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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships

COUNCIL DECISION (EU) 2016/...

of

**authorising enhanced cooperation in the area of jurisdiction, applicable law
and the recognition and enforcement of decisions on the property regimes
of international couples, covering both matters of matrimonial property regimes
and the property consequences of registered partnerships**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 329(1) thereof,

Having regard to the requests made by the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Republic of Finland and the Kingdom of Sweden,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ OJ C [...], [...], p. [...].

Whereas:

- (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 ensured. For the progressive establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters with cross-border implications.
- (2) Pursuant to Article 81 of the Treaty on the Functioning of European Union (TFEU), those measures are to include promoting the compatibility of the rules applicable in the Member States concerning conflict of laws, including measures concerning family law with cross-border implications.
- (3) On 16 March 2011, the Commission adopted a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.
- (4) At its meeting of 3 December 2015 the Council concluded that it would not be possible to reach an agreement within a reasonable period by the Union as a whole for the adoption of the regulations.

- (5) In these circumstances, Malta, Croatia and Belgium subsequently addressed requests to the Commission by letters dated 14 December 2015, 15 December 2015 and 17 December 2015 respectively, and Germany, Greece, Spain, France, Italy, Luxembourg, Portugal, Slovenia and Sweden by letters dated 18 December 2015, indicating that they wished to establish enhanced cooperation between themselves in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and the property consequences of registered partnerships and that the Commission should submit a proposal to the Council to that end. The Czech Republic, the Netherlands, Bulgaria, Austria and Finland addressed the same requests to the Commission by letters dated 28 January 2016, 2 February 2016, 9 February 2016, 16 February 2016 and 26 February respectively. By letter to the Commission dated 18 March 2016, Cyprus indicated its wish to participate in the establishment of the enhanced cooperation; Cyprus reiterated this wish during the work of the Council. In total, 18 Member States have requested such enhanced cooperation.
- (6) The enhanced cooperation should provide a clear and comprehensive legal framework in the area of the property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, in the participating Member States, ensure adequate solutions for citizens in terms of legal certainty, predictability and flexibility, and facilitate the circulation of decisions and authentic instruments between the participating Member States.

- (7) In accordance with the Member States' requests for the establishment of enhanced cooperation, two substantive acts should implement enhanced cooperation, one concerning matrimonial property regimes and the other concerning the property consequences of registered partnerships. In order to cover the entire scope of enhanced cooperation in the area of the property regimes of international couples and to ensure non-discrimination of citizens, the two substantive implementing acts should be adopted simultaneously.
- (8) The conditions laid down in Article 20 of the Treaty on European Union (TEU) and in Articles 326 to 329 TFEU are fulfilled.
- (9) The relevant area of the enhanced cooperation, namely jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, is identified by points (a) and (c) of Article 81(2) and Article 81(3) TFEU as one of the areas covered by the Treaties. This is not an area of exclusive competence of the Union.
- (10) The requirement of last resort in Article 20(2) TEU is fulfilled in that the Council concluded on 3 December 2015 that the objectives of the proposed regulations could not be attained within a reasonable period by the Union as a whole.

- (11) Enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, aims to develop judicial cooperation in civil matters having cross-border implications based on the principle of mutual recognition of judgments, and to ensure the compatibility of the rules applicable in the Member States concerning conflict of laws. Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process as required by Article 20(1) TEU.
- (12) Enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, complies with the Treaties and Union law, and it does not undermine the internal market or economic, social and territorial cohesion. It does not constitute a barrier to or discrimination in trade between Member States and does not distort competition between them.
- (13) In particular, enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, complies with Union law on judicial cooperation in civil matters, in that enhanced cooperation does not affect the *acquis* in this area.

- (14) Enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, respects the competences, rights and obligations of those Member States that do not participate in it. The common rules on jurisdiction, conflict of laws and recognition and enforcement in the participating Member States do not affect the rules of the non-participating Member States. The courts of the non-participating Member States will continue to apply their existing domestic rules to determine the jurisdiction and applicable law and to the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships.
- (15) This Decision respects the principles enshrined in the Charter of Fundamental Rights of the European Union, in particular those in Articles 9 and 21 thereof.
- (16) Enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, is open, at any time, to all Member States, in accordance with Article 328 TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Republic of Finland and the Kingdom of Sweden are hereby authorised to establish enhanced cooperation between themselves in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, by applying the relevant provisions of the Treaties.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council

The President
