of such rights, should also be excluded from the scope of this Regulation, as they are from Regulation (EU) No ... [*of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession*]²². This means that the courts of the Member State in which property of one or both spouses is located may take measures under property law, regarding such things as the recording of a transfer of the property in the public register, where the law of that Member State so provides.
- (14) To reflect the increasing mobility of couples during their married life and facilitate the proper administration of justice, the rules on jurisdiction in this Regulation provide that matters of matrimonial property regimes, including liquidation of the regime as a result of divorce, legal separation or marriage annulment, are to be dealt with by the courts of the Member State having jurisdiction to deal with the divorce, separation or marriage annulment proceedings under Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000²³.
- (15) Similarly, matters of matrimonial property regimes linked to the death of a spouse should be treated by the court with jurisdiction over the succession of that spouse, as established under the Regulation (EU) No ... [*of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession*].
- (16) Where matters of matrimonial property regimes are not linked to a divorce, separation or marriage annulment or to the death of a spouse, the spouses may decide to submit questions related to their matrimonial regime to the courts of the Member State of the law they chose as the law applicable to their matrimonial property regime. Such a decision is expressed by an agreement between the spouses which may be concluded at any moment, even during the proceedings.
- (17) This Regulation must allow the territorial jurisdiction of a Member State's courts over applications concerning matrimonial property regimes to be determined in cases other than those of separation of the couple or death of a spouse, and must in particular have a forum necessitatis provision to prevent situations where justice is denied.
- (18) The proper functioning of justice requires that irreconcilable decisions should not be pronounced in the Member States. Accordingly, this Regulation must provide for general rules of procedure based on Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters²⁴.

²¹ OJ L 177, 4.7.2008, p. 6.

²² OJ C [...], [...], p. [...].

²³ OJ L 338, 23.12.2003, p. 1.

²⁴ OJ L 12, 16.1.2001, p. 1.

- (19) To facilitate spouses' management of their property, this Regulation will authorise them to choose the law applicable to all the property covered by their matrimonial property regime, regardless of the nature or location of the property, among the laws with which they have close links because of residence or their nationality. This choice may be made at any moment, at the time of the marriage or during the course of the marriage.
- (20) The law chosen by the spouses to govern the property consequences of their marriage or, failing such a choice, the law determined by the connecting factors should apply even if it is not the law of a Member State. To facilitate the application of one Member State's law by another Member States' courts, the European Judicial Network in civil and commercial matters set up by Council Decision 2001/470/EC of 28 May 2001²⁵ can help inform the courts about the substance of the foreign law.
- (21) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at marriage, the third criterion should be the State with which the spouses have the closest links, taking into account all the circumstances, including the place where the marriage was celebrated, it being made clear that these links are to be considered as they were at the time the marriage was entered into.
- (22) If nationality is used to determine the applicable law, account must be taken of the fact that some States with a legal system based on common law use 'domicile' and not 'nationality' as a connecting factor.
- (23) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the matrimonial property regime being made without the spouses being notified, no change of law applicable to the matrimonial property regime should be made except at the express desire of the parties. Such a change by the spouses should not have retrospective effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties and the validity of transactions entered into previously.
- (24) Given the importance of choosing the law applicable to the matrimonial property regime, the Regulation must contain some guarantees to ensure that spouses or prospective spouses are aware of the consequences of their choice. This choice should be made in the form prescribed for the marriage contract by the law of the State chosen or by that of the State where the instrument is drawn up, and at least be in writing and dated and signed by the couple. Any additional formal requirements imposed by the law of the State chosen or that of the State where the instrument is drawn up concerning the validity, disclosure or registration of such contracts should be complied with.
- (25) Considerations of public interest dictate that courts in the Member States be given the possibility in exceptional circumstances of setting aside the foreign law in a given case where its application would be manifestly contrary to the public policy of the forum.

²⁵ OJ L 174, 27.6.2001, p. 25.

However, the courts should not be able to apply the public policy exception in order to set aside the law of another Member State or to refuse to recognise or enforce a decision, authentic instrument or legal transaction drawn up in another State if the application of the public policy exception would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination.

- (26) Since there are 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.
- (27) Since mutual recognition of decisions rendered in the Member States is one of the objectives of this Regulation, this Regulation must lay down rules on the recognition and enforcement of decisions on the basis of Regulation (EC) No 44/2001, adjusted where necessary to meet the specific requirements of matters covered by this Regulation.
- (28) In order to take into account the different methods of dealing with matters of matrimonial property regimes in the Member States, this Regulation must guarantee the recognition and enforcement of authentic instruments. Nevertheless, authentic instruments cannot be treated as court decisions with regard to their recognition. The recognition of authentic instruments means that they enjoy the same evidentiary effect with regard to their contents and the same effects as in their country of origin, and a presumption of validity which may be rebutted if they are contested.
- (29) While the law applicable to matrimonial property regimes must govern the legal relationship between a spouse and a third party, the conditions for relying on that law should be regulated by the law of the Member State of habitual residence of the spouse or the third party, in the interests of the third party's protection. The law of that Member State may thus provide that the spouse may invoke the law of his or her matrimonial property regime against the third party only if the conditions of registration or disclosure laid down in that Member State have been complied with, unless the third party was aware of or ought to have been aware of the law applicable to the matrimonial property regime.
- (30) Given the international commitments entered into by the Member States mean that this Regulation should not affect international conventions to which one or more Member States are party when it is adopted. Consistency with the general objectives of this Regulation requires, however, that the Regulation take precedence over the conventions between Member States.
- (31) The objectives of this Regulation, namely the free movement of persons in the European Union, the opportunity for spouses to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at European Union level; under the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union, therefore, the Union has competence to act. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21

and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles.

- (33) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].
- (34) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark will not participate in the adoption of this Regulation and is not therefore bound by it or required to apply it,

HAS ADOPTED THIS REGULATION:

Chapter I

Scope and definitions

Article 1

Scope

1. This Regulation shall apply to matrimonial property regimes.
It shall not apply in particular to revenue, customs or administrative matters.
2. In this Regulation, 'Member State' means any Member State with the exception of Denmark, [the United Kingdom and Ireland].
3. The following are excluded from the scope of this Regulation:
 - (a) the capacity of spouses,
 - (b) maintenance obligations,
 - (c) gifts between spouses,
 - (d) the succession rights of a surviving spouse,
 - (e) companies set up between spouses,
 - (f) the nature of rights in rem relating to a property and the disclosure of such rights.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'matrimonial property regime': a set of rules concerning the property relationships of spouses, between the spouses and in respect of third parties;
- (b) 'marriage contract': any agreement by which spouses organise their property relationships between themselves and in relation to third parties;
- (c) 'authentic instrument': an instrument which has been officially drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
 - (i) relates to the signature and the content of the authentic instrument, and
 - (ii) has been established by a public authority or other authority empowered for that purpose;
- (d) 'decision': any decision given in a matter of a matrimonial property regime by a court of a Member State, whatever the decision may be called, including the terms 'decree', 'judgment', 'order' or 'writ of execution', and the determination of costs or expenses by an officer of the court;
- (e) 'Member State of origin': the Member State in which, as the case may be, the decision has been given, the marriage contract concluded, the authentic instrument drawn up, the court settlement approved or the instrument liquidating the common property or any other instrument produced by or before the judicial authority or authority of delegation or designation;
- (f) 'Member State addressed': the Member State in which recognition and/or enforcement of the decision, marriage contract, authentic instrument, court settlement, instrument of liquidation of the common property or any other instrument produced by or before the judicial authority or authority of delegation or designation is requested;
- (g) 'court': any competent judicial authority in the Member States which carries out a judicial function in matters of matrimonial property regimes, or any other non-judicial authority or person carrying out, by delegation or designation by a judicial authority of a Member State, the functions falling within the jurisdiction of the courts as provided for in this Regulation;
- (h) 'court settlement': a settlement relating to a matrimonial property regime which has been approved by a court or concluded before a court in the course of proceedings.

Chapter II

Jurisdiction

Article 3

Jurisdiction in the event of the death of one of the spouses

The courts of a Member State seised by an application concerning the succession of a spouse under Regulation (EC) ... [*of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession*] shall also have jurisdiction to rule on matters of the matrimonial property regime arising in connection with the application.

Article 4

Jurisdiction in cases of divorce, legal separation or marriage annulment

The courts of a Member State called upon to rule on an application for divorce, judicial separation or marriage annulment under Regulation (EC) No 2201/2003, shall also have jurisdiction, where the spouses so agree, to rule on matters of the matrimonial property regime arising in connection with the application.

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties.

Failing agreement between the spouses, jurisdiction is governed by Articles 5 *et seq.*

Article 5

Jurisdiction in other cases

1. In cases other than those provided for in Articles 3 and 4 jurisdiction to rule on proceedings in a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:
 - (a) of the spouses' common habitual residence, or failing that,
 - (b) of the last common habitual residence if one of them still resides there, or, failing that,
 - (c) of the defendant's habitual residence, or failing that,
 - (d) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of their common 'domicile'.
2. Both parties may also agree that the courts of the Member State whose law they have chosen as the law applicable to their matrimonial property regime in accordance with

Articles 16 and 18 shall also have jurisdiction to rule on matters of their matrimonial property regime.

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties.

Article 6
Subsidiary jurisdiction

Where no court has jurisdiction according to Articles 3, 4 and 5, the courts of a Member State shall have jurisdiction in so far as property or properties of one or both spouses are located in the territory of that Member State, but in that event the court seised shall have jurisdiction to rule only in respect of the property or properties in question.

Article 7
Forum necessitatis

Where no court of a Member State has jurisdiction under Articles 3, 4, 5 and 6, the courts of a Member State may, exceptionally and if the case has a sufficient connection with that Member State, rule on a matrimonial property regime case if proceedings would be impossible or cannot reasonably be brought or conducted in a third State.

Article 8
Counterclaims

The court seised pursuant to Articles 3, 4, 5, 6 or 7 before which proceedings are pending shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

Article 9
Seising a court

A court shall be deemed to be seised:

- (a) on the date when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he or she was required to take to have service effected on the defendant, or
- (b) where the document has to be served before being lodged with the court, on the date on which it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have the document lodged with the court.

Article 10

Examination as to jurisdiction

Where a court of a Member State is seised of a matrimonial property regime case over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 11

Examination as to admissibility

1. Where a defendant habitually resident in a Member State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall be responsible for staying the proceedings until it be shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to defend himself or herself or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters²⁶ shall apply in place of paragraph 1 of this article if the document instituting the proceedings or an equivalent document had to be sent from one Member State to another pursuant to that Regulation.
3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 12

Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In the cases referred to in paragraph 1 the first court seised shall establish its jurisdiction within six months, unless this proves impossible because of exceptional circumstances. At the request of any other court seised of the case, the court first seised shall inform it of the date on which it was seised and whether it has established its jurisdiction over the case or, failing that, inform it of the estimated time needed to establish its jurisdiction.
3. If the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

²⁶ OJ L 324, 10.12.2007, p. 79.

Article 13

Related actions

1. Where related actions are pending before courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 14

Provisional, including protective, measures

Provisional, including protective, measures provided for by the law of a Member State may be requested from the courts of that State, even where, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Chapter III

Applicable law

Article 15

Unity of the applicable law

The law applicable to a matrimonial property regime under Article 16, 17 and 18 shall apply to all the couple's property.

Article 16

Choice of applicable law

The spouses or future spouses may choose the law applicable to their matrimonial property regime, as long as it is one of the following laws:

- (a) the law of the State of the habitual common residence of the spouses or future spouses, or
- (b) the law of the State of habitual residence of one of the spouses at the time this choice is made, or
- (c) the law of the State of which one of the spouses or future spouses is a national at the time this choice is made.

Article 17

Establishing the applicable law where no choice is made

1. If the spouses do not make a choice, the law applicable to the matrimonial property regime shall be:
 - (a) the law of the State of the spouses' first common habitual residence after their marriage or, failing that,
 - (b) the law of the State of the spouses' common nationality at the time of their marriage or, failing that,
 - (c) the law of the State with which the spouses jointly have the closest links, taking into account all the circumstances, in particular the place where the marriage was celebrated.
2. Paragraph 1(b) shall not apply if the spouses have more than one common nationality.

Article 18

Change of applicable law

The spouses may, at any time during the marriage, make their matrimonial property regime subject to a law other than the one hitherto applicable. They may designate only one of the following laws:

- (a) the law of the State of habitual residence of one of the spouses at the time this choice is made;
- (b) the law of a State of which one of the spouses is a national at the time this choice is made.

Unless the spouses desire otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.

If the spouses choose to make this change of applicable law retrospective, the retrospective effect may not affect the validity of previous transactions entered into under the law applicable hitherto or the rights of third parties deriving from the law previously applicable.

Article 19

Formalities for choosing the applicable law

1. The choice of applicable law shall be made in the way specified for the marriage contract, either by the law of the State chosen or by the law of the State in which the document is drawn up.
2. Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated and signed by both spouses.
3. If the law of the Member State in which the spouses have their common habitual residence at the time of the choice referred to in paragraph 1 provides for additional formal requirements for the marriage contract, these requirements must be complied with.

Article 20

Law applicable to the form of marriage contract

1. The form of the marriage contract shall be that prescribed by the law applicable to the matrimonial property regime or by the law of the State where the contract is drawn up.
2. Notwithstanding paragraph 1, the marriage contract must at least be set out in a document dated and signed by both spouses.
3. If the law of the Member State in which the spouses have their common habitual residence at the time the marriage contract is concluded provides for additional formal requirements for that contract, these requirements must be complied with.

Article 21

Universal nature of the conflict-of-law rule

Any law determined in accordance with the provisions of this Chapter shall apply even if it is not the law of a Member State.

Article 22

Overriding mandatory provisions

The provisions of this Regulation shall be without prejudice to the application of imperative provisions the upholding of which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime under this Regulation.

Article 23

Public policy

The application of a rule of the law determined by this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Article 24

Exclusion of renvoi

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

Article 25

States with two or more legal systems — territorial conflicts of laws

Where a State comprises several territorial units each of which has its own system of law or its own rules concerning matters governed by this Regulation:

(a) any reference to the law of that State shall be construed, for the purposes of determining the law applicable under this Regulation, as a reference to the law in force in the relevant territorial unit;

(b) any reference to habitual residence in that State shall be construed as a reference to habitual residence in a territorial unit;

(c) any reference to nationality shall refer to the territorial unit determined by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of such a choice, to the territorial unit with which the spouse or spouses has or have the closest connection.

Chapter IV

Recognition, enforceability and enforcement

SECTION 1

DECISIONS

Subsection 1

Recognition

Article 26

Recognition of decisions

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures set out in Articles [38 to 56] of Regulation (EC) No 44/2001, apply for the decision to be recognised.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 27

Grounds for non-recognition of decisions

A decision shall not be recognised if:

- (a) such recognition is manifestly contrary to public policy in the Member State addressed;

- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him or her to do so;
- (c) it is irreconcilable with a decision given in a matter between the same parties in the Member State addressed;
- (d) it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State addressed.

Article 28

Prohibition of review of jurisdiction of the court of origin

1. The jurisdiction of the court of the Member State of origin may not be reviewed.
2. The public policy criterion referred to in Article 23 shall not apply to the rules on jurisdiction set out in Articles 3 to 8.

Article 29

No review as to substance

Under no circumstances may a foreign decision be reviewed as to its substance.

Article 30

Stay of proceedings

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged.

Subsection 2

Enforcement

Article 31

Enforceability of decisions

Decisions given in a Member State where they are enforceable shall be enforced in the other Member States in accordance with Articles [38 to 56 and 58] of Regulation (EC) No 44/2001.

SECTION 2

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 32

Recognition of authentic instruments

1. Authentic instruments drawn up in a Member State shall be recognised in the other Member States, unless their validity is disputed in accordance with the applicable law, and provided such recognition is not contrary to public policy in the Member State addressed.
2. The recognition of authentic instruments confers on them evidentiary effect with regard to their contents and a presumption of validity.

Article 33

Enforceability of authentic instruments

1. Authentic instruments drawn up and enforceable in one Member State shall, on request, be declared enforceable in another Member State following the procedure set out in Articles [38 to 57] of Regulation (EC) No 44/2001.
2. The court with which an appeal is lodged under Articles [43 and 44] of Regulation (EC) No 44/2001 may refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the Member State addressed.

Article 34

Recognition and enforceability of court settlements

Court settlements that are enforceable in the Member State of origin shall be recognised and declared enforceable in another Member State at the request of any interested party under the same conditions as authentic instruments. The court with which an appeal is lodged under Article [42 or 44] of Regulation (EC) No 44/2001 may refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy in the Member State addressed.

Chapter V

Effects in respect of third parties

Article 35

Effects in respect of third parties

1. The effects of the matrimonial property regime on a legal relationship between a spouse and a third party are governed by the law applicable to matrimonial property regimes under the terms of this Regulation.
2. However, the law of a Member State may provide that the law applicable to the matrimonial property regime may not be relied on by a spouse in dealings with a third party if one or other has their habitual residence in the territory of that Member State and the conditions of disclosure or registration provided for in the law of that State are not satisfied, unless the third party was aware of or ought to have been aware of the law applicable to the matrimonial property regime.
3. The law of the Member State in which immovable property is located may provide for a similar rule to that laid down in paragraph 2 in respect of the legal relationship between a spouse and a third party in respect of that property.

Chapter VI

General and final provisions

Article 36

Relations with existing international conventions

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation and which relate to the subjects covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 of the Treaty.
2. Notwithstanding paragraph 1, this Regulation shall, between Member States, take precedence over conventions which relate to subjects governed by this Regulation and to which the Member States are party.

Article 37

Information made available to the public and the relevant authorities

1. The Member States shall send the Commission, no later than ..., in the official language(s) they judge appropriate:

- (a) a description of their national legislation and procedures relating to the law on matrimonial property regimes, and the relevant texts;
 - (b) the national provisions on the effects in respect of third parties referred to in Article 35(2) and (3).
2. Member States shall notify the Commission of any subsequent changes in this information.
3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available by appropriate means, in particular through the multilingual internet site of the European Judicial Network in civil and commercial matters.

Article 38

Review clause

1. No later than [five years after the date of application...], 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. Where necessary, the report shall be accompanied by proposals to amend this Regulation.
2. To that end, the participating Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.

Article 39

Transitional provisions

1. Chapters II and IV of this Regulation shall apply to legal proceedings instituted, authentic instruments received, court settlements concluded and decisions given after the date of its application.
2. However, if the proceedings in the Member State of origin were instituted before the date of application of this Regulation, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.
3. Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after the date of application of this Regulation.

Article 40

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from [one year after the date of its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at [...]

For the Council
The President