

## **Clearer rules for international couples – frequently asked questions**

### **Why does the EU need to act to help international couples?**

There are around 122 million marriages in the EU, of which around 16 million (13 %) are considered "international" (couples of different nationalities, couples living apart in different countries or living together in a country other than their home country). There were more than 1 million divorces in the 27 EU Member States in 2007, of which 140 000 (13 %) had an "international" element.

Member States' courts have different ways of deciding which country's law applies to divorces. This divergence limits international couples' autonomy and choice and creates legal uncertainty. The lack of legal certainty also makes it easier for one spouse to take advantage of a partner in a weaker financial position. For example, the stronger partner may rush through divorce proceedings in a jurisdiction that applies a law favouring him or her. Today's proposal allows international couples to know in advance which law will apply to their divorce. It will increase flexibility and autonomy by giving spouses a possibility to choose the applicable law.

More autonomy for spouses will provide a strong incentive to deal in advance with the consequences of a potential marriage breakdown and encourage amicable divorces, which are crucial if the couple has children. Increased autonomy will also prevent one partner from gaining an unfair advantage over a weaker spouse.

### **How will the proposal work when spouses cannot agree on an applicable law?**

The proposal will allow international couples to choose the applicable law if they were to separate, as long as it is the law of a country to which they have a close connection (such as long-term residence or nationality). For example, it would allow a Swedish-Finnish couple living in Spain to agree that Swedish or Finnish law applies if they were to divorce. If the spouses themselves cannot agree on the applicable law, it is determined on the basis of the following connecting factors:

- Divorce and legal separation are primarily subject to the law of the country where the spouses have their common habitual residence;
- Failing that, where they had their last recent common habitual residence if one of them still resides there
- Failing that, to the law of the spouses' common nationality;
- Failing that, to the law of the court before which the matter is brought.

Under this formula, the law of the country where the divorce or legal separation was requested will apply in the vast majority of cases. For example, if an international couple living abroad in another EU country asks for a divorce there, the most important factor for the court would be their country of common habitual residence. That country's laws would therefore apply.

## **Why is the Commission making a proposal for enhanced cooperation? Which countries asked for it?**

As the figures above show, divergent national rules lead to a great deal of uncertainty, making an already difficult procedure even harder. While there is a clear need for a solution, finding an agreement has been elusive because new rules must be approved by all 27 EU countries. Many EU governments are still very interested in resolving the problem. Under EU rules, enhanced cooperation can be used to move forward on new rules when a unanimous agreement cannot be found.

The Commission first proposed measures to help international couples in 2006. There has been little progress since then. Now 10 EU governments (Austria, Bulgaria, France, Greece, Hungary, Italy, Luxembourg, Romania, Slovenia and Spain) are willing to pursue enhanced cooperation to find a common solution. The Commission studied the problem and decided to propose a solution.

Enhanced cooperation allows a group of nine or more EU countries to work more closely together as a procedure of last resort when a proposal fails to win the support of enough countries through the normal EU legislative procedure. Existing national rules will not be affected, and other EU countries can decide to apply the rules at any time. The procedure allows a large group of countries to solve a significant problem affecting citizens' lives without harming other EU countries. Any nation that does not initially participate can easily join to share the benefits with their citizens. The goal is to have eventually all Member States participate.

The urgency and human dimension in this area is very clear: international couples need the EU to set clear rules to provide comfort, legal certainty and justice when they have to deal with a divorce or separation.

### **The timetable: what happens next?**

The Council of EU Ministers must approve the proposal for enhanced cooperation by a qualified majority. The European Parliament must also give its consent.

### **Will courts have to apply the divorce laws of other countries?**

Many courts currently apply the laws of other countries. The aim of today's proposal is to add more consistency in the way they decide which country's laws to apply.

The proposal could lead to the application of a foreign law in limited cases. This is a consequence of the free movement of citizens within the EU. Nevertheless, a court could choose not to apply a country's divorce law if it is manifestly contrary to the country's own public policy – if it is discriminatory, for example.

The proposal has been designed to avoid that the application of foreign law leads to delays and additional costs in divorce proceedings. If a court is called upon to apply the law of another Member State, the court can turn to the European Judicial Network in civil and commercial matters (EJN) to obtain further information on the foreign law. All Member States have designated contact points that are responsible for providing information to judges about national law.

Information about national divorce laws is already available on the EJM's website. The Commission is currently exploring other measures to facilitate the application of foreign law before the proposal enters into force.

The proposal does not in any way harmonise national divorce laws or practices, which remain very diverse for cultural and historical reasons.

These rules will apply only to international divorce – where both spouses are from different Member States or live in another Member State than that of their nationality or do not live in the same Member State. It will simply be a helpful set of rules for citizens involved in an international divorce.

### **What happens to countries that do not take part? What happens to citizens from a country that is not participating who live in or who are married to someone from a country that is participating?**

The proposal may also benefit people from non-participating countries and non-EU countries whose divorce or legal separation is heard before a court of a participating Member State. Take the example of a married American couple living in the south of France. If one spouse moves to an EU country that does not take part in the proposal, such as the Czech Republic, Poland or Slovakia, and the other stays in France, in many cases US divorce law would apply because both spouses have a common nationality, even if they had lived in France for most of their lives. However, if the husband moves to a Member State that is part of the proposal, French law would apply to the divorce because France is the last habitual residence of the spouses.

On the other hand, a couple from a participating country may be deprived of the proposal's benefits if the court that is competent to hear the divorce is located in a non-participating country. That would be the case if two French people move to the U.K. and decide to separate.

In any case, this French couple would be no worse off after the proposal takes effect in the participating Member States compared to the current situation, which offers no benefits for international marriages.

### **How will the proposals help children of separating international couples?**

It will make it easier to have consensual divorces by helping couples to **avoid legal systems that are foreign to them and difficult to understand**. As a result, children would not suffer from drawn-out divorce proceedings. For example, a Swedish-Lithuanian couple who gets married in Sweden, has two children and moves to Italy would be able to agree, even during the divorce proceedings, that Swedish or Lithuanian law applies to their divorce without being obliged to go back to either Sweden or Lithuania to plead their case.

The proposal will also give couples legal certainty, which will make it easier for them to deal with a divorce or separation. For example, a British couple gets married in the UK and then lives in France for three years. One partner then moved to Spain. The couple would be able to ask either French or Spanish courts to apply English law if they separate.

## **How will the proposals protect weaker spouses?**

Today's proposals will protect weaker spouses from stronger partners who file for divorce in a court where the law is most favourable to him. These cases of a partner "rushing to court" or "forum shopping" often harm the weaker spouse. Such situations occur because a partner who can afford the legal fees to shop around for divorce abroad and to travel for that reason is likely to gain an unfair advantage over the weaker spouse. For example, if one spouse from a Polish couple moves to Finland, after one year he could ask for a divorce there without the other spouse's consent. The new rules would tackle this sort of "forum shopping" in participating Member States by guaranteeing that the law of the country in which the weaker spouse lives with her partner or in which her partner last resided with her will apply.

Mediation efforts are hurt when one partner rushes to court. This may also lead to the application of a law that fails to take into account the defendant's interests. The proposal will reduce the incentive of rushing to court since the applicable law is determined on the basis of common rules, which don't take into account the court where the divorce was first filed.

The proposal prevents forum shopping because the criteria for choosing the applicable law are strict. Couples must have a close connection to the country and its laws. The partners' choice of law, which must be in writing and signed by both spouses, is based on:

- their common habitual residence;
- their last common habitual residence if one of them still resides there;
- the nationality of one of the spouses; or,
- the law of the court before which the matter is brought.

## **How does the proposal strengthen gender equality?**

The proposal includes a number of important safeguards that preserve gender equality between the spouses. It ensures that both spouses are aware of the consequences of their choice to protect the weaker party. Notably, divorce proceedings must be started by a dated, written agreement signed by both spouses.

The proposal would also help women who were married in countries where the law discriminates against them by giving more rights to the man. Courts in the EU can apply their own law if the foreign law is discriminatory or refuse to apply foreign laws that are manifestly contrary to the public policy of the Member State.

For example, a spouse from a non-EU country living with her partner in Austria signs a marriage contract stating that the non-EU country's law applies to a divorce. After the breakdown of her marriage the woman changes her mind and would like to divorce according to Austrian law. The local family court could rule that the third country's law stipulated in the couple's marriage contract is unfair for the wife (if, for example, it states that the man can ask for a divorce but not a woman) and apply Austrian law.

## **How does it affect people who are not EU citizens?**

Couples from outside the EU living in an EU country can have extra difficulties with their divorce. In principle, the proposal also applies to third-country citizens.

For example, under existing national rules, if the marriage of a Turkish couple living in Hungary breaks down and one spouse moves to another participating EU country where the law of their common nationality applies, they would not be able to get divorced under Hungarian law. Today's proposal would allow the Turkish couple to choose Hungarian law (as the last place they lived together).

This will support better integration of immigrants in the Member States where they live by giving them the chance to ask that the law of their place of residence applies.

**Can international couples choose which court has jurisdiction to rule on their divorce?**

EU rules already set out uniform rules on the competent court and mutual recognition of divorce judgments (Council Regulation (EC) No 2201/2003 (“the Brussels IIa Regulation”). However, these do not include rules on the choice of court. Today's proposal does not change the grounds of jurisdiction of the Brussels IIa regulation.

**Does this proposal deal with the consequences of divorce?**

No, these are either covered by other EU rules, or will be covered by forthcoming Commission proposals. A common EU approach on deciding which rules apply on maintenance (alimony) issues was adopted at the end of 2008. Later this year, the Commission will make a similar proposal on which EU rules apply when it comes to the division of international couples' property in divorce procedures.