

Rome III Regulation Adopted by Council

As a Christmas gift for European PIL scholars, the first enhanced cooperation in the history of the EU has been achieved in the field of conflict of laws (on the origin of the initiative see our previous post here).

The Council, in its meeting of 20 December 2010, **adopted the Rome III regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation** (for previous steps of the procedure, see here and here). As of mid-2012 (18 months after its adoption, pursuant to Art. 21), the Rome III reg. will apply in the **14 Member States** which have been authorised to participate in the enhanced cooperation by Council decision no. 2010/405/EU: Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. Further Member States which wish to participate may do so in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union.

The text of the new regulation is available in Council doc. no. 17523/10 of 17 December 2010; after the signing of the President of the Council, it will be soon published in the Official Journal. The regulation is accompanied by a Declaration of the Council regarding the insertion of a provision on *forum necessitatis* in reg. no. 2201/2003, worded as follows:

The Council invites the Commission to submit at its earliest convenience to the Council and to the European Parliament a proposal for the amendment of Regulation (EC) No 2201/2003 with the aim of providing a forum in those cases where the courts that have jurisdiction are all situated in Member States whose law either does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings (forum necessitatis).

The European Parliament, merely consulted under the special legislative procedure provided by Art. 81(3) TFEU for measures concerning family law, gave its opinion on 15 December 2010 (informal contacts with the Council have ensured that the EP views were taken into account in the final text). In the

preamble of the legislative resolution, the EP called “on the Commission to submit a proposal for amendment of Regulation (EC) No 2201/2003, limited to the addition of a clause on *forum necessitatis*, as a matter of great urgency before the promised general review of that Regulation”.

Many thanks to Federico Garau (Conflictus Legum blog) and to Marina Castellaneta for the tip-off.