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The Law Societies

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EU Family Law and Private Client

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The Law Societies' Joint Brussels Office
85 Avenue des Nerviens
B-1040 Brussels, Belgium

Tel: (+32) 2 743 85 85
Fax: (+32) 2 743 85 86
brussels@lawsociety.org.uk

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WHAT'S NEW

Agreement was reached between the Council and the European Parliament on the [text](#) of the proposed Regulation concerning the mutual recognition of protection measures in civil matters. The Regulation aims to ensure that protection measures ordered by a Member State in the case that there are serious grounds for concluding that an individual's life, physical or psychological integrity is at risk can be recognised across the EU. This Regulation follows agreement for a Directive on the European Protection Order in 2011 concerning criminal law matters and has been designed to complement it.

Following the start of the Irish Presidency of the EU, negotiations are continuing on two important proposals concerning jurisdiction, applicable law and the recognition and enforcement of decisions in (i) matters of matrimonial property regimes and (ii) the property consequences of registered partnerships. The UK has not opted in to these initiatives.

On 23 January, the Legal Affairs (JURI) Committee of the European Parliament hosted a workshop on "Civil Law and Justice with the participation of EU National Parliaments: Do EU citizens enjoy free movement?". This included a presentation on the current functioning of the Directive on certain aspects of mediation in civil and commercial matters (which applies to family law) as well as in-depth sessions on family and succession law and civil status. A report was also published examining "[Life in Cross-Border Situations in the EU - A Comparative Study on Civil Status](#)". A proposal concerning the mutual recognition of civil status documents is expected from the European Commission this year.

A report published by the Commission on 23 February 2012 considered the provisions of the Directive on the provision of minimum standards for legal aid in civil and commercial cross-border cases and identified areas for potential reform. The JURI Committee of the European Parliament has published a [draft own-initiative report](#) in response to the Commission's findings.

Please note that new items appear in bold and italics in the tracker.

BACKGROUND AND LEGISLATIVE FRAMEWORK

Creating a genuine area of freedom, security and justice, where decisions taken in one Member State are recognised and enforced throughout the European Union, is one of the main aims of EU policymakers today. As family ties are formed increasingly between nationals or residents of different Member States, the free circulation of decisions can be viewed as particularly important in the family law sphere. In such cases it is important to have clear rules on jurisdiction and applicable law in questions of divorce and parental responsibility and to establish common effective rules for the recognition and enforcement of decisions within the EU.

The Treaty of Lisbon entered into force on 1 December 2009. It amended the EU's two core treaties: the Treaty on European Union and the Treaty Establishing the European Community (TEC). The TEC is renamed the Treaty on the Functioning of the European Union (TFEU). Under the TFEU, family law stays subject to unanimity in the Council of the EU ("Council") with the European Parliament (EP) only having the right to be consulted.¹ Initiatives in the field of judicial cooperation in civil matters remain subject to qualified majority voting in Council and the sharing of decision-making power with the EP under the ordinary legislative procedure. Initiatives in the field of judicial co-operation in criminal matters move from unanimity to qualified majority voting in Council and the sharing of decision-making power with the EP under the ordinary legislative procedure.²

Under Protocol No 21 of the treaties on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice,³ the UK and Ireland have a right to opt in to all measures set out in Title V, TFEU. Should the UK wish to opt in to a particular proposal, it must notify the President of the Council of its intention to do so within three months of the proposal's presentation. The UK may also opt-in following the adoption of the measure.

For further information about the impact of the Treaty of Lisbon, see the Law Society of England and Wales' guide.⁴

The European Commission

The Vice-President of the European Commission ("Commission") Viviane Reding was appointed as EU Commissioner for Justice, Fundamental Rights and Citizenship on 9 February 2010.⁵ In a written statement to the EP prior to her appointment,⁶ Vice-President Reding pledged among other things to: submit an Action Plan concerning the delivery of the Stockholm Programme (2010 to 2014); progress the proposal on applicable law in matrimonial matters ("Rome III"), with the full participation of Member States, or using enhanced cooperation (whereby a minimum of nine Member States participate in a proposal);⁷ and work on a common response to the issue of the prevention of violence against women.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF> (Article 81(3))

² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0201:0328:EN:PDF>

⁴ http://www.lawsociety.org.uk/documents/downloads/guide_to_treaty_of_lisbon.pdf

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:038:0007:0008:EN:PDF>

⁶ http://www.europarl.europa.eu/hearings/static/commissioners/answers/reding_replies_en.pdf

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF> (Article 20)

The Presidency

The Presidency of the Council transferred to Cyprus on 1 July 2012 for the final six months of the eighteen month "trio" of presidencies of Poland, Denmark and Cyprus. On 1 January 2013 Ireland took up the presidency and will chair discussions until the end of June, to be followed by Lithuania and Greece. The joint work programme⁸ of this trio sets out the issues they intend to address over an 18-month period. In the field of family law and private client:

- There will be further work on instruments designed to enable the exercise cross-border of property rights, specifically with the completion of a Regulation on the private international law rules applying to matrimonial property regimes and further consideration of a regime on the private international law rules regarding the property consequences of registered partnerships; and
- Work on the mutual recognition of certain civil status documents will be advanced.

Commission Work Programme

The Commission Work Programmes (CWP) set out the Commission's priorities and indicate possible upcoming legislative and non-legislative initiatives. Those of relevance to family law listed in 2012 and due for publication soon include:

- A legislative proposal on "mutual recognition of the effects of certain civil status documents (e.g. relating to birth, affiliation, adoption, name, death)"; and
- A legislative proposal "dispensing with the formalities of legalisation of documents between Member States".

For 2013, the CWP lists:

- A legislative initiative amending the Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (2201/2003); and
- A legislative initiative amending the Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (1393/2007).

In addition, 2013 has been named the European Year of Citizens⁹ and the European Commission will focus on promoting EU citizens' rights throughout the EU.

⁸ <http://www.eu2013.ie/media/eupresidency/content/documents/Trio-Programme.pdf>

⁹ <http://europa.eu/citizens-2013/>

Quick Links

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Proposal	Summary	State of Play	Law Society Action
Divorce / Separation	Proposal for a Regulation amending Regulation 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (Rome III) 17 July 2006.	<ul style="list-style-type: none"> • Proposal for a Regulation 17 July 2006. • Justice and Home Affairs Council negotiations stalled. • EP approved draft Regulation subject to amendments 21 October 2008. UK not participating. • Commission Work Programme 2012 listed for 2013 a legislative initiative to amend Regulation 2201/2003 following an assessment of its application and to "establish common minimum standards in relation to the recognition of decisions on parental responsibility with a view to abolishing exequatur proceedings for these decisions". 	
	Regulation 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.	<ul style="list-style-type: none"> • Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation adopted 20 December 2010. • The UK is not participating. • The new rules apply to participating Member States from 21 June 2012. These are Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. 	
Matrimonial property / Property consequences of registered partnerships	Proposals for Regulations on jurisdiction, applicable law and the recognition and enforcement of decisions in (i) matters of matrimonial property regimes and (ii) the property consequences of registered partnerships	<ul style="list-style-type: none"> • Commission Communication on bringing legal clarity to property rights for international couples, proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and proposal for a Regulation on jurisdiction, applicable law 	The Law Society of England and Wales and the Law Society of Scotland responded to the consultation.

		<p>and the recognition and enforcement of decisions regarding the property consequences of registered partnerships 16 March 2011.</p> <ul style="list-style-type: none"> • Commission Impact Assessment accompanying the Communication and two proposals on property rights for international couples 16 March 2011. • Noted by Justice and Home Affairs Council (JHA Council) 12 April 2011. • UK Government consultation on the Commission proposals 15 April 2011 to 20 May 2011. • UK decision not to opt-in to the proposals at this stage announced 30 June 2011. • JHA Council meeting to discuss the proposals 14 October 2011. Conference of the Council of the Notariats of the European Union (CNEU) debated criteria applicable to matrimonial property regimes 17 October 2011. • Legal Affairs Committee (JURI) rapporteur published draft reports on the proposal in matters of matrimonial property and on the proposal on the property consequences of registered partnerships 25 July 2012. • The JURI Committee debated the draft reports, 11 October 2012, and discussed the issue again on 17 December 2012. 	
Maintenance	Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (4/2009).	<ul style="list-style-type: none"> • Regulation published in the Official Journal 10 January 2009. • Action Plan implementing the Stockholm Programme includes the creation of fact sheets in 2011 concerning maintenance obligations as an action for strengthening mutual trust 4 April 2010. • Regulation generally applies from 18 June 	The Law Society of England and Wales responded to the original Green Paper and commented on the draft Regulation.

		<p>2011 and provision on continuation of legal aid (Article 47(3)) applied from 18 September 2010.</p> <ul style="list-style-type: none"> • UK opt-in published in Official Journal 12 June 2009 and Regulation applies in the UK since 18 June 2011. • Denmark not participating. • Corrigendum to Regulation published in the Official Journal 18 May 2011. • Regulation entered into force 18 June 2011. • Commission adopted Implementing Regulation (EU) No 1142/2011 establishing Annexes X and XI to Council Regulation (EC) No 4/2009 in order to list relevant authorities for the purposes of the Regulation 10 November 2011. 	
	Protocol on maintenance issues to the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.	<ul style="list-style-type: none"> • Action Plan implementing the Stockholm Programme lists "Recommendation for an authorisation to negotiate an agreement between the EU and Norway, Iceland and Switzerland regarding an additional protocol on maintenance issues to the 2007 Lugano Convention" as an action for increasing the EU's international presence in the legal field for 2011, 4 April 2010. 	
	Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.	<ul style="list-style-type: none"> • Council Decision published in Official Journal 16 December 2009. • Protocol applies provisionally within the Community from 18 June 2011, the date of application of Regulation 4/2009. 	
	<u>Related</u> Hague Convention on the	<ul style="list-style-type: none"> • Hague Convention on the International Recovery of Child Support and Other 	

	International Recovery of Child Support and Other Forms of Family Maintenance, concluded on 23 November 2007.	<p>Forms of Family Maintenance concluded 23 November 2007.</p> <ul style="list-style-type: none"> • Commission proposal for a Council Decision concerning the signature and conclusion of the Hague Convention by the European Community 28 July 2009. • UK opted-in 30 October 2009. Hague Convention signed by the EU 6 April 2011. • Council Decision approving the Hague Convention on behalf of the EU 9 June 2011. • Published in the Official Journal 22 July 2011. • UK Ministry of Justice sought views between 27 July and 14 September 2012 on the implementation in the UK of the Convention. • Conclusion of the Convention by the EU was expected in December 2012. • <i>EP Legal Affairs Committee (JURI) published draft report proposing to amend the Council Decision on the approval of the convention 6 March 2013. JURI indicates support for amendments proposed by the Commission (following consultation with Member States) which would enable an instrument of approval to be deposited so that the EU could become subject to the convention.</i> 	
Succession	Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments and the creation of a European Certificate of Succession	<ul style="list-style-type: none"> • Green Paper launching public consultation 1 March 2005. • EP own-initiative report 16 November 2006. • Regulation proposed 14 October 2009. • House of Commons' European Scrutiny 	<p>Law Society of England and Wales and STEP memorandum October 2009</p> <p>Law Society of Scotland response to consultation November 2009.</p>

		<p>Committee Report 4 December 2009.</p> <ul style="list-style-type: none"> • UK decision not to opt-in 16 December 2009. • European Network of Registers of Wills Association Final Report 17 March 2010. • Legal Affairs Committee (JURI) workshop 23 March 2010. • UK House of Lords European Committee Report 24 March 2010. • Action Plan implementing the Stockholm Programme lists “Commission Recommendation on registration of wills, following the adoption by the Council and EP of the Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession” for 2013, 4 April 2010. • Summary of Responses to UK Ministry of Justice Consultation 24 August 2010. • Contribution from the Council of the Notariats of the European Union to the Working Party on Civil Law Matters (Succession) 14 February 2011. • Council Political guidelines for further work 6 June 2011. • JHA Council reached a political compromise on the main issues 9 June 2011. • JURI hearing 20 June 2011. • JHA Council meeting 12 and 13 September 2011. • JURI adopted a detailed mandate 10 October 2011. • Polish Presidency published a paper setting out its position 8 December 2011. • JHA Council agreed general approach on 	
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		<p>the proposed text subject to continued work on the issues of clawback and the administration of estates 14 December 2011.</p> <ul style="list-style-type: none"> • The text was adopted on 13 March 2012 by the EP. • Negotiations concluded with agreement among ministers on 7 June 2012 in the JHA Council. The UK and Ireland did not opt in. • Regulation published in Official Journal on 27 July 2012. It will come into force on 17 August 2015. 	
Civil Status	European Authentic Act	<ul style="list-style-type: none"> • EP adopted own-initiative Report 18 December 2008. • EP Legal Affairs Committee (JURI) confirms commitment to legislating 2 September 2009. • Stockholm Programme: Council invites the European Commission to “follow up on the recent study on the possible problems encountered with regard to civil status documents and access to registers of such documents”. • Europe 2020 Strategy: the Commission will propose action to tackle bottlenecks in the single market by “Making it easier and less costly for businesses and consumers to enforce contracts and to recognise court judgments and documents in other EU countries” 3 March 2010. • Stockholm Action Plan includes a Green Paper on the free circulation of the documents: civil status documents, authentic acts and the simplification of legalisation 4 April 2010. • Citizenship Report 2010 set out initiatives on free circulation of documents for 2013, 27 October 2010. 	

		<ul style="list-style-type: none"> Commission Work Programme (CWP) for 2012 listed legislative proposal on mutual recognition of the effects of certain civil status documents for 2012. CWP for 2012 also listed legislative proposal on dispensing with the formalities of legalisation of documents between Member States for 2012. (It is expected that these will now be released in 2013.) 	
	Green paper on less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records	<ul style="list-style-type: none"> Public consultation launched 14 December 2010 and closed 10 May 2011. UK House of Commons EU Committee considered Green Paper 10 March 2011. Commission Work Programme (CWP) for 2012 lists legislative proposal on mutual recognition of the effects of certain civil status documents for 2012. (It is expected that this will now be released in 2013.) CWP for 2012 lists legislative proposal on dispensing with the formalities of legalisation of documents between Member States for 2012. (It is expected that this will now be released in 2013.) 	United Kingdom and Ireland Notarial Forum responded to Consultation (includes Law Society of Scotland)
Free Movement	Free Movement of European citizens and their family members	<ul style="list-style-type: none"> Report is expected in October 2013. On 23 January 2013, EP Legal Affairs Committee (JURI) hosted a workshop on "Civil Law and Justice with the participation of EU National Parliaments: Do EU citizens enjoy free movement?" The EP's Research Unit also published a report examining "Life in Cross-Border Situations in the EU - A Comparative Study on Civil Status" February 2013. 	

Protection of Vulnerable Adults	Council Conclusions on the situation of vulnerable adults and their cross-border legal protection 10 October 2008	<ul style="list-style-type: none"> • Council Conclusions on the situation of vulnerable adults and their cross-border legal protection 10 October 2008. • EP report on legal protection of adults: cross-border implications 18 December 2008. • Council Resolution on a Roadmap to enhance procedural rights of suspected and accused persons in criminal proceedings envisages special safeguards for those who are vulnerable 30 November 2009. • UK Extradition Review recommends that the UK Government works with the EU and other Member States through the Council Roadmap 30 September 2011. • CWP for 2012 lists a legislative proposal on Special Safeguards in criminal procedures for Suspected or Accused Persons who are Vulnerable for 2012. According to the Commission Roadmap, this was initially due for release in May 2012. • <i>The CWP for 2013 now lists this initiative for 2013. A proposal is expected from the Commission in October or November.</i> 	
	<u>Related</u> Hague Convention on the international protection of adults concluded on 13 January 2000	<ul style="list-style-type: none"> • Entered into force 1 January 2009. • Stockholm Programme encourages Member States to join the Convention as soon as possible, 11 December 2009. • Action Plan implementing the Stockholm Programme envisages a Commission Report on the application of the 2000 Hague Convention on the International Protection of Adults, assessing also the need for additional proposals as regards vulnerable adults by 2014. 	

Violence	EP report on priorities and outline of a new EU policy framework to fight violence against women	<ul style="list-style-type: none"> • Future directive against gender-based violence. EP own-initiative report calls for new comprehensive policy approach against gender-based violence, including among other things a criminal-law instrument in the form of a directive against gender-based violence 5 April 2011. • Commission adopted package on victims' rights which will include protection for women and children from gender-based violence 18 May 2011. 	
	Directive on the European Protection Order	<ul style="list-style-type: none"> • Directive on the European Protection Order published in the Official Journal 21 December 2011. Member States (including the UK) must implement the Directive (concerning criminal matters) by 21 December 2014. 	
	Regulation on mutual recognition of protection measures in civil matters	<ul style="list-style-type: none"> • Commission Proposal for a Regulation on mutual recognition of protection measures in civil matters (mirroring the European Protection Order for criminal matters) 18 May 2011. • EP Committee on Legal Affairs (JURI) and Committee on Women's Rights and Gender Equality (FEMM) publish draft report 7 March 2012. • Debate in Council 26 April 2012. Originally scheduled for vote in EP plenary 19 November 2012. • The UK has opted into this Directive. • Agreement reached on text between the Council and the European Parliament February 2013. • Vote of JURI and FEMM committees 19 	

		March 2013.	
Sexual Exploitation of Children	Directive on combating the sexual abuse, sexual exploitation of children and child pornography	<ul style="list-style-type: none"> • EP report adopted amendments to Proposal 27 October 2011. • Council adopted Directive 15 November 2011. • Final act signed 13 December 2011. • Directive published in the Official Journal and entered into force on 17 December 2011. 	
Rights of the Child	Protecting Children	<ul style="list-style-type: none"> • The European Commission published its non-legislative implementation report 'Protecting Children in the Digital World' 13 September 2011. • The Committee on Culture and Education (CULT) produced its draft own-initiative report on 2 April 2012. • The CULT Committee adopted its draft report on 9 October 2012 and the European Parliament adopted the report in plenary 20 November 2012. 	
	Commission Communication "An EU Agenda for the Rights of the Child."	<ul style="list-style-type: none"> • Communication published 15 February 2011. • "An EU Agenda for the Rights of the Child" noted by JHA Council 12 April 2011. • Opinion of the European Economic and Social Committee 15 February 2012. 	
Alternative Dispute Resolution in civil, commercial and family matters	EP own-initiative report on alternative dispute resolution in civil, commercial and family matters.	<ul style="list-style-type: none"> • EP adopted report 25 October 2011, which stated that any approach to ADR should go beyond consumer disputes so as to include family disputes among other things. • Commission adopted proposals for a Directive on consumer alternative dispute resolution and a proposed Regulation on 	

		<p>consumer online dispute resolution on 29 November 2011, though these only cover the sale of goods and services by a trader to a consumer and not family disputes.</p> <p>Both EP reports on alternative dispute resolution and online dispute resolution adopted 12 March 2013.</p>	
Cross Border Inheritance Tax	Communication on cross-border inheritance tax issues for European citizens.	<ul style="list-style-type: none"> • Commission published a Communication, Recommendation, Working Paper and Impact Assessment addressing obstacles faced by EU citizens in cross-border inheritance tax situations 15 December 2011. • The Commission will now engage in discussions with Member States to ensure proper steps are taken in response to the Communication. • In 2014, the Commission will review the matter and may take further steps. 	
Legal aid	Legal aid in cross-border civil and commercial disputes - Directive 2003/8	<ul style="list-style-type: none"> • Commission report on the application of Directive 2003/8/EC on minimum rules for legal aid in cross border civil and commercial disputes 23 February 2012. • EP Legal Affairs Committee (JURI) published a draft own-initiative report on the application of this Directive and how it could be improved. 	

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