



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 June 2010**

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**Interinstitutional File:  
2010/0066 (APP)**

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**10288/10**

**LIMITE**

**JUSTCIV 110  
JAI 485**

**NOTE**

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from:	Presidency
to:	JHA Council
No. Cion prop.:	8143/1/10 JUSTCIV 56 JAI 267
No. prev.doc.:	9756/2/10 REV 2 JUSTCIV 95 JAI 426
Subject:	Proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation - Political agreement - Request for consent of the European Parliament

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**I. INTRODUCTION**

1. On 17 July 2006, the Commission submitted to the Council a proposal for a Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.<sup>1</sup>

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<sup>1</sup> 11818/06 JUSTCIV 174 + ADD 1 + ADD 2

2. At its meeting on 5 and 6 June 2008 the Council concluded that there was no unanimity to go ahead with the proposed Regulation and that insurmountable difficulties existed, making unanimity impossible at that time and in the foreseeable future. It established that the objectives of the proposed Regulation could not be attained within a reasonable period by applying the relevant provisions of the Treaties.<sup>2</sup>
3. The Council also noted that a large majority of Member States could, by way of compromise, approve the text of the proposed Regulation on the basis of 9712/08 JUSTCIV 106.
4. In these circumstances, Greece, Spain, Italy, Hungary, Luxembourg, Austria, Romania and Slovenia addressed a request to the Commission by letters dated 28 July 2008 indicating that they wished to establish enhanced cooperation between them in the area of applicable law in matrimonial matters and that they expected the Commission to submit a proposal to the Council to that end. Bulgaria addressed an identical request to the Commission by a letter dated 12 August 2008 and France by a letter dated 12 January 2009. On 3 March 2010, Greece withdrew its request.

Germany, Belgium, Latvia and Malta joined the request by letters dated respectively 15 April 2010, 22 April 2010, 17 May 2010 and 31 May 2010. In total, thirteen Member States have thus requested enhanced cooperation.

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<sup>2</sup> 9985/08 JUSTCIV 111

5. On 31 March 2010 the Commission presented to the Council:
  - (a) a proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation<sup>3</sup>; and
  - (b) a proposal for a Council Regulation (EU) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.<sup>4</sup>
6. The Commission assessed the legal conditions for enhanced cooperation in the explanatory memorandum to the proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.
7. On 1 June 2010 the Legal Affairs (JURI) Committee of the European Parliament voted unanimously for the proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.<sup>5</sup>
8. It should be noted that although the Protocol on the position of the United Kingdom and Ireland<sup>6</sup> and the Protocol on the position of Denmark<sup>7</sup> are applicable in the area of law applicable to divorce and legal separation, in accordance with Article 329(1) of the Treaty on the Functioning of the European Union authorisation to proceed with the enhanced cooperation is to be granted by the Council, acting by qualified majority of all EU Member States. Authorisation to proceed with enhanced cooperation will be adopted after the consent of the European Parliament has been obtained.

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<sup>3</sup> On 16 April 2010, the Commission presented a revised version of this proposal to the Council: see document 8143/1/10 JUSTCIV 56 JAI 267

<sup>4</sup> On 16 April 2010, the Commission presented a revised version of this proposal to the Council: see document 8176/1/10 JUSTCIV 57 JAI 271

<sup>5</sup> EP reference: 2010/0066(NLE)

<sup>6</sup> 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 the Treaty on the Functioning of the European Union.

<sup>7</sup> Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

9. Some delegations have still a parliamentary scrutiny reservation.

## **II. EXAMINATION OF THE PROPOSED DECISION**

10. Coreper examined the proposal at its meeting on 19 May 2010. Many delegations expressed a general positive approach on the proposal. Other delegations were still reflecting. Several delegations addressed certain legal questions to the Legal Service and indicated that dealing with these concerns would help them to take a final decision.
11. The written opinion of the Legal Service is set out in 10172/10 JUR 240 JUSTCIV 108 JAI 468, supplementing the previous one from 2008 on this topic.<sup>8</sup>
12. The legal/linguistic experts of the Council have in the meantime completed their revision of the text. The revised text is set out in 9898/10 JUSTCIV 100 JAI 441.
13. Several delegations considered that the Commission should carry out a separate impact assessment on using enhanced cooperation in the field of the law applicable to divorce and legal separation. The Commission recalled that a thorough impact assessment was made when the original Commission proposal<sup>9</sup> was submitted and that it was reflecting on possibly making a declaration on this.

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<sup>8</sup> See also 8038/08 JUR 148 JUSTCIV 62 and 9142/08 JUR 191 JUSTCIV 93

<sup>9</sup> 11818/06 JUSTCIV 174 + ADD 1 + ADD 2

### **III. JHA COUNCIL**

14. In the light of the above JHA Council is invited:

- (a) to acknowledge that there is political agreement on the text of the proposed Decision, as set out in 9898/10 JUSTCIV 100 JAI 441, subject to the consent of the European Parliament; and
  - (b) to decide to transmit to the European Parliament the draft text of the Decision as set out in 9898/10 JUSTCIV 100 JAI 441 in order to obtain the consent of the European Parliament in accordance with Article 329(1) of TFEU.
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