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JUSTCIV 313

NOTE

From: Presidency

To: Council

No. prev. doc.: 15275/14 JUSTCIV 281 and 15276/14 JUSTCIV 282 + COR 1

No. Cion prop.: 8160/11 JUSTCIV 64 and 8163/11 JUSTCIV 65

Subject: Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships
- State of play

I. INTRODUCTION

1. By letters of 16 March 2011 the Commission transmitted to the Council a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes¹ and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships².

¹ 8160/11 JUSTCIV 64

² 8163/11 JUSTCIV 65

2. The proposals aim at ensuring a uniform system of rules on jurisdiction and applicable law, and at ensuring mutual recognition of decisions in matters of matrimonial regimes and the property consequences of registered partnerships within the European Union.
3. The United Kingdom and Ireland have made no notification under Article 3 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.
4. 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 does not take part in the adoption of the proposed Regulations and will not be bound by them or subject to their application.
5. The Working Party on Civil Law Matters (Matrimonial Property Regimes and Registered Partnerships) has carried out a parallel examination of both proposals.
6. During its meeting on 6 and 7 December 2012, the Council (JHA) agreed on political guidelines paving the way for future work¹.
7. The proposed Regulations are subject to a special legislative procedure based on Article 81(3) TFEU. The European Parliament was consulted and adopted two legislative resolutions on 10 September 2013.

¹ 16878/12 JUSTCIV 344

II. STATE OF PLAY

8. The Working Party on Civil Law Matters (Matrimonial Property Regimes and Registered Partnerships) has examined the proposed Regulations at regular meetings since the transmission of the Commission proposals. It is emphasised that both Regulations have always been examined in parallel.
9. These negotiations have in particular highlighted the following elements:
 - (i) both Regulations leave untouched the underlying institutions of marriages and partnerships, which remain matters that are defined by the national laws of the Member States. In particular, nothing should oblige the Member State whose law does not know the institution of registered partnership to provide for it in its national law;
 - (ii) particular attention has been given to ensuring that both Regulation would contain, as far as possible, parallel provisions; and a discrepancy between the two Regulations only exists when the significant differences existing between the institutions of marriage and registered partnership justify it.
10. A large number of technical questions have been discussed. In three years, eleven redraft texts have been presented to the Working Party, and discussed at length. With the time, the number of technical questions remaining to be solved has been decreasing significantly.
11. The Presidency is now of the view that the extensive technical negotiations that took place within the Working Party led to significant progress on both files. On that basis, both texts having reached a high degree of maturity, the Presidency has submitted a possible compromise text on the two Regulations¹.

¹ 15275/14 JUSTCIV 281 and 15276/14 JUSTCIV 282 + COR 1.

12. However, some Member States have expressed a need for further reflection, particularly on Article 28a of the Matrimonial Property Regimes Regulation and on Article 23a of the Registered Partnership Regulation.
13. The Presidency is therefore of the opinion that it is time to open a period of reflection for Member States to assess the results of the work completed so far. It would therefore wish to invite delegations to further reflect on the possible compromise text on the two Regulations.
14. At its meeting of 26 November, Coreper had an exchange of views on this matter, with a view to preparing the JHA Council on 4 and 5 December 2014.

III. CONCLUSION

15. Council is invited to:

a) take note that the Presidency has submitted a possible compromise text on the two Regulations¹;

b) take note that a period of reflection is needed for several Member States in order to allow them to assess the results of the work completed so far;

c) re-examine the possible compromise texts on the two Regulations as soon as possible and not later than by the end of 2015, in order to assess whether the required unanimity can be achieved.

¹ 15275/14 JUSTCIV 281 and 15276/14 JUSTCIV 282 + COR 1.