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IMPACT ASSESSMENT

Accompanying document to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Bringing legal clarity to property rights for international couples

Proposal for a

COUNCIL REGULATION

on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

and the

Proposal for a

COUNCIL REGULATION

on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships

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1. INTRODUCTION

For the European Union it is of essential importance to ensure that citizens can move freely between all Member States, that they can live there, create a family and acquire property without any inconvenience or uncertainty. Freedom of movement and of residence are fundamental freedoms under European Union law (Article 45 of the Charter of Fundamental Rights of the European Union; hereinafter: the Charter), and any obstacles and hindrances should be tackled. It is also essential to ensure access to justice and respect of fundamental rights, in particular the right to property (Article 17), equality before the law (Article 20) and the principle of non-discrimination (Article 21).

More and more citizens in Europe move across national borders to study, to work, to live. This leads to an increased number of international couples or couples with an international dimension: spouses of different nationalities, couples living in a Member State of which they are not nationals, buying or owning assets in different Member States and sometimes they divorce or die in a country other than the one of their origin. The basic problem is that it is very difficult for people to know which courts have jurisdiction, and which laws are applicable, to their personal situation and the situation of their property. As a result, they face unintended, and disadvantageous, consequences not only in the daily management of their assets, but also when the couple separates, or when a member of the couple dies.

In 2007 in EU, 13% of all marriages celebrated in EU were international[1] (307,158), and in the same year approximately 500,000 international marriages were dissolved through divorce or death.

It is estimated that over 460 millions euro is at stake each year when international married couples separate, through divorce or death (see Annex III). As the future initiatives of the Commission would concern both married and unmarried couples, other forms of union are analysed later in this report.

Such initiatives should not only concern European couples living in Europe, but also couples where one or both parties are third–country nationals living on the territory of the EU, or European couples living in a third country. However, it has to be mentioned that in accordance with the Protocol on the position of Denmark annexed to the Treaties, Denmark is not concerned by the future initiatives of the Union.

The study undertaken for those initiatives show that international couples, or couples who own property in other Member States than the one of their origin, face many problems related to rules which apply to the couples' assets[2].

The causes of existing problems are complex and the national laws on property matter vary greatly between the different Member States – some are based on the principle of separate property of the spouses' assets (e.g. Austria), whilst others are based on the principle of community of property (e.g. France, Italy, Spain). However, even between the community property regimes there are significant differences as to the property included. Moreover, in

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1 For a definition of international couples and marriages, see annex I

2 For married couples, the notion of "Matrimonial property regimes" is used, which means the rules which apply to the spouses' assets and which define the financial relations between spouses and between the spouses and third parties (in particular creditors) – see annex I

case there are several countries involved (e.g international couples acquiring property in another Member State), several courts might have jurisdiction, and this could lead to a risk of conflicting law and judicial decisions. In this context, parties could have difficulties in enforcing a decision rendered in a State in the one in which, for example, a property is located. All these differences make it difficult for EU citizens to dispose of their properties, and could make things more complicated than expected, additional costs, lengthening of proceedings.

Europeans expect a clear set of the rules to know which court is competent to deal with their case and which law should be applicable in the daily management of their assets and at the moment of the partition of their assets (because of death, divorce, separation). This is a cross–border problem which affects a large and growing proportion of citizens in the European Union. Those actions concern international private law, and not substantive laws. Member States and stakeholders have therefore urged actions at European Union level. This impact assessment considers options for taking such actions.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Political mandate

The Stockholm programme aims for a Europe of citizens were everybody can benefit from the common area of justice, freedom and security, and called for the principle of mutual recognition *to "be extended to fields that are not yet covered but essential to everyday life, e.g. <…> matrimonial property rights and the property consequences of the separation of couples*".

Much progress has already been made towards the creation of a genuine European Area of Civil Justice, with common rules setting out which courts have jurisdiction in cross border civil and family law cases[3]. In addition, European Union Regulations provide which law should apply to cross-border cases[4]. However, the question of what happens when a couple separates in a cross-border situation is still governed entirely by national law, and a multitude of different regimes apply in the various Member States. This is usually referred to as "matrimonial property regimes"[5] and is a field where many Europeans face problems.

2.2. Organisation and timing

To support the preparation of this impact assessment, the Commission commissioned an external study[6], which was finished in March 2010. To guide the drawing up of this study, an inter-services steering group was set up with the departments most concerned, and two meetings took place, in October and December 2009.

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3 Regulation (EC) N°44/2001 OJ L 12, 16//01/2001, Regulation (EC) N°2201/2003 OJ L 338, 23/12/2003

4 Regulation (EC) N°593/2008, OJ L 177, 04/07/2008, Regulation (EC) N° 864/2007, OJ L 199 31/07/2007

5 For the purpose of this report, "matrimonial property regimes" will be used only for married couples, and "patrimonial aspects of unions…" will be used for unmarried couples.

6 By EPEC, Impact assessment study on Community instruments concerning matrimonial property regimes and property of unmarried couples with translational elements.

In 2003 the ASSER-UCL Consortium was commissioned for a study on matrimonial property regimes and the property of unmarried couples in private international law and internal law. National reports were prepared for each of the EU15 Member States and it has informed the outline of current problems. This study is available at: http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc/regimes/report_regimes_030703_fr.pdf

Since the study confirmed the existence of practical problems, in 2006 the European Commission adopted a Green Paper on conflict of laws in matters concerning matrimonial property regimes[7], including the question of jurisdiction and mutual recognition. Approximately 40 responses were received from Ministries, regional and local authorities, NGOs, legal professions and community institutions. Responses were received from stakeholders in a total of fifteen Member States.

Following a call for proposals, on 19 May 2008 the Commission set up an expert group to assist it in its work on a future legislative proposal on matrimonial property regimes, called PRM-III, which is composed of experts acting independently of the Member States, including several observer bodies[8]. This Expert Group has examined the whole range of issues at stake, such as conflict of laws, jurisdiction rules, recognition and enforcement of decisions, registration and publicity of matrimonial property regimes, civil partnerships and a optional European regime. Five meetings were arranged by the Commission in the period 2008 to 2010.

A public hearing was organised on 28 September 2009: 99 participants, from the Member States (governments and Courts), member of the expert group as well as academics, lawyers, notaries and member of civil society attended to discuss the usefulness of a European instrument on matrimonial property regimes and the consequences in terms of property rights of the separation of unmarried couples.

In addition, in the framework of the study done for the Commission in 2009 and 2010, the contractor contacted every Member State and organization of legal professionals, Bar associations, and Citizens Advice Bureau to collect information on the legal situation in the 27 EU Member States, to identify problems faced by citizens and to assess and compare policy options. National registers of property regimes, national Statistics Offices and tax Authorities were also consulted for this study.

Moreover, the European Commission organised on 23 March 2010 an informal meeting with representatives of Member States, for which were in particular presented the progress of the preparation of this report, the main lines, and to obtain their comments.

This impact assessment report was presented to the Impact Assessment Board on 2nd June 2010. This report was completed with additional information, to be in accordance with the recommendation of the Impact Assessment Board.

De facto unions

[7] COM(2006)400, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=fr&type_doc=COMfinal&an_doc=2006&nu_doc=400

[8] CNUE (conseil des notariats de l'Union européenne), CCBE (conseil des barreaux européens), Hague conférence, Council of Europe, CRE (Colegio de Registradores de Espana).

Only eight Member States have specific rules for *de facto* unions (for a definition of de facto unions, see on Annex I), and practically no conflict of law rules have been codified in the Member States so far for de facto unions. It was impossible to collect precise data and figures on the number of de facto unions in the 27 EU member States.

Legal professionals questioned about current problems for de facto unions referred to the absence of substantive law rules, but not to the lack of jurisdiction rules and conflict of law rules (the area where the EU has competence to act).

Citizens who live together without being married or in a registered partnership may have made an active choice not to have their property relations governed by a substantive law; in most countries, if those citizens wish to have their property relationships governed by a substantive law, they could choose to get married or register a partnership.

The vast majority of experts consider that an EU instrument will not provide appropriate answers to the problems faced by de facto unions. It is considered that EU level action on de facto unions is premature and cannot be justified at present. In the future, if substantive law is introduced across the EU, it may be relevant for the Commission to revisit this issue.

3. PROBLEM DEFINITION FOR MARRIED COUPLES

3.1. The basic problem and its causes

The starting point for the assessment of current problems is the legal differences between Member States in relation to property regimes for married couples. Although European Union rules exist on jurisdiction and applicable law in civil and commercial law, and in some areas of family law, no such laws currently exist in the field of matrimonial property regimes, or in the field of property rights of unmarried couples. The subject is therefore governed by national law and bilateral agreements between countries.

The concept of matrimonial property regime is used in all the Member States, with the exception of common law countries. Most of the continental European jurisdictions use this concept, and distinguish between a legal matrimonial property regime (set of rules which apply in case of lack of choice of spouses) and optional regimes based on pre- or post- nuptial agreements (‘marriage contracts’, in which spouses can, to a certain extent, choose rules which will apply to their marriages). According to which matrimonial property law applies, rules will be different, and assets will be considered as common or individual property. Indeed, in most countries the legal matrimonial property regime is based on the principle of "community property" (all or part of the movable and immovable property held or acquired by one spouse is transformed into common property of both spouses), with some differences between countries (the entire property of both spouses is held in common, or only acquisitions of spouses after the marriage…). On the opposite side, the system of separate property exists, which has traditionally been the basis of marriages in the Common law countries. Most community property regimes are restricted to property acquired after the marriage, but some of them include the whole property of the spouses (e.g. the Netherlands). Furthermore, the common law countries do not know matrimonial property at all. The same diversity of rules exists in private international law:

some Member States apply the law of the common nationality of the spouses[9], others prefer the domicile[10] or the common residence of the spouses[11]. Moreover, whilst most of the Member States apply one and the same law to questions of matrimonial property, irrespective of the location of such property, others prefer a system of splitting the applicable law and applying the *lex rei sitae* on movable property belonging to the spouses.

The preparatory work gave a particular attention to take into consideration the characteristics of national laws of each Member State[12], in particular of the common law States (in which the concept of matrimonial property regime does not exist in itself).

3.2. Who is affected?

Those affected are "International couples", who may be defined as those who live in a Member State other than the one of which they are nationals, where the spouses come from different Member States, or who have assets in a number of Member States[13]. When the couple is split, whether through divorce, separation or death, couples face great problems resolving how their assets should be dealt with – which courts are competent (questions of jurisdiction), which law is applicable? If the couple, or one of them, have debts, then creditors need to know against whom they can proceed, which property they can seize, and this will depend upon the type of patrimonial property regime applicable to the couple.

3.3. The Scope of the problem

In 2007 there were 2, 400, 000 new marriages (see Annex IV) in the European Union of which approximately 310 000 (13%) were international. In the same year there were 1, 047, 427 divorces (see Annex V), of which also 13% (137 000) had an international element (number and proportion of new international divorces steady increase since 2000). It is estimated that the number of married couples abroad getting divorced was 28 000 and married couples with assets abroad 8 000. Moreover, in the same year approx. 2.4 million marriages were dissolved through death, of which approximately 390 000 were estimated to be international. Furthermore, around 87 000 dissolution of matrimonial property regimes of married couples living abroad occurred in 2007 through death and 25 000 liquidations of property regimes of married couples with assets abroad. Hence, the total number of dissolutions of matrimonial property regimes having an international dimension because of death in 2007 was around 500 000. All in all, in 2007 more than 637 000 international marriages split through divorce or death, and in all these cases matrimonial property had to be divided up. These numbers do not include dissolutions of matrimonial property regimes for other reasons, such as separation and changes of matrimonial property regimes.

For those entering marriage the problem may be one of lack of awareness that complications might arise in the future and it is estimated (see Annex III) that the costs that could arise for these couples would be in the order of 318 million euro.

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9 For example, Art. 14 I, 15 I German EGBGB; §§ 18, 19 I Austrian IPRG; Art. 14 Nr. 1, 15 Greek ZGB; Art. 17 § 1 Polish IPRG; Art. 9 II, III Spanish Código civil.

10 For example, United Kingdom, Ireland.

11 For example, Art. 51 Nr. 1 Belgian IPRG; Art. 13 I Latvian ZGB.

12 a table collecting pieces of information on the differences on choice of law and choices of jurisdiction in national legislation of EU Member States is provided in Annex II.

13 A more complete definition of "international married couples", including non-EU nationals living in the EU, is provided in annex I

For those already married the problem may be due to one spouse (aware or not of their lack of rights) wishing to dispose of property without the consent of their partner. Such circumstances will cause a problem for the third party potential purchaser and an estimated notional cost would be in the order of 160 million euro.

For those international marriages divorcing the estimated cost that could be addressed by the policy options is 205 million euro.

The problems arising when international marriages are dissolved through the death of a partner are similar to those arising through divorce; the estimated notional cost that could be addressed by the policy options is 257 million euro.

In total the order of magnitude of the costs to international married couples of the problems that could arise while liquidating the matrimonial property is estimated to be 1.15 billion euro per annum (see Annex IV).

In addition, property may also have been acquired by married couples living in a Member State other than their country of origin. The estimated value of the problem per annum that may result from these matters is 135 million euro per annum (see Annex III).

Additionally, married couples (international and not) could acquire, for leisure or investment purposes, a property in a Member State other than their country of habitual residence, and it may lead to the problems with the total costs of 72 million euro (see Annex III) for marriages with property (either communal or separate) held in different Member States.

4. PROBLEM DEFINITION FOR UNMARRIED COUPLES

4.1. The basic problem and its causes

The causes of current problems for registered partnerships are basically the same as for married couples in terms of differences between jurisdiction rules, conflict of law rules etc. in the Member States. However, there are some important additional challenges because the concept of registered partnerships in itself exists only in 14 Member States: Austria, the Netherlands, France, Hungary, United Kingdom, Czech Republic, Denmark, Slovenia, Finland, Germany, Belgium, Luxembourg and Ireland (in Sweden, it was possible to register partnerships from 1994 until same-sex marriages were allowed in 2009), and not all Member States have substantive laws on this matter, and even fewer have adopted jurisdiction rules and conflict of law rules. As a consequence, the issue of the recognition of the concept of registered partnership would need to be tackled, while the notion of marriage exists in all Member States.

Furthermore, it is not possible to simply adopt the jurisdiction and applicable law rules developed for matrimonial property regimes: a future regulation on patrimonial aspects of registered partnerships could not determine the court which has jurisdiction if it is in a State that does not recognise registered partnership, or to determine that the applicable law if the law of a country that does not recognise registered partnership. Besides, contrary to matrimonial property regimes, decisions on the dissolution on registered partnerships cannot be recognised under Regulation N°2201/2003: consequently, it cannot be planned that the court which has jurisdiction to deal with the "divorce" of a registered partnership

under that Regulation has its jurisdiction extended to patrimonial aspects of the dissolution of this partnership.

4.2. Who is affected?

Those affected are "International couples", who may be defined as those who live in a Member State other than the one of which they are nationals, where the partners come from different Member States, or who have assets in a number of Member States[14]. When the couple is split, whether through separation or death, couples face great problems resolving how their assets should be dealt with – which courts are competent (questions of jurisdiction), which law is applicable? If the couple, or one of them, have debts, then creditors need to know against whom they can proceed, which property they can seize, and this will depend upon the patrimonial aspects of the registered partnership applicable to the couple.

4.3. The scope of the problem

In 2007 there were approximately 211,000 new registered partnerships in the EU, of which over 41,000 had an 'international dimension' with regard to their matrimonial property (total of international registered partnerships, registered partnerships living abroad or having property abroad). It is difficult to compare the number of registered partnerships, because it is a more recent concept than marriage. However, these numbers are significantly increasing. Of these 8500 (4%) end in separation and 1,266 (0.6%) end in death per annum (see Annex VI).

Indeed, it has to be pointed out that the concept of registered partnership is a recent one, appeared in 1989, which already exists in 13 Member States. Statistics show that the number of registered partnerships increases regularly, and the number of liquidations of patrimonial property (including those having an international dimension) due to the separation of partners, or of the death of the one of them, should increase in the same way.

The average value of property regimes with a transnational element is indicated to be noticeably higher than for purely national property regimes. Besides, all the practitioners indicated that the proportion of property regimes of registered partnerships with cross-border elements is steadily increasing.

The magnitude of the costs to international couples in registered partnerships relating to the problems that could be addressed by the policy options is estimated to be 17 million euro per annum could not be compared with sums for international marriages, but it could be estimated at several millions of euro each year. Moreover, this figure is expected to increase with the increasing number of registered partnerships and the number of Member States which provide internal rules on registered partnerships.

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[14] A more complete definition of "international married couples", including non-EU nationals living in the EU, is provided in annex I

5. IDENTIFIED PROBLEMS

5.1. Problem 1 - Problems relating to the determination of which court and body is competent to handle the case

A. It is difficult for couples to predict which courts will handle litigation on matrimonial property.

Due to different national rules at the time of the dissolution of patrimonial assets it is often not clear which Member State is competent to handle the case. It might happen that the case can be brought to court in different Member States and consequently one couple can have two parallel court proceedings and two decisions, which might conflict. The costs of several proceedings must also be taken into account.

This is further complicated by the fact that some countries' national laws cover both movable and immovable property, whereas others have a split system where movable and immovable property is covered in the country where it is physically situated.

If one member of the couple is aware of this they might rush to the court in a Member State where more favourable law for him/her would be applied. This rush to court, or "*forum shopping*", significantly decreases legal certainty for the other spouse or partner, as indicated in the example below:

Citizens rush to court as they know that they will have more advantages if the liquidation is done in one Member State rather than another. This is particularly the case between France and the United Kingdom as the latter is known to generally be more favourable to the most vulnerable party (normally the wife) whereas the former is normally more favourable to husbands.

B. Competence of different non-judicial authorities to handle cases concerning matrimonial property regimes.

In different Member States non-judicial authorities are competent to handle matrimonial property regimes. In 21 of the 27 EU Member States exists the body of notaries: public officers who establish and certify acts and contracts. They are not always competent to liquidate matrimonial property regimes in other countries and citizens often have to deal with liquidation including immovable property in different Member States. In this situation, problems arise including having additional costs and time delays and citizens having to rely on different non-judicial authorities in different Member States.

C. Difficulties because of the relationship between jurisdiction on matrimonial matters and other rules

When different courts are competent for divorce, succession and matrimonial property liquidation, citizens face different proceedings in different jurisdictions, which may apply different national laws. These proceedings may lead to different, and sometimes conflicting, results. The costs of having different proceedings in different Member States are high.

5.2. Problem 2 - Problems relating to the applicable law

A. Conflicting laws are applicable to property regimes.

If proceedings are started in several countries at the same time, the outcome will be uncertain because of the differences between Member States' property regimes, especially because some Member States have a system of common property while others consider property to be separate. Connecting factors are factors in national laws, or international conventions, to determine which law should be applied (as an example, habitual residence of the spouse/partner, common nationality…). At the moment each Member State uses its own conflict of law rules, under which different connecting factors (common nationality or domicile/habitual residence of the spouses/partners, physical location of immovable property etc.) determine which law should be applicable to the dissolution of the property regime. This may result in negative consequence for the spouses/partners:

> **Example:** *the movable property of a German couple living permanently in England is governed by German law according to German conflict of law rules (common nationality), whereas it is governed by English law under English conflict of law rules (domicile). As a consequence, conflicting judgments of German and English courts on the liquidation of the matrimonial regime are possible, and may lead to problems with regard to the recognition of these judgments.*

Even if the same connecting factor is used in the Member States concerned the respective conflict of law rules refer to different moments in time:

> **Example:** *A Hungarian husband and his Greek wife married in Greece and lived there for three years after the marriage, then moved to Hungary where the marriage failed after a further two years. In this case the liquidation of the matrimonial regime was governed by Greek substantive law under the Greek conflict of law rule (common habitual residence of the spouses at the time of marriage), whereas it is governed by Hungarian substantive law under the Hungarian conflict of law rule (common habitual residence of the spouses at the time of divorce).*

For registered partners, legal uncertainty is extremely high because most of the Member States have not even developed any codified conflict of law rules.

> **Example:** *If a same sex couple living in France involved a French national or the couple was habitually resident in France, they could register a French PACS (civil partnership) and upon death the survivor was exempt from French succession duty. Similarly, a French PACS is recognised in England as a Civil Partnership and the surviving partner is exempt from UK inheritance tax. However, if same-sex couple (both UK citizens), who concluded a civil partnership in the UK, moved to France, their partnership was not recognised for tax purposes and upon death the survivor had to pay 60% tax on the French assets, with the result that he had to sell his home. France modified its law in 2009 to solve this issue.*

B. Unexpected and unintended consequences related to a change in the connecting factor concerning matrimonial property regimes

In some countries the law applicable to the matrimonial property regime changes automatically following actions by the spouses (for example, moving to another country) without them being notified. This may lead to unexpected and unintended consequences as a law other than the one expected may be applied, in which the provisions may be very different to the expectations of the spouses:

Example: *an English couple living in France for ten years, without making any choice of law, automatically becomes subject to the legal regime in France. The couple was not aware of the automatic change of the applicable law. The consequences of this modification are considerable as there are many differences in the substantive laws of the two countries.*

Example: *in France the principle of mutability applies. At present, there is a problem of legal uncertainty for international couples or couples moving abroad. The couples are usually unaware that a change in their habitual residence will affect the law applicable to their property regime. Unmarried couples are also sometimes unaware that some Member States do not recognise their form of union and that when moving abroad their partnership may not be recognised under the law of their new country, leading to significant complications.*

Legal uncertainty arising from the mutability principle is therefore higher for unmarried couples than for married couples.

C. Differences in the ability to choose the applicable law and, when a choice is possible, between what laws a choice is allowed in cases with transnational elements

As mentioned above, members of a couple can decide to choose which rules will apply to their property regimes by agreement ("marriage contracts", for married couples). When spouses/partners are aware of the differences of conflict of law rules governing property in the Member States in which their properties are situated and they are also aware of the resulting problems, they may wish to get around this by drawing up a marital contract and choosing a single law applicable to all their assets irrespective of the countries in which movable or immovable properties are situated. Choice of law seems to be possible in most, but not all Member States. Furthermore, the limits set up by the Member States are very different. Therefore, the choice of law made by the spouses/partners may be recognised in one Member State, but not in another Member State where property is located, leading to the choice not being respected.

Example: *English law is unclear as to whether it is possible to choose different laws for different assets. The choice of French law for French real estate is valid in France; however, there is no case law or any other indication / guidance as to whether it is valid in England and Wales as well.*

D. Difficulties because of relationships between applicable laws on property regimes and other rules.

It might be problematic when both the applicable law on property regimes and the applicable law on succession provide rules to secure cover the surviving spouse/partner, or when both of the laws assume that the surviving spouse/partner will be properly under the other regime, thus potentially leaving the spouse/partner without any share in the estate of the deceased, contrary to the desire/will of the deceased.

Example: *one member of a Swedish couple owned an apartment in Portugal. According to Swedish succession law the ownership should have been transferred to the widow but there was a risk that the Portuguese authorities would not accept the ruling so the ownership was never transferred.*

In case of a split system in which the applicable law for immovable property (*lex rei sitae*) might be different from the law for movable property (domicile or nationality of the spouses/partners) additional problems result since both laws might have to be taken into consideration to reach an equitable solution.

5.3. Problem 3 - Lack of automatic recognition and enforcement of judgments in property regimes

The recognition and enforcement of judgments on property matters is regulated either by bilateral Conventions/Treaties between certain Member States or by the national procedural law of the Member States. Whereas foreign judgments on property regimes are automatically recognised in some Member States (Austria, Czech Republic, Greece, Germany, Hungary, Italy, Sweden), recognition is granted in special proceedings by court ('exequatur') in other Member States (Belgium, France, Lithuania, Luxembourg and the Netherlands).

The lack of automatic recognition and the variety of different documents required in different Member States causes problems for international couples – time delays and incurs higher expenses than for cases where this is not necessary:

Example: *A Spanish citizen married a man with a double nationality: Dutch and German. The couple married in Düsseldorf (Germany) in 1965. Their matrimonial property was (automatically) governed by a community regime; both spouses were aware of this. For cultural and practical purposes, the Spanish wife changed her nationality, after marriage, from Spanish to Dutch and the couple moved to the Netherlands. They owned property both in Germany and in Spain.*

At the time of the divorce, both parties had their habitual residence in the Netherlands and were of Dutch nationality, and therefore the proceedings took place in the Netherlands. During the divorce proceedings, the parties agreed that the husband would keep the property in the Germany whilst the wife would keep the property in Spain, an agreement that was formalised by a letter written and signed by the husband confirming that he passed on the ownership rights of the Spanish property to his ex-wife. However, before the conclusion of the divorce the wife had to move back to Spain for health reasons and established her habitual residence there. This had unintended consequences when she decided, a year after the divorce, to name their children as the legal owners of the property in Spain. As she started the procedures for the transfer of property rights, she discovered

that she needed her husband's consent to do so because she was married under the community of property regime and the letter drafted by her ex-husband (which would have been sufficient to transfer property under Dutch law) was not recognised in Spain. As she was now under Spanish law, to confirm that she was the owner of the property she needed either a notarial act or the permission of her ex-husband to give the property to their children.

The case is coming to an end after twenty years of legal proceedings and fees after her ex-husband agreed to sign before a notary a document transferring property ownership rights to the children.

On the recognition of judgments concerning property aspects of registered partnerships, in some Member States (in particular, Latvia and Slovakia) judgements concerning property of unmarried couples are not recognised and therefore not enforced. On the other hand, few Member States (in particular, Austria, Czech Republic, Malta, Poland, Lithuania and Romania) affirmed that the general rules on recognition and enforcement for registered partnerships are the same as those described for married couples.

5.4. Problem 4 – Inadequate information for third parties on the existence of property regimes

At present only 3 Member States have a central register of marriage contracts, 12 Member States have decentralised registers and 4 countries do not have registers. Consequently, it may be difficult or impossible to access information on existing property regimes abroad, which in turn brings about other negative effects for citizens (costs, time delays etc.). Problems experienced by third parties wishing to buy property or land from a couple will persist. It is difficult for third parties to know whether the spouse or partner selling the property is autonomous i.e. if there is separation of property one can sell the property without the consent of the other.

When a spouse enters into a contract with a third party, or borrows money from a bank, it is important for the third party or for the creditor to know what's going on if this spouse become insolvent: they need to be aware on the existence, or not, of a marriage contract; and to know which law would apply on property assets of the couple. If common property exists, creditors have recourse against that and the private capital of both spouses. On the other hand, if the spouses or partners have chosen a separate property regime, each spouse is only liable for the debts which he or she has contracted, while his or her creditor only has recourse against his or her own capital. So there are more citizens then only the spouses and partners, who are interested in gathering information about existing matrimonial property regimes as well as the matrimonial property regime of the couple in question (common or separate property).

Example: *as no national register of marriage contracts and matrimonial regimes is currently in place in France, third parties have to go through a long procedure in order to access this information. Third parties can access information on the matrimonial property regime chosen by the spouses by checking the birth certificate of one the spouses (subsequent a special authorisation).*

Furthermore, extracts of birth certificates cannot be accessed by everyone. According to a decree, only the person concerned, his/her spouse, parents children, legal representative or a person with a special authorisation can access this information. A prosecutor can also

ask to access this personal information in the frame of a proceeding.

Example: *according to a French lawyer, at present it is not possible to access information about the regime applicable to the property of a registered partnership as no national register has been established in France. The Convention (PACS contract) drafted between the partners is kept by the partners themselves or by a notary (in case the convention as been drafted before the latter – however this constitutes only a minority of the cases). Creditors and other third parties therefore cannot know the financial arrangements between the members of the couple.*

6. NEED FOR ACTION AT EU LEVEL FOR MARRIED COUPLES AND REGISTERED PARTNERSHIPS

6.1. Baseline scenario - how would the situation evolve, all things being equal?

European citizens face problems related to property regimes at several circumstances: when couples get married, for one or both spouses and for third parties when one spouse dispose an asset where it is communal, when married couples divorce and when one of the spouses die. Considering that marriages, partnerships, divorces and separation will continue, the problems which are indicated now will not disappear as citizens will keep facing them not only in these important time of their life, but also in their daily management of assets.

As already mentioned under point 3.3, the total costs that could arise while liquidating the matrimonial property are estimated to be 1.15 billion euro per annum. Although there is a slight decrease in the number of international marriages and fairly stable trend in international divorces, the indicated costs are likely to remain the same. The costs affecting the dissolution of registered partnership are estimated to be more then 17 millions. Those costs correspond to the absence of Europe in matrimonial property regimes and for property effects of registered partnership. The costs are link e.g. to the matrimonial/ patrimonial property regime differences and most of these costs accrue as fees to lawyers.

The scale of the problems related to registered partnerships is small compared with those related to marriages with international elements. However unlike the latter, the scale of the problem related to registered partnership is likely to increase in the future. This is because of the growing number of registered partnerships and particularly international registered partnership on one hand, and the increasing number of property acquisitions by EU citizens in other EU Member States on the other. Besides, it should be considered that, since 1989, 12 Member States (plus Sweden) have adopted specific rules on registered partnerships. Furthermore, at national level Lithuania, Estonia and Ireland are examining the possibility to introduce legislation allowing registered partnerships. The number of registered partnerships is increasing, and consequently difficulties linked with their dissolution due to separation or death will increase in the future.

Not taking any new action at EU level does not necessarily mean there will be no improvement in the situation. Assuming that the Commission's proposal on successions and wills which is currently being negotiated will be adopted, this should improve the situation when couples are split by the death of one member of the couple, by providing greater legal certainty.

Considering the problems citizens face, if no action is taken at the European Union level, the legal uncertainty will remain for the future and international couples as well as married couples owning property in different Member States will have to face the above mentioned problems.

6.2. Legal framework in place

Matters concerning the right of property arising out of matrimonial property regimes and property of registered partnerships are excluded from the scope of the existing European Union instruments on mutual recognition and enforcement.

Spouses (regardless of their nationality) of EU nationals have the right to move anywhere in the European Union with their spouse under Council Directive 2004/38/EC[15]. However, the rights of registered partners are more limited, and if they are not EU citizens they only have rights as family members if the host Member State treats registered partnerships as marriage.

There are currently vast differences between Member States' international conflict rules on matrimonial regimes, with very little international cooperation. Only few member States provide specific rules on conflict of law for registered partnerships in their national legislation.

In this field two main international multilateral instruments exist: the Hague Convention of 17 July 1905 relating to conflicts of laws with regard to the effects of marriage on the rights and duties of the spouses in their personal relationship and with regard to their estates, and the Hague Convention of 14 March 1978 on the law applicable to matrimonial property regimes. However, these Conventions, which concern only married couples, have only been ratified by 3 Member States.

An ICCS (International Commission on Civil Status) Convention of 2007 on the recognition of registered partnerships should also be mentioned, and a number of multilateral and bilateral agreements exist, but they do not resolve all the problems.

These Conventions are examined bellow in the part on discarded options.

6.3. Does the EU have the power to act?

A. Treaty base

Article 81 of the Treaty on the Functioning of the European Union is the legal base for judicial cooperation in civil matters following the entry into force of the Lisbon Treaty. It provides that the European Parliament and the Council shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring [inter alia]:

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[15] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *OJ L 158, 30.4.2004, p. 77–123*

- the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases

- the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction

- effective access to justice

- the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States

Article 81(3) of the TFEU makes it clear that when such measures concern family law, the Council shall act unanimously after consulting the European Parliament.

B. Necessity test (Subsidiarity)

The problems identified above show clearly that we are dealing with transnational or cross-border situations which by their very nature cannot be properly dealt with at the level of the individual Member States. EU level action in the closely related fields of divorce, parental responsibility and civil and commercial litigation have made a clear and significant contribution to helping citizens solve cross border legal problems related to their day to day lives. The Commission's proposal on wills and successions is a further example of the added value of action at EU level in terms of solving problems due to incompatibilities of the Member States' legal systems. Actions on property regimes for married couples and registered partners would help solve a large number of problems for citizens but would not interfere in purely domestic scenarios, thus going no further than is necessary.

It has to be kept in mind that the future Union Instruments would not involve harmonisation of the substantive laws on property relations between spouses or between citizens who have registered a partnership, which is outside the scope of the Commission’s competences.

7. OBJECTIVES AND DESCRIPTION OF POLICY OPTIONS

The overall objective of the Proposals is to contribute to the creation of a genuine European area of civil justice in the field of matrimonial property regime and in the field of patrimonial aspects of registered partnerships.

The general and specific objectives are summarised in the following table:

General and specific objectives	
General objectives	Specific objectives
To remove the remaining restrictions on citizens exercising their rights in the European judicial area through the extension of mutual recognition to matrimonial property rights and the property consequences of the separation of couples.	To prevent the occurrence of parallel proceedings and of the application of different substantive laws to the property of a married or unmarried couple.
	To ensure spouses and partners are able to choose, as far as is appropriate, the rules and legal provisions applicable to their situation.
	To facilitate the recognition and enforcement of judgements and other decisions relating to international property regimes of married and unmarried couples.
	To make it possible for parties of a couple to bring all legal matters relating to their case (as a result of separation or death which brings about the liquidation of the matrimonial regime) before the same court.
	To ensure that spouses and partners know, where they have not chosen an applicable law, which law will be applicable in the event of liquidation of the property regime.
	To ensure compatibility with other proposed EU rules (e.g. in relation to successions and wills and, for married couples, applicable law in divorce proceedings).
	To increase access to information on matrimonial and property regimes.

The Study carried out by the contractor (EPEC Consortium) proposed 10 policy options, and analysed separately married couples, registered partnership, and problems on the information on property regimes of spouses and partners. For the purpose of this report, the most relevant 7 policy options have been indentified and analysed.

Policy options that address problems caused by national legislative differences concerning property regimes for married couples and registered partnerships with transnational elements:

Policy Option 1: Status quo

Policy Option 2: Provision of targeted information provision to raise citizens' awareness that patrimonial property regimes may not be the same in other Member States

Policy Option 3: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments

Policy Option 4: Harmonisation of conflict of law rules

Policy Option 5: Uniform optional European proforma for marriage contracts

Policy Option 6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments

Policy Option 7: Provision of information for third parties on the existence of property regimes of married couples and couples in registered partnerships

8. DISCARDED POLICY OPTIONS

It was not possible or relevant to assess in detail all theoretical policy options, or all different combinations of elements (e.g. different connecting factors, choice of law etc). Certain policy options have therefore been discarded after an initial evaluation, as follows:

- *Harmonisation of jurisdiction rules*: Simply harmonizing jurisdiction rules without a parallel harmonization of the rules on recognition and enforcement of judgments does not make sense, because harmonization of jurisdiction rules is only a means to facilitate the mutual recognition and enforcement of judgments between the Member States. On the basis of harmonized jurisdiction rules there is no need for control of jurisdiction by the courts in the State where recognition and/or enforcement is sought. For this reason, all existing EU regulations on international civil procedure law (Brussels I, Brussels II a) as well as Regulation (EC) No. 4/2009 of 18 December 2008 on maintenance matters[16] combine both aspects.

- *Introduction of rules on automatic recognition and enforcement of judgments and other decisions*: automatic recognition and enforcement of judgments of other Member States requires harmonization of jurisdiction rules. Both aspects are so closely connected that an EU instrument on matters of matrimonial property regimes necessarily has to combine both elements (as explained above relating to the option on "harmonization of jurisdiction rules").

[16] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:007:0001:0079:EN:PDF

-*Mutual recognition of the choice of law made by spouses/partners:* not the Member States allow the choice of applicable law in this field. Introducing the principle of freedom of choice results to establish already a common rule. However, when no choice is made, common rules are still needed, to ensure a complete and coherent system. If only the choice of the applicable law is introduced without any harmonisation of the relevant rules in the absence of such choice, national rules will continue to apply in this area, and therefore legal security and coherence will not be ensured. For the Member States which know the possibility of choice, there must be common rules to determine common connecting factors. Otherwise, the strongest part could impose the choice of the law which is the most advantageous on the detriment the weaker part.

- *Ratification by the EU and its Member States of the Hague Convention of 17 July 1905 relating to conflicts of laws with regard to the effects of marriage on the rights and duties of the spouses in their personal relationship and with regard to their estates*: this Convention[17] (which concerns only married couples) establishes rules with regard to the effects (personal and financial) of marriage. In practice, the Convention has principally lost its significance; because only a small number of countries are bound by it (it applies in Italy, Portugal and Romania). Furthermore, because its rules include the choice of law of the nationality of the husband, this international Convention is in conflict with the fundamental principle of equality of the spouses making it impractical to apply in full[18].

- *Ratification by the EU and its Member States of the Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes (which concerns only married couples):* this Convention is restricted to the determination of the law applicable to matrimonial property regimes. The Convention does not cover the questions of jurisdiction and of recognition/enforcement of judgments. The conflict of law rules of the Convention are based on a (limited) choice of the applicable law, but if the spouses have not chosen the law applicable, their matrimonial property regime is governed by the internal law of the State in which they both establish their first habitual residence. However, this Convention provides a rule of automatic change of applicable law, without the spouses necessarily being aware of it. Consequently, the result of liquidation of matrimonial property regime might be unpredictable and surprising, providing very little legal security. This might be the reason that in more than 30 years only three States (the Netherlands, Luxemburg, France) have ratified the Convention.

- *A particular option which was analysed with respect to registered partnerships is accession of the EU and Member States to the ICCS Convention on the recognition of registered partnerships, opened for signature on 5 September 2007*, but this only provides rules on recognition of the notion of partnership (which would be helpful for the preliminary question of the recognition in itself of the registered partnership), but does not include rules on jurisdiction, applicable law, recognition and enforcement. Moreover, this Convention has not been ratified by any Member State. Consequently, the ratification of the ICCS convention by all Member States could not solve problems met by couples in a registered partnership, although it might be a helpful first step.

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17 http://hcch.e-vision.nl/index_en.php?act=text.display&tid=17

18 EJN refers to Portugal, where, as a consequence, the law which normally governs the effects of marriage is the one designated under conflict of laws rules in the Portuguese Civil Code. http://ec.europa.eu/civiljustice/applicable_law/applicable_law_por_en.htm

- *With regard to the non-legislative options, alternatives considered include*: benchmarking, training of legal professionals, codes of conduct, the adoption of a Communication or an action programme and the exchange of good practice. However, none of these alternatives seem to generate many benefits for the achievement of the policy objectives on their own. Therefore, they have been discarded as such, but may be borne in mind later on as flanking measures for legislative options.

9. RETAINED POLICY OPTIONS

9.1. Policy Option 1:

Status quo: under this option there would be no new common EU (legislative) action in the area of property regimes, although the present situation would follow its natural development at national, EU and international level.

9.2. Policy Option 2:

Targeted information provision to raise citizens' awareness that rules on property regime may not be the same in other Member States: information would be distributed to citizens who are about to get married or enter into a registered partnership that the property regime may change in case of a move or acquisition of property abroad. For example, short information leaflets could be prepared and distributed at the time citizens register to get married (or to enter into a partnership) , or when they undertake administrative steps in relation to a move to another Member State. The leaflets would contain some limited generic information concerning that the fact that their property may be subject to different rights and constraints. The leaflet would need to be translated to all EU languages. The text would be common for all EU countries.

9.3. Policy Option 3:

Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments. This option would imply EU legislation establishing harmonised jurisdiction rules and rules on automatic recognition and enforcement of judgments and other decisions. Although it is a "heavier" instrument, a Regulation would be more appropriate than a Directive because only a Regulation would apply identically in all the Member States, which is essential if there is to be a harmonisation of rules.

Harmonisation of jurisdiction rules

Special rules on jurisdiction with regard to the dissolution of the matrimonial regime. The dissolution of the property regime often coincides with the dissolution of the marriage or partnership due to divorce /separation or death. The special rule would imply an extension of the jurisdiction of the court dealing with this divorce (according to Regulation N°2201/2003) or with the succession (according to the proposed Regulation on succession and wills) to have also jurisdiction with regard to the dissolution of the property regime.

General rule on jurisdiction: In other cases, jurisdiction would be determined on the basis of a hierarchy of connecting factors. The following criteria (in line with those criteria already existing in the other Regulations in this field) should be considered: the spouses' or

partners' common habitual residence; the last habitual residence of the spouses or partners if one of them still resides there; the habitual residence of the respondent.

Rules on residual jurisdiction and on *lis pendens* would be introduced (on the basis of those already existing in the other Regulations in this field).

Rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds

Rules concerning the automatic recognition and enforcement of judgments and other decisions would be introduced. The general rule would be automatic recognition of judgments and other decisions given in one Member State in matters of matrimonial property regimes in all other Member States. This means that no review as to the substance of a decision would be made, and no special procedure of recognition is required.

Common grounds for refusing to recognise foreign judgments and other decisions would be introduced, on the basis of those already existing in other Regulations still existing (ex: *judgment manifestly contrary to the public policy).*

9.4. Policy Option 4:

Harmonisation of conflict of law rules

Under this option, there would be EU legislative action in terms of adoption of harmonised conflict-of-law rules on property regimes. As explained above, the only appropriate instrument would be a Regulation.

A (limited) choice of law would be introduced, but restricted to laws which are sufficiently connected with the property regime of the spouses or partners. This choice of law could be limited to the following laws: (i) Law of the habitual residence of either spouse or partner; (ii) Law of the nationality of either spouse or partner. It should be possible to make a choice of law at any time during their marriage or partnership and they should also be free to change a choice of law made at an earlier stage. It has to be considered that the extent of the choice of law could not be the same for married couples and couples in a registered partnership. Indeed, partners could not choose as applicable law to their partnership the law of a State that does not provide rules on registered partnerships in its national legislation.

If no choice of law was made, a system based on a **hierarchy of connecting factors** would be applicable: (i) Common or first habitual residence of the spouses or partners; (ii) Common nationality of the spouses or partners; (iii) Other close connection of the matrimonial regime to the law of a State. The definition of habitual residence would follow that of the ECJ ("permanent and usual centre of interests of a person chosen by the person with the intention to live there permanently"). For the same reason as mentioned above, the list of connecting factors that applied in case of lack of choice of law could not be the same for registered partnerships.

A **unitary system** would be established, i.e. all property, both movable and immovable property, wherever it is situated would be subject to a single law.

Principle of immutability. The conflict of law rule in property matters should be based on the principle of immutability of the property regime. This means that the legal framework

of the property regime of the spouses will remain unchanged during the marriage or partnership. In particular there will be no automatic change of the property regime on the ground that a relevant connecting factor has changed.

Renvoi (system by which the applicable law provides that in fact another national law should apply to the case) is not accepted, and **rules would be universally applicable (**i.e. the conflict of law rules would apply also in relation to third countries).

The **scope of the rules**: positive definition of the concept supplemented by a **list of matters that are expressly excluded**. In order to have a common definition, because the scope of matrimonial property law is defined very differently in the national laws of the Member States, and the concept of matrimonial property law in the sense of continental law is not even known to the common law countries, it would be defined in a positive way.

9.5. Policy Option 5:

Uniform optional European proforma for marriage contracts

The main features of this model are as follows:

– The form of the agreement is an instrument drawn up by a notary in accordance with his/her local law.

– The agreement contains the following typical clauses: (i) on the choice of the property regime (of a certain national law), (ii) on the choice of the applicable law, (iii) on the information clauses for third parties about the general rules of the property regime chosen by the spouses or partners (who is the owner of which property, what are the responsibilities of the spouses or partners for debts incurred, and the effects of regime chosen for and against third parties).

A proposal for a uniform optional European proforma for marriage contracts was drafted by notaries from different European countries[19]. This draft regime, of which some parts would need to be adapted to the specifics of the national situation, includes an outline of provisions as well as guidance for notaries/other legal professionals that would assist with the drawing up of the regime.

This proposal is not a European matrimonial regime in the sense there no harmonisation of substantive matrimonial property law, but only the introduction of a optional model form for ante- and postnuptial agreements ("marriage contracts").

9.6. Policy Option 6:

Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments

This option, which would imply EU legislative action in the form of a Regulation, would combine options 4 (on harmonisation of conflict of law rules on international property regimes) and 3 (jurisdiction rules and rules on automatic recognition and enforcement of judgments).

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[19] The experts were from the following countries: Germany, England and Wales, Austria, Spain, France, Greece, Italy, the Netherlands, Poland, Romania and Switzerland.

9.7. Policy Option 7:

Provision of information on property regimes of married couples and registered partnerships

This option could be achieved in a number of different ways:

- Creation of a webpage of existing registers of matrimonial property regimes, property regime aspects of registered partnerships and national rules

- Creation of a database/knowledge management system on existing registers of matrimonial property regimes, property regime aspects of registered partnerships and national rules

- Commission Recommendation on (i) the establishment of national registers of matrimonial property regimes and property regime aspects of registered partnerships; and, (ii) interconnected national registers; and, (iii) the organisation of information campaigns on these

- Compulsory establishment of interconnected national registers of matrimonial property regimes and property regime aspects of registered partnerships.

10. ANALYSIS OF THE IMPACTS OF POLICY OPTIONS

10.1. Policy Option 1: Status quo.

(i) Objectives to achieve: This option would not meet the objectives indicated above. The Member States are unlikely to streamline their national rules (both with regard to jurisdiction rules and conflict of law rules) – they may make changes to their national legal systems on their own initiative, but it is unlikely that these will be made with a view to harmonize the country's rules with those of other EU Member States. In particular, variations between national systems in terms of (i) community property and separate property, as well as (ii) unitary systems and systems of separate conflict of law rules for movable and immovable property are likely to remain. On the contrary, it is possible that the existing problems are likely to become aggravated in view of current trends of citizens – moving to another country, getting married with citizens from other countries, having assets in other countries. In summary, this option does not imply any positive effects for citizens or third parties and problems would become worse.

(ii) Fundamental rights: Maintaining the *status quo* would mean that the fundamental right to property according to Article 17 of the Charter, which also protects the right of the spouse or partner to property acquired during the marriage/partnership in case of dissolution of the marriage/partnerships, would not be fully ensured because different jurisdictions or laws may apply to the same property which would incur long proceedings to determine which court will handle the case or which law will apply, thus significantly delaying access to property. Furthermore, the fundamental rights in Articles 20, 21 and 23 of the Charter (equality before the law, non-discrimination and equality between men and women) would not be fully ensured when, in the case of divorce or separation, one party can rush to a court that may be more favorable to him/her.

(iii) Social effects: The problems experienced by the weaker party in the couple during separation proceedings are also likely to remain as the spouse or partner in a better financial situation may hire a legal professional for advice and consequently rush to the court where they are most likely to get the most favorable financial outcome for their case.

(iv) Financial costs: This option itself would not imply any financial costs to the EU or other public authorities.

(v) Economic effects: The problems experienced by economically disadvantaged are likely to remain as legal professionals will be able to charge more for increasing numbers of complicated cases due to links to two or more countries. Time delays and costs, including reduction of the value of assets will become worse than at present.

10.2. Policy Option 2: Targeted provision of information to raise citizens' awareness that the property regime may not be the same in other Member States and that they can register their regime

(i) Objectives to achieve: This option would have some limited positive impacts with regards to achieving the objectives. Firstly, it could to a very limited extent prevent the occurrence of parallel proceedings and the application of different substantive laws, if the information provided would lead to that a higher proportion of couples take precautionary measures, e.g. in the form of a marriage or partnership contract and choice of applicable law. Although this option would not introduce any rules concerning the ability for the citizens to choose the law applicable to their property, as citizens are made aware that their property regime may change if they move to another Member State, they may be more inclined to seek advice and take necessary steps to ensure that this does not have significant negative consequences in the future.

However, it is also possible that despite being aware, couples decide that it is not necessary or desirable for them to take precautionary measures, or they may not agree on what law to choose. Furthermore, given the vast differences between national legal systems it is also possible that measures taken in the contract may not be valid in the place where proceedings are being handled or that a choice of law is not possible. An information campaign would raise awareness amongst spouses and partners that it is important for them to be aware of their property regime, and that they have the possibility to register their property regime and may therefore encourage them to do so.

(ii) Fundamental rights: This option would have a positive impact on Article 17 of the Charter (right to property). Upon being informed of the possible consequences of moving to another country on their property regime, a couple can decide to draw up a marriage contract, or a partnership contract. This would therefore ensure that the parties have agreed on the measures to be taken in relation to their property in the event of divorce or death, thus respecting both parties' right to property. Furthermore, this option would also have a positive impact on third parties wishing to purchase the property from the couple as a contract would clarify who is entitled to sell and under what conditions. However, this would be only marginal impact as such measures may not be taken despite awareness of potential problems, or that the measures are not valid.

(iii) Social effects: There would be minor improvements compared to the present situation. In particular costs for legal advice and assistance could slightly decrease in case adequate

precautionary measures (choice of law) were taken to reduce the likelihood of problems and if these measures are recognised by the Member State handling the proceedings.

(iv) Financial costs: The costs related to producing the information leaflets would amount to 2 million euro per year including drafting, amendments, translation and distribution costs.

(v) Economic effects: it is estimated that this option would lead to maximum 4% savings of the estimated costs, which a new initiative should address.

10.3. Policy option 3: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments, decisions and deeds.

(i) Objectives to achieve: This option would have a limited positive impact; however it would have some advantages compared to the current situation. The rules of jurisdiction would be harmonized and rules on *lis pendens* would be introduced, thus the couples would be able to avoid parallel court proceedings. It would also increase legal certainty. Problems with regard to the recognition of decisions would be greatly reduced. This means that the citizens no longer would have to go to courts in different countries and go through the same procedures already finalized in another country. However as the applicable law rules would be not harmonized, the lack of clarity for the spouses with regard to the applicable law questions would remain unresolved.

(ii) Fundamental rights: This option would have an impact on Article 17 (right to property) of the European Charter of Fundamental Rights. By extending the jurisdiction of the court dealing with this separation/divorce or with the succession to have also jurisdiction with regard to the liquidation of the matrimonial property regime, and by introducing *lis pendens* rules and rules on automatic recognition and enforcement of decisions, this option would reduce the costs to parties in terms of time delays and administrative procedures (in terms of parallel proceedings and ensuring that the decision is recognised and enforced). The reduction of such costs would therefore allow both parties, both weak and strong, to have a right to access their property. This would also contribute to respecting the equality before the law (Article 20, European Charter of Fundamental Rights). However, the possibility that the stronger party seeks legal advice, and consequently 'chooses' the court that would be most favourable to him/her (by rushing to court), remains.

(iii) Social impacts: This option would result in costs savings for the citizens because of the prevention of parallel proceedings. Savings would also be incurred because of the facilitation of recognition and enforcement of decisions throughout the EU. However, this option does not address problems faced by the weaker party: the wealthier one may take advantage of legal advice and rush to court in order to seize the court with the most advantageous outcome for him/her.

(iv) Financial costs: Financial costs for administration would be very low for the introduction of new jurisdiction rules.

(v) Economic impacts: This option would lead to cost savings for Member States, which are estimated by the study to represent a maximum of 2% of the costs currently pertaining to the problems addressed by the policy options.

10.4. Policy option 4: Harmonisation of conflict of law rules.

(i) Objectives to achieve: Although this option would not fully achieve the objectives, it would have some advantages compared to the current situation. This option would introduce harmonised conflict of law rules based on a hierarchy of connecting factors. Several jurisdictions could still handle the case (i.e. the problem of parallel proceedings would remain), but they would apply the same conflict of law rules and, as a result, they should also apply the same substantive law on property regimes. This policy option would introduce harmonised rules on a limited choice of law for the spouses or partners. As a result, in those cases where a choice was made, there would be increased certainty as to what law will be applied to the property regime thus increasing the predictability of the outcome of the proceedings. It would also imply great benefits in terms of eliminating the impetus to rush to court and thereby prevent *forum shopping*. This option would also introduce the principle of immutability and a unitary system, whereby all matrimonial property (both movable and immovable) and wherever it is situated would be subject to a single law. This would greatly improve legal certainty for the parties that have not made a choice as the hierarchy of connecting factors would ensure legal certainty with regard to the applicable law. This option would contribute to ensuring compatibility with other (proposed) EU rules in relation.

(ii) Fundamental rights: This option would have an impact on Article 17 (right to property) of the European Charter of Fundamental Rights, while this option would reduce the costs to parties in terms of time delays and administrative procedures. The reduction of such costs would therefore allow the parties, both weak and strong, better rights to property, consequently contributing to respect the equality between men and women (Article 23 of the European Charter of Fundamental Rights). However as this option does not include any rules on recognition and enforcement, in case problems arise in relation to the recognition of a decision the proceedings may nevertheless be delayed. This would have slightly negative consequences on the right to property as it would take longer for the parties to access their property in terms of time delays.

(iii) Social effects: There would be costs reductions for citizens in terms of reduced legal fees (in particular in those cases when the spouses or partners made a choice of law). Also it would be benefits for economically disadvantaged persons as the simplification of the proceedings through harmonisation of conflict of law rules will eliminate the reason for rush to court (forum shopping) by the wealthier spouses or partners. Moreover, costs would also be reduced as legal professionals would not need to look into other countries' conflict of law rules and since no *renvoi* would be necessary (which would save time and money). However, there would still be costs e.g. due to the lack of adoption of automatic rules on recognition and enforcement.

(iv) Financial costs: Financial costs for administration would be very low for the introduction of new rules.

(v) Economic effects: This option would lead to some limited cost savings. These savings are estimated to be maximum 12% (by EPEC) of the costs currently pertaining to the problems addressed by the policy options.

10.5. Policy Option 5: Uniform optional European proforma for a marriage contract

As a preliminary remark, it has to be noted that this assumption has been developed only for married couples, by taking into account the existing rules in Europe in matrimonial property regimes.

(i) Objectives to achieve: the introduction of Uniform optional European proforma for a marriage contract would ensure that where people have opted to draw up such a contract, its format and content would be recognised throughout the EU. For the citizens drawing up such contract would be reminded that they can use the possibility, offered by the harmonisation of conflict of law rules, to choose the law applicable to their matrimonial property regime. As the Uniform optional European proforma for a marriage contract also includes the possibility to amend the contract if a couple moves to another Member State and in case they are aware that they can change the law applicable to their matrimonial property regime, they could take the necessary steps to choose the law that would facilitate proceedings the most in situations of divorce or death.

(ii) Fundamental rights: this option would have an impact o Article 17 (right of property). By allowing parties to choose the applicable law, this option would reduce the costs to parties in terms of time delays and administrative procedures. The reduction of such costs would therefore allow the parties, both weak and strong, to better access to property. This would also contribute to respecting the equality between men and women (article 23).

(iii) Social impacts: the introduction of the Uniform optional European proforma for a marriage contract would increase legal certainty in that it would increase the number of citizens who draw up a marriage contract, choose a law and amend it when necessary. This option would also greatly benefit third parties, since the proforma foresees that additional information clauses be included informing third parties in relation to matrimonial property regime of the spouses[20].

(iv) Financial costs: This option would cause costs for administrative work to produce the necessary legislation at EU level. This is estimated to be the equivalent of one FTE Commission official during one year. To ensure judicial cooperation training of legal professionals in the Member States also would be required.

(v) **Economic effects:** This option would lead to some limited cost savings. These savings are estimated to be maximum 17 % of the costs currently pertaining to the problems addressed by the policy options. Nevertheless, this option has been developed only for married couples, and a vast majority of experts consider that such a proposal is immature, because of big differences that still exists between legislation of Member States.

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[20] The Proforma foresees that third parties should be informed in relation to: who is the owner of the property; what are the powers of the spouses with regard to the administration of the property; the responsibility of the spouses for debts incurred; and the effects of the chosen regime for and against third parties.

10.6. Policy Option 6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments

Harmonised conflict of law rules would ensure, as far as possible, that the same law is applied throughout the EU on a same case. They would also help preventing the occurrence of forum shopping as there would no longer be a need to rush to the court which could lead to the most favourable outcome for one of the parties.

Moreover, the introduction of the rules on jurisdiction and *lis pendens provision* in combination with rules on recognition and enforcement of judgments would significantly reduce the possibility of parallel and conflicting proceedings or of lack of proceedings. This set of rules would lead to very few possibilities for parallel proceedings.

There is a minor risk that despite harmonised conflict of law rules different laws might be applied by the courts of the Member States (for instance due to a different interpretation of habitual residence). It is expected, however, that legal certainty would increase in the long term (e.g. through case law and rulings by the ECJ).

This policy option would introduce harmonised conflict of law rules entailing a limited choice of law for the spouses. As a result, in those cases where a choice was made, there would be increased certainty as to what law will be applied to the matrimonial property regime thus increasing the predictability of the outcome of the proceedings.

This option would also introduce rules on automatic recognition and enforcement of judgments, decisions and deeds, thus increasing the likelihood that the choice made by the spouses is recognised and applied in all Member States. This would contribute to overcoming problems related to non-recognition of foreign decisions relating to property regimes of married couples and registered partners.

For Policy Option 7, "Provision of information on property regimes of married couples and registered partnerships", several sub-options have been envisaged.

As a preliminary remark, the idea to create a central EU register of matrimonial property regimes and property regime aspects for registered partnership has been discarded, because of its costs, and because since it would not be compulsory to register property regimes, uncertainties as to whether a such a regime exists will remain with the existing difference between systems of registration.

10.7. Policy Option 7(a): Creation of a webpage on existing registers of property regimes and national rules

Access to information would be slightly improved for legal professionals and third parties desiring to determine the property regime applying to the property or land they are about to purchase. However, there would still be Member States where such registers have not been established, and in the other Member States there is not always an obligation for couples to register any document indicating which property regime applies. Cost reductions would be particularly significant for international marriages when one spouse disposing of property under community property regime, and for international registered partnerships and more especially regarding problems occurring at separation. **Impacts on different social and economic groups**: costs for legal advice and assistance could slightly decrease if it becomes easier to access information, but the impact of this option would only be limited.

Considering **Fundamental Rights**, it would have a minor positive impact on Article 17 (right to property): if information is easier to access for legal professionals and citizens, by speeding time delays in finding the correct information, and accessing their property much faster. **Social impacts:** costs for legal advice and assistance could slightly decrease if it becomes easier to access information, but the impact of this option would be very limited. **Financial costs**: this option would lead to costs related to the establishment of the webpage. These costs are estimated at 5000 euro (and very low maintenance costs).

10.8. Policy Option 7(b): Creation of a database/knowledge management system on existing registers of matrimonial property regimes and national rules.

As in the previous case, access to information would be slightly improved for legal professionals and third parties. In addition, this option would provide a more user-friendly information tool which would allow citizens to access information by typing key words concerning their case. This option however, significantly relies on the ability and willingness of Member States' authorities to update information regularly; if this is not done there is a risk that the information provided in the database may be incorrect. For the same reasons as those mentioned in the previous policy option, the extent of the information they contain would remain limited. **Fundamental Rights, social impacts, economic and financial impacts** would be the same that those in the previous sub-option. **Costs**: this option would lead to costs related to the establishment of a database/knowledge management system. The estimated annual costs are 200 000 euro including translation costs (and annual technical maintenance).

10.9. Policy option 7(c): Commission Recommendation on the establishment of interconnected national registers of property regimes and the organisation of information campaigns.

This option would increase access to information on property regimes. However, even though registration of property regimes would be encouraged, registration would still not be compulsory. This means that although registers would be available in a higher proportion of EU Member States, a confirmation that no property regime has been registered does not mean necessarily that no property regimes exist.

Fundamental rights: the right of property (article 17) is promoted if property regimes are identified at a higher degree. When exchanging information between registers, it would be necessary to ensure the protection of personal data.

Financial costs: Overall, costs of implementing the Recommendation are estimated to be 50 million euro across the EU (borne and organised at national level). Some of these costs would be regained from couples who register their property regimes and through fees paid for searches for property regimes.

Social impacts: the option would trigger some benefits for (i) ordinary citizens and economic actors (by increasing protection of third parties), (ii) the spouses and partners (by increasing indirectly their knowledge of the property regimes), and (iii) the legal professionals involved in the liquidation of the property regime (this option would facilitate their access of information about property regimes). However, the Recommendation would not impose any obligation on Member States. Besides, the recommendation would also include registration of property regimes of registered partnerships. However, it was generally emphasised that this option would only apply to

countries that recognise partnerships and since it is not (and should not be) made compulsory to establish such register, this option would only have a very limited impact on access to information concerning property regimes of registered partnerships.

10.10. Policy option 7(d): Compulsory establishment of interconnected national registers of property regimes.

All Member States would be required to establish a national register of property regimes and property regime aspects of registered partnerships, which would be responsible for storing data concerning the existence of all the property regimes. The national registers would be interconnected, (through a system similar to the one developed concerning the interconnection of national registers of wills).

Compared to the previous option, this policy option would increase access to information on matrimonial property regimes to a greater extent. This would reduce costs for legal fees and time delays as information on the property regime would be quickly and easily available. However, it would not be compulsory to register property regimes. This option could lead to reduction of costs, particularly significant for international marriages and international registered partnerships.

Social impacts: these would be the same than in the previous option.

Financial costs: Considering the costs of maintenance and registers, the initial costs vary greatly between Member States (from 26,000 to 600,000 euro). This option could lead to reduction of costs, particularly significant for international marriages and registered partnerships. **Regarding impacts on different social and economic groups**, they would be the same than in the previous option. On the same way, and as in the previous option, more citizens may register their property regimes and it would be easier to gain access to these whilst liquidating the property. The positive benefits are primarily reduced time delays and costs.

On the basis of the assessments made in terms of the achievement of objectives, and cost estimations made, **the preferred option** on information on property regimes is the **creation of a webpage on existing registers of matrimonial property regimes and national rules**. Although some of the other policy options achieve the objectives to a slightly higher extent, the predictable costs for those outweigh the limited additional benefits.

11. COMPARISON OF THE POLICY OPTIONS

Policy Option 1: Status quo. This option would not meet the objectives, and variations between national systems are likely to remain. The situation would worsen in view of the trends of EU citizens' increasing international connections; negative economic effects are likely to become aggravated for citizens.

Policy Option 2: Targeted information provision to raise citizens' awareness that the matrimonial property regime may not be the same in other Member States. This option would not solve any of the current problems as the existing legal differences would remain, implying that it would only benefit those citizens that made an active choice because of the information received. Benefits would be very limited and dependent on how

well the information is distributed and the willingness of the spouses/partners to take additional steps to protect themselves against potential future problems.

Policy Option 3: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgements, other decisions and deeds. This option would prevent several jurisdictions from handling the same case in parallel, offer citizens a possibility to bring all legal matters relating to their case before the same court, and would also lead to cost reductions as there would be less problems of non-recognition. However, the lack of harmonisation of conflict of law rules could be abused by the wealthier spouse/partner and lead to forum shopping as difference laws (with different outcomes) could be applied in different Member States.

Policy Option 4: Harmonisation of conflict of law rules. There would be increased legal certainty with regard to the applicable law and thereby the outcome of the liquidation of the patrimonial property. This reduces problems of forum shopping. There would be costs reductions for citizens in terms of reduced legal fees, in particular in those cases when the spouses/partners have made a choice of law. However, parallel proceedings would still be a possibility. Furthermore, there would still be costs due to non-recognition, legal uncertainty would still be a problem due to the lack of harmonised jurisdiction rules and the lack of recognition and enforcement of decisions.

Policy Option 5: Uniform optional European proforma for a marriage contract. This option could reduce problems in terms of time delays and costs since it would prompt the spouses to make a choice of law and reduce the likelihood that a decision is not recognised. It will also reduce costs for legal fees as the same conflict of law rules will be applied across the Union and increase legal certainty. However, the drawing up of a marriage contract is sometimes costly, and the benefits of the marriage contract would only benefit those that make an active choice to draw up such. Besides, it could be only envisaged for married couples, and could not solve the problems faced by couples in registered partnership.

Policy Option 6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgements. This option is more advantageous than the previous options as it is combining the three main legal elements at disposal to handle international property regimes (jurisdiction rules, conflict of law rules and rules on recognition and enforcement). Harmonised jurisdiction rules in combination with conflict of law rules and rules on recognition and enforcement would significantly reduce the scope for parallel and conflicting proceedings or lack of proceedings. Furthermore, the introduction of special rules of jurisdiction would ensure that spouses/partners can bring all matters relating to their case in front of one court. Predictability of the outcome of the liquidation of the patrimonial property would be greatly improved in those cases a choice of law was made. The choice is likely to be recognised in other Member States due to the rules on automatic recognition and enforcement. However, also in cases where no choice was made, the harmonised conflict of law rules would imply that all jurisdictions across the EU should apply the same law to the case.

Policy Option 7: regarding to the achievements of objectives of each sub-options, and cost estimations made, the preferred sub-option **on information on property regimes** is the **creation of a webpage on existing registers of matrimonial property regimes and national rules**. Although some of the other policy options achieve the objectives to a

slightly higher extent, the predictable costs for those outweigh the limited additional benefits.

On the basis of the assessments of the policy options, the preferred policy option amongst policy options is Policy Option 6 completed by Policy Option 7a. Indeed, this option would address current, as well as potential, problems. It will lead to the greatest cost reductions, whilst at the same time only imply minimal establishment and implementation costs.

Effectiveness of options against policy objectives

	Prevent parallel proceedings and application of different substantive laws	**Ensure choice of applicable rules and legal provisions**	**Facilitate the recognition and enforcement of judgements and other decisions**	**Facilitate bringing all legal matters before the same court**	**Ensure spouses and partners know applicable law in case of liquidation**	**Ensure compatibility with other proposed EU rules**	**Increase access to information on property regimes**
Option 1	no effect	no effect	no effect	no effect	no effect	no effect	no effect
Option 2	limited effect	limited effect	no effect	no effect	limited effect	no effect	positive effect
Option 3	positive effect	no effect	positive effect	positive effect	no effect	positive effect	no effect
Option 4	positive effect	positive effect	no effect	no effect	positive effect	no effect	no effect
Option 5	no effect	positive effect	no effect	no effect	positive effect	limited effect	no effect
Option 6	positive effect	positive effect	positive effect	positive effect	positive effect	positive effect	no effect
Option 7	no effect	limited effect	no effect	no effect	positive effect	no effect	positive effect

12. PREFERRED POLICY OPTION

This section describes the **preferred policy option** and the expected impacts of the preferred policy option.

The harmonisation of conflict of law rules and jurisdiction rules, the introduction of rules on automatic recognition and enforcement of judgments, other decisions and deeds and the creation of a webpage on existing registers of property regimes and national rules.

This option would involve EU level action in the form of:

- The adoption of two **Regulations** (there could be one Regulation or two, one dealing with married couples, the other with registered partnerships) on the harmonisation of conflict of law rules and jurisdiction rules and the introduction of rules on automatic recognition and the enforcement of judgments, other decisions and deeds; and,

- The **creation of a webpage** on existing registers of matrimonial property regimes and national rules.

Why two Regulations? As mentioned in the problem definition, couples in registered partnerships face some specific difficulties because partnerships do not exist in all Member States. As a result jurisdiction rules and rules on applicable laws cannot be the same as those for marriages. Indeed, the applicable law should not be the law of a Member State which does not recognise registered partnerships. Additionally, the competent court should be in such a Member State. To put together all the different rules that apply to matrimonial property regimes and property regime aspects of registered partnerships would lead to an extremely long and complicated instrument, which would be very difficult to understand and implement. Furthermore, in view of the outcome of the consultation with Member States, which revealed that whilst there is a general agreement in favour of including registered partnerships, the majority of country representatives did not believe that it this was feasible in a single instrument, and given the different scale of the problems for married couples and couples in registered partnerships, two separate instruments would be more practical and more feasible politically.

12.1. The preferred option's achievement of the policy objectives

As indicated in the assessment of the individual policy options, this option would address the following identified problems better that any other of the options:

- Parallel proceedings and application of different substantive laws to the same property regime;

- Insufficient (limited) choice of law for the spouses and the acceptance of this in other EU Member States;

- Non-recognition and enforcement of judgments, other decisions and deeds on the liquidation of property regimes;

- The possibility to bring all legal matters relating to one case before the same court;

- The ability of the spouses or partners to know, where no applicable law was chosen, which law will be applicable in the event of liquidation of their property regime;

- Compatibility with other proposed EU rules in relation to succession and wills and applicable law in divorce proceedings; and,

- The limited availability and access to information on property regimes.

Considering all the described positive impacts of the preferred option, it has to be outlined that only having an EU wide property regime where all countries have the same rules (including substantive law) would reduce the problems further than the preferred option. Such an EU wide matrimonial property regime would be politically and culturally unfeasible.

The introduction of rules on jurisdiction with regard to the liquidation of property regimes would extend the jurisdiction of the court dealing with a divorce or with a succession to matters also relating to the liquidation of the property regime. This would give greater legal certainty to citizens as the jurisdiction handling the divorce or succession would also deal with the liquidation of the property regime.

The harmonised jurisdiction rules would lead to very few possibilities for parallel proceedings, and would increase legal certainty for couples. The introduction of the *lis pendens* provision in combination with rules on recognition and enforcement of judgments (as described below) would significantly reduce the possibility of parallel and conflicting proceedings.

Moreover, the harmonised conflict of law rules would ensure, as far as possible, that the same law is applied throughout the EU with regard to the same case. The conflict of law rules would also help in preventing the occurrence of forum shopping as there would no longer be a need to rush to the court which could lead to the most favourable outcome for one of the parties (normally the wealthier party with access to legal advice). There is a minor risk that, despite harmonised conflict of law rules, different laws might be applied by the courts of the Member States[21] or that the same law might be applied in a slightly different way in case it is applied as a foreign law. It is expected, however, that legal certainty would increase in the long term (e.g. through case law and rulings by the ECJ).

The introduction of rules on a limited choice of law for the spouses would increase legal certainty, when a choice of law has been made, in relation to the law that will apply to the property regime in case of e.g. divorce, separation or death.

Problems in relation to recognition of judgments, decisions and deeds are likely to be almost completely eliminated. This means that citizens no longer would have to experience time delays through the national exequatur procedure, go to courts in different countries, and go through the same procedures as those already finalised in another country (resulting in additional costs). This would also increase the predictability of the outcome of the proceedings.

Problems concerning citizens who have not made a choice of law would also be addressed through the introduction of a system based on a hierarchy of connecting factors that would be

[21] As an example, due to different interpretation of habitual residence.

applicable to property regimes and would be common to all Member States. Furthermore, the principle of immutability and a unitary system would be included, thus ensuring that the law applicable to the matrimonial property regime does not change when the spouses move to another Member State and applies to all assets.

Under the preferred option, there would be increased access to information on property regimes in other Member States through the creation of a webpage. This webpage would provide contact details on existing registers and would also facilitate access to information concerning national legislation on property regimes. More specifically, this option would provide third parties with better access to information on the property regime applying to the property or land they are about to purchase.

Overall the preferred option would increase the likelihood that the rights of each spouse or partner, private and public creditors etc. would be respected in an efficient way. The option would also lead to an increased likelihood that the initial choices of the spouses would not be affected by any decision to move to, or acquire property, in another country.

12.2. Economic impacts

According to the EPEC Consortium, who carried out the impact assessment study, the preferred policy option could lead to cost reductions of up to an estimated maximum 32% of the costs currently pertaining due to the problems addressed, i.e. 0.4 billion euro (25% of 1.1 billion euro)[22].

Financial costs: the preferred policy option would lead to the following financial costs:

At EU level this preferred policy option would lead to the costs for administrative work to produce the necessary legislation at EU level. **At national level** costs would occur while establishing the necessary additional national rules (e.g. regarding the jurisdiction of applicable law rules), also in training of legal professionals (e.g. lawyers, judges, notaries, solicitors) and judicial cooperation. Both – EU and the Member States – would have additional costs for information campaign, presenting the new legislative element.

12.2.1. Impact on the legal professions

The implications of simplifying the law (and reducing legal costs) would be reduction in the fees for legal professionals. The limited choice of law for the spouses and partners in the preferred option is likely to increase the proportion of marriage contracts and partnerships contracts drawn up, thus it would lead to the extent of the work for legal professionals. By far the most significant effects would be on legal professionals involved in difficult cases. Here, there is a clear potential for fee reductions for clients, and thus revenue foregone for legal professionals. However, these effects are likely to be twofold. First, a reduction in the volume of work, second, an increase in the 'quality' of the work which could be associated with improved financial returns and efficiency. However legal professions are always a subject to

[22] The creation of a webpage on existing registers of matrimonial property regimes and national rules would lead to approx. 1.5% costs reduction of 1.1 billion euro. The remainder of costs saving would be an outcome of harmonization of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds.

market changes and the magnitude of those associated with the preferred option is likely to be small and gradual.

12.2.2. Impact on different social groups and impact on existing inequalities

There would be benefits for economically disadvantaged citizens as the simplification of the proceedings through harmonisation of conflict of law rules will decrease the legal fees; normally different laws will not be applied by the courts of different Member States. Furthermore, the ability to choose the applicable law would also greatly reduce the chances that the wealthier party in the couple rushes to court (i.e. forum shopping) where the outcome of the proceedings is more likely to be in his/her favour.

12.2.3. Impact on taxation

The preferred option would be tax neutral, in so far as the future Regulations would not result in any changes to the Member States' national legislation on taxation (tax base, allowances and tax rates).

12.3. Sensitive elements, potential draw – backs and risks

Potential draw-backs and risks include:

- The use of habitual residence as primary connecting factor.
- The extent to which citizens take advantage of the possibility to make a choice of law.

All options assessed have assumed that **common habitual residence** would apply as the primary connecting factor rather than **common nationality**. Habitual residence seems to be a more natural and appropriate connecting factor in cross-border matrimonial property regimes, it is an autonomous concept in private international law which is detached from all national legal systems. It is accepted within the framework of the Hague Conference on private international law by almost all countries in the world.

With regard to the **extent to which citizens take advantage of the possibility to make a choice of law**, this will impact on the benefits and level of costs reductions the implementation of the preferred option will lead to. The more citizens who choose law (and make a marriage contract), the greater the benefits will be. At present the tradition of drawing up a marriage contract varies between Member States, thus the proportion of citizens who take the possibility to make a choice of law (in a marriage contract) may therefore vary between Member States. It is likely that the proportion would increase in the long term.

This decision is based on the balance between the need to ensure legal certainty on the one hand (in such a case transfer of jurisdiction and choice of jurisdiction would not be included in the content of the preferred option) and flexibility to take account of the closest connection of the parties in individual cases. It is also related to the consistency between the content of this proposal and other related legislation. As previously mentioned, the extent of choice of law for partners in registered partnerships could not be the same that for married couples.

12.4. Fundamental rights, proportionality and EU added value

12.4.1. Fundamental rights

The preferred policy option respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union and in particular Article 21 - non-discrimination, Article 7 - respect for private and family life, Article 9 - right to marry and right to found a family, Article 17 – right to property.

Furthermore, the proposals aim at increasing legal certainty, access to justice as foreseen in Article 47 of the Charter of Fundamental Rights of the European Union. In particular, they will be beneficial for the exercise of the right of free movement and of residence by European citizens.

12.4.2. Proportionality

The present proposal respects the principle of proportionality, as it concerns EU Instruments on property regimes only for married couples and registered partnerships with international elements, i.e. only cases with cross-border elements are concerned. It would not harmonise substantive laws; it would merely aim to achieve a situation where parallel proceedings do not occur and where different substantive laws are not applied to the same liquidation of matrimonial property. Thus, in this sense, the policy option would be adopted to ensure 'the smooth co-existence' of different national substantive laws. For this purpose the policy option would imply changes to national legal systems in terms of harmonised jurisdiction rules, harmonised conflict of law rules, introduction of a limited choice of law and rules on recognition and enforcement of judgments, decisions and deeds.

The adoption of Regulations incorporating these elements would imply more changes in some Member States than others (most countries for example already provide the possibility for spouses to choose law, although the limits for making this choice may be different or no limits exist). However, in order to address the problems and achieve the objectives, such changes are necessary. Indeed, EU level legislative action is necessary; as outlined in the assessments of the individual policy options and comparison of these assessments, Member States would not be able to address the problems individually or multilaterally (they are unlikely to harmonise or otherwise improve their national rules to facilitate international successions without EU level action).

12.4.3. European added value

The preferred option has the potential to **promote trust in the internal market.** The problems addressed by the preferred policy option are in part a consequence of the internal market. At the same time if the current problems are not solved, trust in the EU internal market and the EU area of freedom, security and justice without internal borders may be damaged. By ensuring more efficient handling of the liquidation of matrimonial property regimes with international elements, the preferred option would promote trust in and the operation of the internal market.

13. MONITORING AND EVALUATION

In order to monitor the effective implementation of the Regulations as well as the success of the webpage, regular evaluation and reporting by the Commission will take place. In this respect, the proposed Regulations will include a requirement on Member States to provide information on the application of the Regulations and of all the measures taken by them to improve their application. Furthermore, the European Judicial Network for civil and commercial matters could play an important role to strengthen the cooperation between Member States when applying the Regulations.

When evaluating the effective implementation of the Regulations, following indicators can be taken into account:

– the number of possible parallel proceedings concerning the same case could allow to determine if the objective of prevention of the occurrence of parallel proceedings has been fulfilled,

– information on the number of couples who made a choice of law for their property rights would allow to evaluate if the right to choose the law has been used,

Furthermore, for statistical purposes it could be very useful to receive information by Member State on the number of international marriages/registered partnerships, international divorces, separations and successions.

The Commission will also monitor the webpage on existing registers of property regimes and national rules to assess its effective use.

ANNEX I – Glossary

International jurisdiction: Competence of the courts in a particular country to judge an international dispute.

Conflict of laws: Situation in which two or more national laws may be applicable to relationships (facts, contracts, family relationships, etc.) that are connected with more than one State. The conflict rules determine which country's domestic law is best placed to govern the legal relationship in question.

Marriage contract (or pre-nuptial agreement): Contract concluded prior to the celebration of the marriage with a view to organising property relationships between the spouses.

Exequatur: Procedure allowing a court judgment, an arbitration award, a notarial act or a legal settlement given or ordered in one State to be enforced on the territory of another State.

Forum: Court having jurisdiction in, or dealing with, a dispute.

Matrimonial property regime: Matrimonial property rights of the spouses. Matrimonial property regimes are the sets of legal rules relating to the spouses' financial relationships resulting from their marriage, both with each other and with third parties, in particular their creditors.

Registered partnership: Partnership of two people who live as a couple and have registered their union with a public authority established by the law of their Member State of residence. For the purposes of the Green Paper, this category will also include relationships within unmarried couples bound by a "registered contract" along the lines of the French "pacs".

De facto union / Non-marital cohabitation (living together): Situation in which two people live together on a stable and continuous basis without this relationship being registered with an authority.

"**International marriages**" include marriages between:

- One national of the country and one national of (i) another EU country or (ii) a third country
- Two EU nationals from other EU countries
- Two nationals from third countries
- One EU national from another EU Member State and one national from a third country.
- Two EU nationals living in a third country
- Two EU nationals having assets in a third country

Could also be considered as "international married couples", couples which acquire or are owners of a property in a Member State other than their country of origin.

"**International divorces**" include divorce between:

- One national of the country and one national of (i) another EU country or (ii) a third country
- Two EU nationals from other EU countries
- Two nationals from third countries
- One EU national from another EU Member State and one national from a third country
- Two EU nationals living in a third country
- Two EU nationals having assets in a third country

Could also be considered as "international divorce"; the divorce of a couple who own property in a Member State other than their country of origin.

International registered partnerships" include registered partnership between:

- One national of the country and one national of (i) another EU country or (ii) a third country
- Two EU nationals from other EU countries
- Two nationals from third countries
- One EU national from another Member State and a third country national

Partners do not have the nationality of the place where they register

lis pendens: a pending lawsuit; a dispute or matter which is the subject of ongoing or pending litigation

renvoi rule: the process by which a court adopts the rules of a foreign jurisdiction with respect to any conflict of laws that arises. In some instances, the rules of the foreign state might refer the court back to the law of the forum where the case is being heard, or might refer the court to the law of another jurisdiction.

ANNEX II – Information on applicable law and competent jurisdiction in Member States

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
Austria		√	Common nationality Habitual residence of the spouses at the time of the conclusion of the marriage		√	Specific rules on matrimonial regimes Domicile or residence Nationality in non-contentious cases *(Order unknown)*
Belgium					√	Domicile or residence Nationality *(Order unknown)*
Czech Republic	√		Nationality of the spouses Lex fori Habitual residence of the spouses			Domicile or residence Nationality

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
Denmark					√	Specific rules on matrimonial regimes Domicile or residence Nationality *(Order unknown)*
Estonia		√ *(no further information has been obtained concerning whether this is free or limited)*	Common residence Nationality of the spouses Last common residence Closest connection			Domicile or residence Nationality
Finland		√ Limited choice			√	Competence based on the domicile or residence
France		√ Limited choice			√	Domicile or residence Nationality

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
						(Order unknown)
Germany		√ Limited choice	Common nationality Habitual residence when the marriage was celebrated		√	Specific rules on matrimonial Domicile or residence Nationality *(Order unknown)*
Greece						Specific rules on matrimonial regimes Domicile or residence Nationality *(Order unknown)*
Hungary	√		The joint personal law of the spouses at the time of the marriage The last joint personal law Last common habitual			Specific rules on matrimonial regimes Competence based on the domicile or residence *(Order unknown)*

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
			residence Lex fori			
Italy		√ Limited choice			√	Domicile or residence
Ireland		√			√	Domicile or residence
Latvia			Lex fori			Domicile or residence
Lithuania		√ *(no further information has been obtained concerning whether this is free or limited)*	Domicile Common citizenship Place where the marriage was celebrated *(Order unknown)*			Domicile or residence Nationality *(Order unknown)*
Luxembourg						Domicile or residence Nationality *(Order unknown)*

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
Malta			Nationality			Domicile or residence *(Order unknown)*
Netherlands					√	Domicile or residence
Poland	√		Common nationality Common habitual residence of the spouses Lex fori			Domicile or residence
Portugal		√ Limited choice				
Romania		√ Limited choice	Common nationality Common habitual residence of the spouses Closest connection			Domicile or residence
Romania			Common habitual residence			

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
New Civil code to be adopted			of the spouses Common nationality Place where the marriage was celebrated			
Slovenia			Common nationality or citizenship Common habitual residence of the spouses Closest connection			Nationality Domicile or residence
Spain		√ Limited choice			√	Specific rules on matrimonial regimes Competence based on the domicile or residence Competence based on nationality *(Order unknown)*

1. MARRIED COUPLES						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
Slovakia	√					
Sweden		√ Limited choice			√	Specific rules on matrimonial regimes Domicile or residence Nationality *(Order unknown)*
UK		√ *(England and Scotland)*	Lex fori		√	Domicile or residence

2. REGISTERED PARTNERSHIPS						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
Austria						
Belgium			Habitual residence			
Czech Republic	√		Place where the property is situated			The rules concerning property issues would apply concerning the liquidation of property of registered partnerships and therefore Czech courts would be competent for proceedings concerning immovable property located in Czech Republic.
Denmark						
Finland						
France						
Germany			Specific rules have been developed for registered partnerships. The general and patrimonial effects and the dissolution of a registered partnership is governed by the substantive law			Brussels I Regulation; which gives the competence to the court of the domicile of the defendant. Moreover, German family law gives international competence to German courts when the partner is a German national, if his/her habitual residence is in Germany and if the partnership

2. REGISTERED PARTNERSHIPS						
Country	**Choice of law**		**Connecting factors**	**Choice of jurisdiction (forum)**		**Connecting factors**
	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.	No	Yes (info on limitation of choice provided if possible)	Connecting factors in hierarchical order, if known.
			of the place of registration.			was registered before a German authority.
Hungary						
Luxembourg						
Netherlands			The law of the State where the partnership was registered.			
Portugal						
Slovenia						
Sweden		√ Limited choice	The same rules apply to registered partnerships as for married couples		√	Competence based on the domicile or residence Competence based on nationality *(Order unknown)*
UK						

ANNEX III – Note on Costs / Benefits of policy options

1. NOTE ON COSTS / BENEFITS OF POLICY OPTIONS

The purpose of this note is to clarify the basis for the estimations of the benefits that would be brought about by the policy options considered in the Impact Assessment Study. These benefits have been expressed in monetary terms because this may assist in the Commission's Impact Assessment process. However, estimating such monetary values is difficult because the nature of current problems are varied and the problems occur alongside other issues that need to be addressed by married couples and registered partnerships when forming a union, during the union and when unions are dissolved through divorce or death.

The estimates come from the "Impact Assessment Study on Community Instruments concerning matrimonial property regimes and property of unmarried couples with transnational elements", commissioned by Directorate-General Justice, Freedom and Security of the European Commission. It was conducted by the European Policy Evaluation Consortium, and the work was led by one of the EPEC partners, GHK Consulting. External expertise was provided by Prof. Dr. Rainer Hausmann. The methodology used is more fully explained in their report, referenced at footnote 6, and is summarised here with the aim of highlighting strengths and weaknesses. Fieldwork took place from August 2009 to March 2010. Data and assumptions used in the estimates were chiefly based on stakeholder consultation (e.g. questionnaires to statistical and tax authorities and legal professionals across EU-27, interviews in case study countries) and desk-based research (e.g. Eurostat and legal studies).

The approach to estimating the benefits has been similar for both married couples and registered partnerships and was as follows:

1. To identify the types and estimate the numbers of couples affected. There are three types: international couples (couples made up of citizens from two different countries), couples living abroad and couples having property abroad. The evidential basis for these quantitative estimates is good. Eurostat and national statistical offices' data provides the number of new marriages and divorces per annum both in total and indicates around 13% have an international element with limited adjustment (see Annex IV and V). This 13% proportion has been applied to data on the stock of marriages to estimate "international couples". Data on citizens living abroad and number of second homes owned has been used to estimate numbers of 'married couples living abroad' and 'married couples with assets abroad'.

2. To identify the problems that might occur in the current situation at different stages of the "couples' evolution": getting married (or registering a partnership);

during a marriage (or registered partnership); and, at the dissolution of a marriage (or registered partnership) through divorce/separation or death. The nature of these problems is clear, however, they vary considerably between individual couples and combinations of matrimonial/patrimonial property regimes.

3. To estimate the incidence of the key events that might trigger problems (marriages or partnerships being registered, and the dissolution of marriages or registered partnerships through divorce/separation or death). The evidential basis for these quantitative estimates is good. Data is available on new international divorces and marriages with limited adjustment, see step 1 above. The proportion with an international element, 13%, was applied to an estimate of the total number of dissolutions of marriage through death each year to predict dissolutions of international marriage via death.[23]

4. To estimate the incidence of problems for different types of couples at different stages. Unfortunately these estimates are poorly informed by evidence. There are no surveys of the different types of couples that could inform these estimates and lawyers and other professionals who may deal with the problems are not well placed to provide estimates. However, the assumptions used in the study are consistent with the observations made by stakeholders consulted during the study. These assumptions are discussed further below.

5. To estimate the average costs of the problems due to variations in matrimonial property regimes that are encountered for different types of couples at different stages of their unions. The difficulty with such estimates is, as stressed above, apportioning costs to the problems in the current situation due to matrimonial/patrimonial property regime differences, as opposed to other costs incurred as a result of drawing up a marriage contract, dealing with property transactions during unions and the dissolution of unions. However, the estimates of average costs used are relatively conservative and reflect the time that should

[23] The EPEC study found that "Of the estimated 3.0 million marriages in the EU that end each year through the death of one partner, around 390K (13%) are international marriages". It says "Eurostat data have been exploited in order to obtain an estimated aggregate figure on the number of married people who died in one year in the EU27. More precisely, in 2007 the total number of EU27 population was 495,305,424 and the crude marriage rate in the EU27 4.87. In other words, 48.7% of the total EU population (circa 241,213,741) was married in 2007. In order to estimate the number of dissolutions of marriages through the death of one spouse, the following logic has been applied: in 2007 the total number of the EU27 population was 495,305,424. The same year, 4,783,670 persons died. The ratio of the number of people who died in 2007 to the population of the same year is 0.97%. This result is confirmed by 2008 figures. Applying this ratio to the total number of persons who were married suggests that 2,363,895 people who died in 2007 were married. It can therefore be estimated that approximately this number of marriages were dissolved through death."

be needed to clarify the issues involved related to matrimonial/patrimonial property regimes to the satisfaction of interested parties. These assumptions are discussed further below.

6. To calculate the total costs by multiplying the types couples affected at different the stages of the unions per annum by the estimated incidence per annum of problems and the estimated average costs of the problems. The resulting monetary values are, in effect, the costs of non-Europe in matrimonial or patrimonial property regimes. That is the estimated costs for problems that are due to the current different legal provisions in the Member States. Most of these costs would accrue as fees to lawyers. If all EU countries shared the same matrimonial/patrimonial property regime no such costs would occur.

The results of applying these steps to married couples and those in registered partnerships are shown in Table 1 and Table 2 respectively. Thus the tables indicate the scale of the problems that could be addressed by the policy options in monetary terms. As stressed above, these problems stem from variations in matrimonial/patrimonial property regimes across the EU.

2. TABLE 1– THE ESTIMATED COSTS OF PROBLEMS FOR MARRIED COUPLES

Type of marriage affected by MPR issues	The stock of marriages	New marriages per annum	Dissolutions through divorces per annum	Dissolutions through death per annum	Proportion of problem cases per annum	Cost per problem, €	Estimated cost per annum, €
International marriages	16,000,000	310,000			50%	50	7,750,000
		310,000			50%	2,000	310,000,000
					1%	1,000	160,000,000
			137,000		50%	3,000	205,500,000
				390,000	33%	2,000	257,400,000
Sub total							**940,650,000**
Married couples living abroad	3,500,000				1%	1,000	35,000,000
			28,000		50%	3,000	42,000,000
				87,500	33%	2,000	57,750,000
Sub total							**134,750,000**
Married couples with assets abroad	1,000,000				1%	1,000	10,000,000
			8,000		50%	3,000	12,000,000
				25,000	33%	2,000	16,500,000
Sub total							**38,500,000**
TOTAL							**1,113,900,000**

3. TABLE 2 – THE ESTIMATED COSTS OF PROBLEMS AFFECTING REGISTERED PARTNERSHIPS

Type of partnership affected by MPR issues	The stock of partnership	New partnerships per annum	Dissolutions through separations per annum	Dissolutions through death per annum	Proportion of problem cases per annum	Cost per problem, €	Estimated cost per annum, €
		13,000			50%	50	325,000
International registered / civil partnerships		13,000			50%	2,000	13,000,000
	36,000				1%	1,000	360,000
			2,100		50%	3,000	3,150,000
				211	33%	2,000	139,260
Sub total							**16,974,260**
	2,800				1%	1,000	28,000
Civil partners living abroad			112		50%	3,000	168,000
				3	33%	2,000	1,848
Sub total							**197,848**
	2,500				1%	1,000	25,000
Civil partners with assets abroad			100		50%	3,000	150,000
				3	33%	2,000	1,650
Sub total							**176,650**
TOTAL							**17,348,758**

The most crucial assumptions underpinning these estimates concern; the incidence of the problem (Step 4) and the average cost of the problem (Step 5). The arguments in support of these assumptions are as follows:

- *For those entering an 'international' union* the problem may be one of lack of awareness that complications might arise in the future. The costs of increasing this awareness are likely to be low (a matter of say 50 euro per couple) and this cost can be used as a proxy for the cost of the problem. However, if, for example, the prospective spouses of the 'international union' already have significant assets and wish them to remain separate then significant costs may be incurred in creating a marriage contract. It is reasonable to assume that 50% of all international unions nevertheless need the benefit of the clarity of such a contract and that this would cost on average 2,000 euro. The remaining 50% experience only a problem of lack of awareness.

- *For those already in a union* the problem may be due to one spouse (aware or not of their lack of rights) wishing to dispose of property without the consent of their partner. Such circumstances will cause a problem for the third party potential purchaser. There may also, be other 'daily management' problems including the problem of lack of knowledge of matrimonial/patrimonial property regimes amongst interested parties. It is reasonable to assume that such problems occur in just 1% of international unions per annum and each problem has a notional cost of 1,000 euro.

- *For those international unions dissolved through divorce or separation*, problems could arise because: the differences in legislation between Member States might lead to parallel proceedings; dealing with the assets may be overly complex; and, decisions made by one court may not be accepted in another. The costs of the problem could accrue to courts, the spouses and third

parties. As divorce settlements may be contested this could add further complications. It is reasonable to assume that such problems might occur in 50% of international divorces per annum and that the average cost is 3,000 euro.

- *For those international unions dissolved through the death of a partner*, the problems are similar to those arising through divorce or separation. However, it is reasonable to assume that the average costs are lower, say 2,000 euro per case and that problems will only arise in a minority (say 33%) of cases where the value of the assets are relatively high.

7. To estimate the proportion of the problems in the current situation that may be eliminated by the policy options. This process involved the consideration of the likely effects of the policy options on the different types of problems that affect different unions at different stages. Table 3 provides an example of the estimates that have been made of benefits (ie reductions in costs) that would accrue if a specific policy option would be adopted – in this case Policy Option 6. Similar tables have been prepared for all of the policy options concerning legal differences between the Member States. The effects have then been aggregated for each policy option as part of the comparative assessment of policy options. The aggregated estimates for each policy option are shown in Tables 4 and 5. As none of the policy options involve the creation of a single matrimonial or patrimonial property regime in the EU then some problems will remain. In the case of Policy Option 6, the process has led to an estimate that 68% of the problem would remain.

This process is systematic and transparent. Of course the judgements concerning the reductions in the problems that could occur are open to question. However, the details of the individual policy options do allow for more certain judgements of the relative effects of each option on each component problem.

The process used is whilst logical and transparent open to challenge. In particular the estimates of the total costs in the current situation are sensitive to the assumptions on the incidence of problems which are the least well informed. However, these assumptions are conservative. Also, the following remarks can be made which contribute to the robustness of the analysis:

- There are a very large number of unions affected or potentially affected by the current variations in matrimonial and patrimonial property regimes.

- The problems are widespread and various.

- The estimated scale of benefits that could accrue through reducing the costs of problems in the current situation considerably outweigh the costs of the preferred policy option.

The policy options have also been carefully assessed against their contribution to achieving the policy objectives and other criteria (feasibility, acceptability etc.). The

estimates of monetary benefits should be seen as a complement to the other aspects of the assessment process.

4. TABLE 3: POLICY OPTION 6: - DETAILED ASSESSMENT OF COSTS SAVINGS COMPARED TO THE CURRENT SITUATION

Type of marriages affected by MPR issues	Specification of type of costs	Costs of current problems (million euro)	Costs savings (proportion & million euro): estimates based on analysis of the content of the policy option (million euro)	
International Marriages	**Unawareness of potential problems**	7.8	45%	3.5
	Costs for marriage contract / choice of law	310	10%	31
	One spouse disposing of property under community property regime	160	15%	24
	Problems at divorce	205.5	50%	102.8
	Problems at death	257.4	50%	128.7
Sub-total		940.7		289.9
Married couples living abroad	**One spouse disposing of property under community property regime**	35	15%	5.3
	Problems at divorce	42	50%	21
	Problems at death	57.8	50%	28.9
Sub-total		134.8		55.1
Married couples with assets abroad	**One spouse disposing of property under community property regime**	10	15%	1.5
	Problems at divorce	12	50%	6
	Problems at death	16,5	50%	8.3
Sub-total		38.5		15.8
Ex-ante total costs		1,113.9	100%	1,113.9
Total reduction achieved by the P.O.			32%	360.8
Cost that the P.O. could not address			68%	753.1

5. TABLE 4 – POLICY OPTIONS CONCERNING LEGISLATIVE DIFFERENCES BETWEEN THE MEMBER STATES: FOR MARRIED COUPLES AND B.1 COUPLES IN REGISTERED PARTNERSHIPS:

Estimated reductions of costs (i.e. benefits) pertaining to current problems for each policy option

Policy options concerning married couples	**Total reduction achieved by the PO**		**Cost that the PO could not address**	**Policy options concerning registered partnerships**	**Total reduction achieved by the PO**		**Cost that the PO could not address**
	Costs reductions (i.e. benefits); million euro	***%***	**(million euro)**		**Costs reductions (i.e. benefits); million euro**		**(million euro)**
Current costs (euro)	***1,114***		***1,114***	***Current costs (euro)***	***17.3***		***17.3***
Policy Option.1: Status quo	0	*0%*	1,114	Policy Option 1: Status quo	0	*0%*	17.3
Policy Option A.2: Targeted information provision	46	*4%*	1,068	Policy Option .2: Targeted information provision	0.4	*3%*	16.9
Policy Option 3: Jurisdiction rules and recognition	18	*2%*	1,096	Policy Option 3: Jurisdiction rules and recognition	0.2	*1%*	17.1
Policy Option 4: Conflict of law (C-O-L) rules	135	*12%*	979	Policy Option 4: Conflict of law (C-O-L) rules	1.0	*6%*	16.3
Policy Option 5 Uniform option marriage proforma	185	*17%*	929	Policy Option 6 : C-O-L rules and jurisdiction rules	3.3	*19%*	14.0
Policy Option 6: Jurisdiction rules and recognition plus C-O-L rules	361	*32%*	753				

6. TABLE 5 – POLICY OPTIONS CONCERNING REGISTERS FOR MATRIMONIAL PROPERTY REGIMES (MARRIED COUPLES) AND PATRIMONIAL PROPERTY REGIMES (COUPLES IN REGISTERED PARTNERSHIPS).

Estimated reductions of costs (i.e. benefits) pertaining to current problems for each policy option

Policy options	**Married couples**			**Registered partnerships**		
	Total costs reductions (benefits); million euro		**Cost that the PO could not address**	**Total costs reductions (benefits); million euro**		**Cost that the PO could not address**
	Costs reduced	***%***		**Costs reduced**	***%***	
Current costs (euro)	***1,114***			***17.3***		
Policy Option 7a: Webpage	16	*1.5%*	1,098	0.06	*0.34%*	17.3
Policy Option 7b: Database	16	*1.5%*	1,098	0.06	*0.34%*	17.3
Policy Option 7c: Information campaign	10	*0.9%*	1,104	0.05	*0.27%*	17.3
Policy Option 7d: Compulsory establishment of national registers that are interconnectedPolicy Option A/B.2.5: EC Recommendation on interconnected national registers & info campaigns	2824	*2.5%2.2%*	1,0861,090	0.10.1	*0.61%0.57%*	17.217.2

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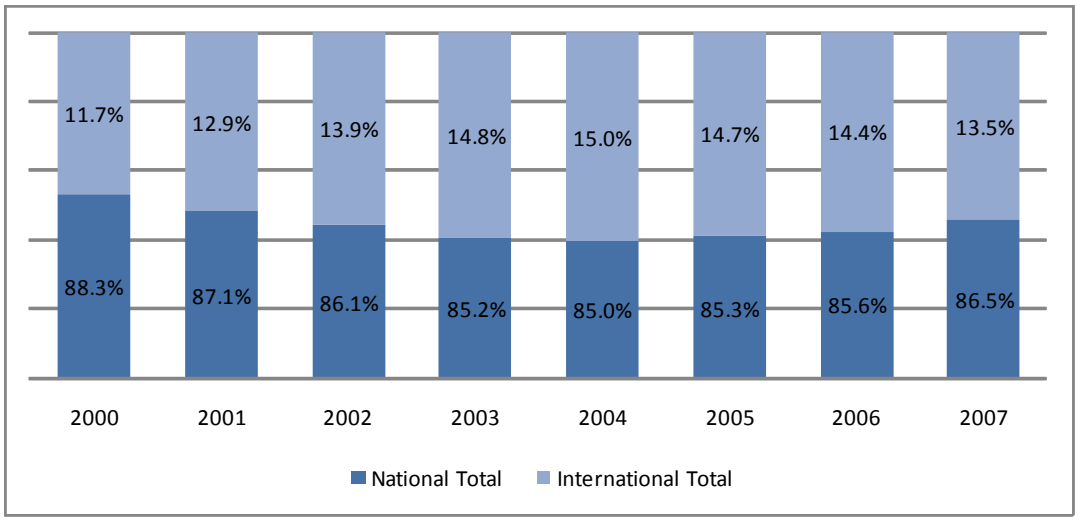
ANNEX IV – Data on marriages: International marriages in EU

1. NUMBER OF MARRIAGES IN THE EU MEMBER STATES (2007)

	Marriages in 2007					
	Total marriages		National		International	
Austria	35,996	1%	27,689	1%	8,295	3%
Belgium	45,561	2%	35,110	2%	10,451	3%
Bulgaria	29,640	1%	27,227	1%	2,413	1%
Czech Republic	57,157	2%	52,188	2%	4,969	2%
Cyprus	13,422	1%	3,532	0%	9,890	3%
Denmark	36,576	2%	30,821	1%	5,753	2%
Estonia	7,022	0%	4,536	0%	2,486	1%
Finland	29,497	1%	27,050	1%	2,447	1%
France	273,833	11%	228,864	11%	44,969	15%
Germany	368,922	15%	318,082	15%	50,840	17%
Greece	61,377	3%	53,952	3%	7,425	2%
Hungary	40,842	2%	38,990	2%	1,852	1%
Ireland	22,544	1%	19,096	1%	3,448	1%
Italy	250,360	10%	215,801	10%	34,559	11%
Latvia	15,486	1%	14,579	1%	907	0%
Lithuania	23,065	1%	20,339	1%	2,726	1%
Luxembourg	1,969	0%	837	0%	1,132	0%
Malta	2,479	0%	1,582	0%	881	0%
Netherlands	72,485	3%	61,848	3%	10,637	3%
Poland	248,777	10%	244,732	12%	4,045	1%
Portugal	46,329	2%	39,648	2%	6,681	2%
Romania	189,240	8%	183,803	9%	5,437	2%
Slovakia	27,437	1%	23,778	1%	3,659	1%
Slovenia	6,373	0%	5,299	0%	946	0%
Spain	208,057	9%	173,834	8%	34,223	11%
Sweden	47,898	2%	38,043	2%	9,855	3%
UK	268,386	11%	232,154	11%	36,232	12%
Total	**2,430,730**	100%	**2,123,414**	87%	**307,158**	13%

Source and notes:
Eurostat; International marriages and divorces in the Member States and National Statistical Offices
*International marriages include "unknow n marriages" for: AT (12), DK (2), Malta (16), Slovenia (128).
2007 data for the UK has been estimated from the total number of new marriages for the period 2000-2006
2007 data on new international marriages for Ireland has been estimated by using 2006 census on marriages

2. PROPORTION OF INTERNATIONAL MARRIAGES IN THE EU (2000 TO 2007; 12 COUNTRIES)[24]



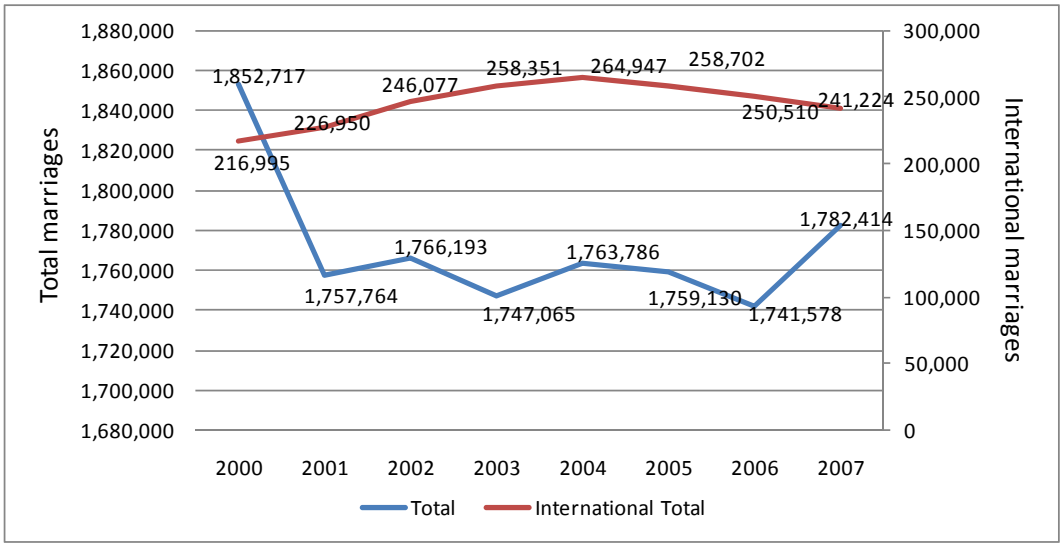
[24] These are: Belgium, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, Luxembourg, Malta, Slovakia, Slovenia and Spain.

3. NUMBERS OF DIFFERENT TYPES OF INTERNATIONAL MARRIAGES IN EU IN 2007.

	International Marriages in 2007									
	Total international marriages		Marriages between a national and another EU27 national		Marriages between a national and a third country national		Marriages between foreign nationals		Other/unknown international marriages	
Austria	8,295	100%	2,858	34%	3,664	44%	1,746	21%	27	0%
Belgium	10,451	100%	3,217	31%	4,908	47%	2,202	21%	72	1%
Bulgaria	2,413	100%	973	40%	1,417	59%	6	0%	17	1%
Czech Republic	4,969	100%	2,658	53%	2,127	43%	184	4%	0	0%
Cyprus	9,890	100%	72	1%	1,090	11%	7,554	76%	647	7%
Denmark	5,753	100%	1,004	17%	1,459	25%	1,792	31%	1,498	26%
Estonia	2,486	100%	159	6%	620	25%	800	32%	907	36%
Finland	2,447	100%	706	29%	1,210	49%	500	20%	31	1%
France	44,969	100%	7,629	17%	29,004	64%	8,311	18%	25	0%
Germany	50,840	100%	17,747	35%	25,794	51%	7,299	14%	0	0%
Greece	7,425	100%	1,638	22%	2,497	34%	3,273	44%	17	0%
Hungary	1,852	100%	1,046	56%	678	37%	123	7%	5	0%
Ireland	3,448	100%	1,142	33%	1,081	31%	790	23%	435	13%
Italy	34,559	100%	8,640	25%	15,552	45%	8,699	25%	1,668	5%
Latvia	907	100%	242	27%	630	69%	24	3%	11	1%
Lithuania	2,726	100%	1,001	37%	1,683	62%	23	1%	19	1%
Luxembourg	1,132	100%	409	36%	166	15%	557	49%	0	0%
Malta	881	100%	88	10%	185	21%	588	67%	20	2%
Netherlands	10,637	100%	2,421	23%	2,753	26%	1,557	15%	3,906	37%
Poland	4,045	100%	1,639	41%	2,317	57%	85	2%	4	0%
Portugal	6,681	100%	576	9%	5,101	76%	1,003	15%	1	0%
Romania	5,437	100%	1,884	35%	3,323	61%	0	0%	230	4%
Slovakia	3,659	100%	2,653	73%	1,004	27%	2	0%	0	0%
Slovenia	946	100%	133	14%	802	85%	11	1%	0	0%
Spain	34,223	100%	5,219	15%	20,835	61%	8,169	24%	0	0%
Sweden	9,855	100%	1,965	20%	2,610	26%	2,153	22%	3,127	32%
UK	36,232	100%	12,681	35%	16,304	45%	7,246	20%	0	0%
Total	**307,158**	100%	**80,400**	26%	**148,814**	48%	**64,697**	21%	**12,667**	4%

Notes and source:
National statistical offices and Eurostat
Data for IE have been estimated according to 2006 census
Data for IT have been estimated basing on marriage statistics with national / international breakdown
Data for the UK have been calculated from 2006 aggregate data + information from ONS and by applying the average ratio for international marriages

4. NUMBER OF NATIONAL AND INTERNATIONAL MARRIAGES IN THE EU (2000 TO 2007; 20 COUNTRIES)



Note: The left axis of the graph provides the figures for the total number of marriages, while the figures relating to the number of international marriages are provided on the secondary axis.

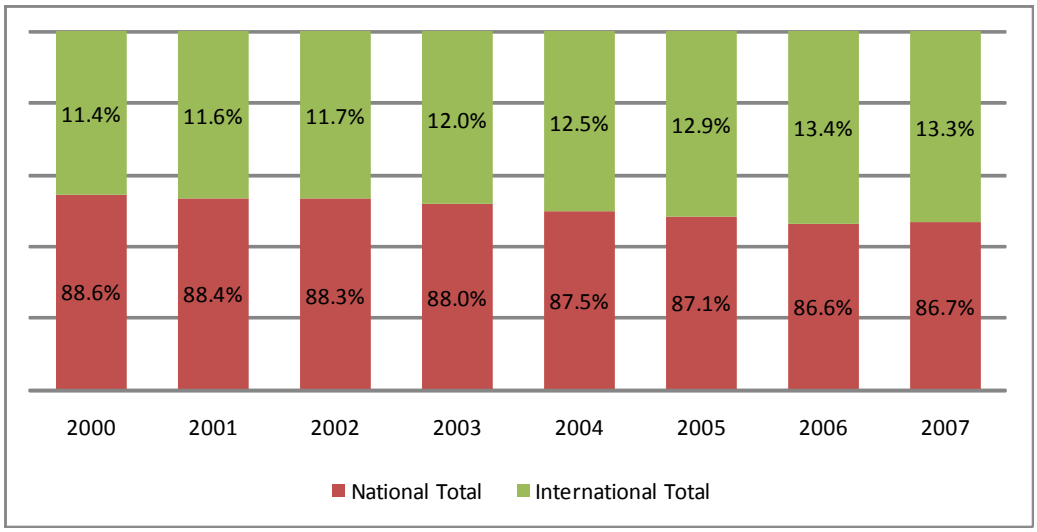
ANNEX V – Data on divorces: divorces in EU in 2007

1. DIVORCES IN THE EU MEMBER STATES (2007)

	Divorces in 2007					
	Total divorces		National		International	
Austria	20,516	2%	15,390	2%	5,111	4%
Belgium	29,881	3%	24,546	3%	5,535	4%
Bulgaria	16,347	2%	15,656	2%	691	1%
Czech Republic	31,129	3%	28,978	3%	2,151	2%
Cyprus	1,648	0%	954	0%	694	1%
Denmark	14,066	1%	11,728	1%	2,337	2%
Estonia	3,809	0%	2,483	0%	1,311	1%
Finland	13,224	1%	11,819	1%	1,405	1%
France	152,954	15%	132,611	15%	20,343	15%
Germany	187,072	18%	152,972	17%	34,100	25%
Greece	13,500	1%	11,678	1%	1,823	1%
Hungary	25,160	2%	24,649	3%	511	0%
Ireland	3,684	0%	2,689	0%	995	1%
Italy	49,003	5%	47,536	5%	3,133	2%
Latvia	7,403	1%	6,418	1%	985	1%
Lithuania	11,336	1%	10,579	1%	753	1%
Luxembourg	1,106	0%	574	0%	532	0%
Malta	0	0%	0	0%	0	0%
Netherlands	31,983	3%	26,269	3%	5,714	4%
Poland	66,586	6%	57,730	6%	8,856	6%
Portugal	25,255	2%	23,915	3%	1,235	1%
Romania	36,308	3%	35,900	4%	408	0%
Slovakia	12,174	1%	11,918	1%	256	0%
Slovenia	2,617	0%	2,343	0%	269	0%
Spain	125,777	12%	111,472	12%	14,305	10%
Sweden	20,669	2%	15,019	2%	5,650	4%
UK	144,220	14%	124,750	14%	19,470	14%
Total	**1,047,427**	100%	**910,577**	87%	**136,850**	13%

Source and notes:
Eurostat; International marriages and divorces in the Member States and National Statistical Offices
2007 data on new international marriages for Ireland has been estimated by using 2006 census
Data for FR, GR, LV, PL and the UK have been estimated by using 13.5% for international divorces
13.5% is the average share of international divorces in total for the period 2003-2006

2. PROPORTION OF NATIONAL AND INTERNATIONAL DIVORCES IN THE EU (2000 TO 2007; 15 COUNTRIES).

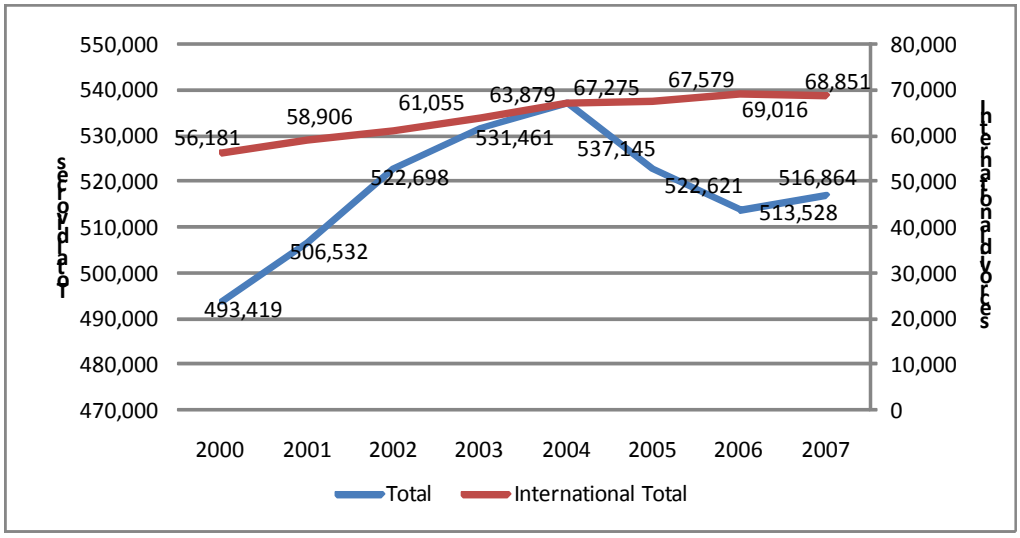


3. INTERNATIONAL DIVORCES IN 2007

	International Divorces in 2007									
	Total international divorces		Divorces between a national and another EU27 national		Divorces between a national and a third country national		Divorces between foreign nationals		Other/unknown international divorces	
Austria	5,111	100%	1,226	24%	3,224	63%	613	12%	48	1%
Bulgaria	691	100%	199	29%	492	71%	0	0%	0	0%
Czech Republic	2,151	100%	694	32%	1,344	62%	113	5%	0	0%
Cyprus	694	100%	170	24%	95	14%	160	23%	148	21%
Denmark	2,337	100%	493	21%	1,038	44%	628	27%	178	8%
Estonia	1,311	100%	44	3%	290	22%	503	38%	474	36%
Finland	1,405	100%	271	19%	711	51%	271	19%	152	11%
Germany	34,100	100%	1,328	4%	3,463	10%	7,965	23%	21,344	63%
Hungary	511	100%	298	58%	186	36%	25	5%	2	0%
Lithuania	753	100%	192	25%	459	61%	24	3%	78	10%
Luxembourg	532	100%	172	32%	69	13%	291	55%	0	0%
Malta	0	0%	0	0%	0	0%	0	0%	0	0%
Netherlands	5,714	100%	736	13%	1,518	27%	890	16%	2,570	45%
Portugal	1,235	100%	204	17%	839	68%	177	14%	15	1%
Romania	408	100%	181	44%	168	41%	9	2%	50	12%
Slovakia	256	100%	139	54%	112	44%	5	2%	0	0%
Slovenia	269	100%	15	6%	136	51%	0	0%	118	44%
Sweden	5,650	100%	724	13%	2,411	43%	1,389	25%	1,126	20%
Total	**63,128**		**7,086**		**16,555**		**13,063**		**26,303**	

Notes and source:
National statistical offices and Eurostat
* Member States for which there is no breakdown data available are excluded.
These countries are: Belgium, France, Greece, Ireland, Italy, Latvia, Poland, Spain and the UK.

4. NUMBER OF DIVORCES AND INTERNATIONAL DIVORCES IN THE EU (2000 TO 2007; 16 COUNTRIES)



ANNEX VI – Data on registered partnerships

1. MAGNITUDE OF INTERNATIONAL REGISTERED PARTNERSHIPS AND INTERNATIONAL PROPERTY REGIMES OF REGISTERED PARTNERSHIPS

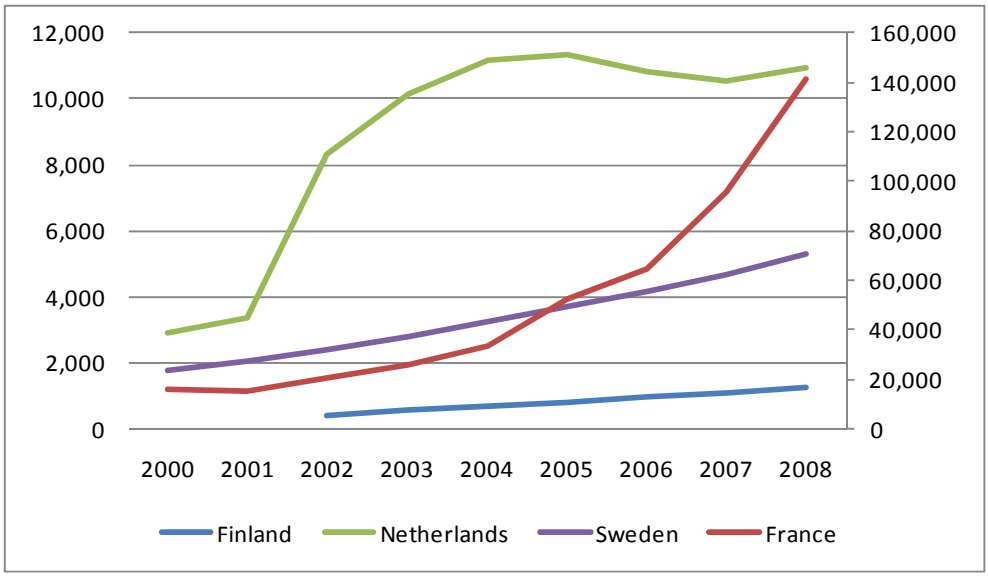
This table indicates the number of registration of new civil / registered partnerships for seven countries (of the eleven countries in which such partnerships existed by the end of 2009) for the period 2000-2009.

Number of civil / registered partnerships										
Country	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
Denmark									6,433	6,900
Finland			446	190	186	200	191	213	249	
France	15,935	15,435	20,588	25,819	33,147	52,800	64,271	95,708	141,099	
Netherlands	2,922	3,377	8,321	10,119	11,156	11,307	10,801	10,550	10,939[25]	
Slovenia[26]							8	8	2	
Sweden	1,788	2,066	2,408	2,803	3,259	3,730	4,188	4,649	5,294	
UK						3,906	32,212	17,456	14,338	

[25] In order to find an aggregate data for 2008, this figure has been extrapolated by using the data 2003-2007.

[26] Although both same-sex and opposite-sex civil / registered partnership exist in Slovenia, data for Slovenia covers same-sex civil partnership only.

2. NUMBER OF NEW CIVIL / REGISTERED PARTNERSHIPS BY YEAR (TRENDS)

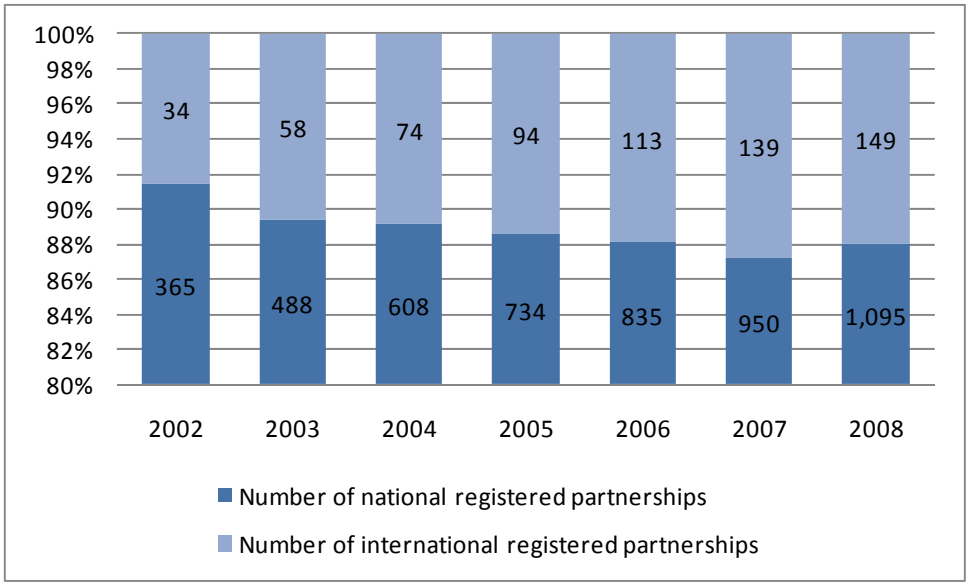


Note: The plot line for France is on the secondary axis, while for other countries the plot lines are on the primary axis.

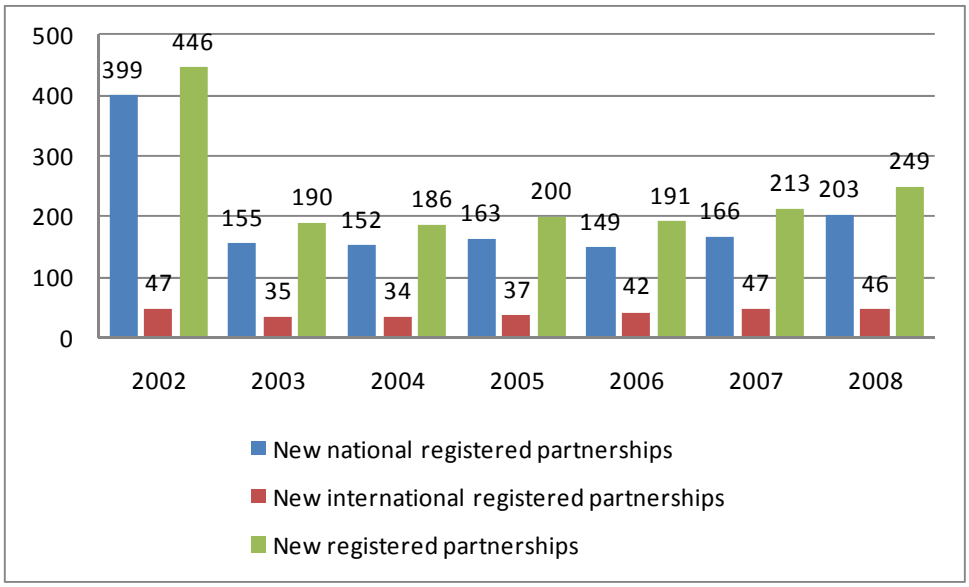
3. NUMBER OF NEW PACS (FRENCH REGISTERED PARTNERSHIPS) IN FRANCE

year	Total	man-man	Woman-woman	Man-woman	Non determined	Dissolutions	
1999	6 139						7
2000	22 108						620
2001	19 410					1 859	
2002	24 979					3 143	
2003	31 161					5 229	
2004	39 576					6 935	
2005	59 837					8 595	
2006	76 680					9 470	
2007	101 045	3 665	2 485	94 797	98	22 553	
2008	144 730	4 742	3 399	136 582	7	23 299	

4. THE STOCK OF REGISTERED PARTNERSHIP IN FINLAND (2002-2008):



5. NUMBER OF NEW REGISTERED PARTNERSHIPS IN FINLAND (2002-2008):



6. NUMBER OF DISSOLUTIONS OF NATIONAL AND INTERNATIONAL REGISTERED PARTNERSHIPS, AND THE REASONS FOR THESE

As with married couples, data have been collected concerning the dissolution of registered partnerships through separation, death and regime alterations, leading to a division of property.

Separation: Data have been collected from Eurostat, national statistics offices and legal professionals. Relevant data have been collected only for Finland. Tables 3.4 and 3.5 present data on the separation of registered partnerships in Finland (with a country group breakdown). According to these figures, while the total number of separations increased

sharply in 2007 to then diminish again in 2008, there has been a steady increase in the proportion of international dissolutions.

7. SEPARATIONS OF REGISTERED PARTNERSHIPS IN FINLAND (2001-2008)

	National		International		Total	
2001	:	:	:	:	:	:
2002	:	:	:	:	2	100%
2003	:	:	:	:	7	100%
2004	19	83%	4	17%	23	100%
2005	23	74%	8	26%	31	100%
2006	23	77%	7	23%	30	100%
2007	54	81%	13	19%	67	100%
2008	30	67%	15	33%	45	100%

International separations between Finnish nationals and non-EU nationals are more common than between Finnish nationals and other EU nationals.

8. SEPARATIONS OF INTERNATIONAL REGISTERED PARTNERSHIPS BY COUNTRY GROUP IN FINLAND (2004-2008)

	Between nationals and EU nationals		Between nationals and non EU nationals		Between two other EU nationals		Between two non EU nationals		**Total**
2004	0	0%	4	100%	0	0%	0	0%	4
2005	2	25%	5	63%	0	0%	1	13%	8
2006	0	0%	7	100%	0	0%	0	0%	7
2007	0	0%	12	92%	0	0%	1	8%	13
2008	4	27%	10	67%	0	0%	1	7%	15