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Divorce and legal separation

A Hungarian couple living in Rome or a French-German couple living in Madrid - international couples will soon be able to follow clear rules on how to seek divorce or legal separation in 14 EU member states¹. That is the result of a regulation on which the Council agreed today ([17045/10](#)). The new rules will apply to all participating member states as of mid-2012. Other EU member states which are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

The agreement also constitutes the implementation of the first enhanced cooperation in the history of the EU². For its adoption two more procedural steps are necessary: The European Parliament is expected to adopt an opinion on the file in its December plenary session. The Council will then adopt the new rules without discussion, most likely at the Environment Council on 20 December 2010.

The new rules provide for a comprehensive legal framework in matrimonial matters ensuring legal certainty and predictability. If the spouses agree, they can choose to a certain extent the law applicable to their divorce or legal separation. The proposal, however, does not cover the consequences of a divorce or legal separation such as property issues, maintenance obligations, parental responsibility or the name of the spouses. Also excluded are preliminary questions within the context of divorce such as the validity of a marriage.

¹ Spain, Italy, Hungary, Luxembourg, Austria, Romania, Slovenia, Bulgaria, France, Germany, Belgium, Latvia, Malta and Portugal.

² EU rules governing enhanced cooperation are provided for in [Title IV, Article 20 TEU](#) as well as in [Title III, Articles 326-334 TFEU](#).

P R E S S

Many citizens affected

There are approximately 122 million marriages in the EU, about 16 million (13%) are assumed to

be international. For many of them, the regulation will bring a number of advantages:

- it allows international couples in the participating member states to know in advance which law will apply to their divorce;
- it improves legal certainty, predictability and flexibility for citizens;
- it protects weaker partners during divorce disputes and prevents the so-called "rush to court", i.e. situations where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests; and
- it lessens the burden on children in international divorce disputes.

Four options if spouses agree

If the spouses agree, they can choose one of the following laws applicable to their divorce or legal separation:

- (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded, or
- (b) the law of the State where the spouses were last habitually resident, insofar as one of them still resides there at the time the agreement is concluded, or
- (c) the law of the State of nationality of either spouse at the time the agreement is concluded, or
- (d) the law of the forum, i.e. the law of the state where the court is seized.

'Cascade system' if spouses disagree

If the spouses do not agree on one of these four options, the following 'cascade system' will designate the law of the state applicable to their divorce or legal separation:

- (a) where the spouses are habitually resident at the time the court is seized; or, failing that,
- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized, in so far as one of the spouses still resides in that state at the time the court is seized; or, failing that,
- (c) of which both spouses are nationals at the time the court is seized; or, failing that,
- (d) where the court is seized.

Special provisions for exceptional cases

The new rules respect the family law traditions of the participating member states. For example where the law of a member state does not provide for divorce (e.g. Malta) or does not recognise the marriage in question (e.g. in the case of same sex marriages), the court of that member state is not obliged to pronounce a divorce or a legal separation.
