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**CCBE letter regarding the Proposal for a Council Regulation amending Regulation (EC) no 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters, COM(2006)399**

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**Conseil des barreaux européens – Council of Bars and Law Societies of Europe**

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## **CCBE letter regarding the Proposal for a Council Regulation amending Regulation (EC) no 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters, COM(2006)399**

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The Council of Bars and Law Societies of Europe (CCBE) represents more than 700,000 European lawyers through its member bars and law societies of the European Union and the European Economic Area. In addition to membership from EU bars, it has also observer representatives from a further seven European countries' bars. The CCBE responds regularly on behalf of its members to policy consultations which affect European citizens and lawyers.

The majority of the CCBE broadly approves the draft regulation.

Even though in its response to the Green paper, the CCBE expressed its preference for common nationality as first connecting factor, in the end it approves the choice of the law of the habitual residence which would have the practical advantage of being most frequently the *lex fori*. It comes round to the hierarchy of the criteria determining the applicable law chosen in the draft regulation.

Nevertheless, the CCBE would like to recall its reservation on this criterion and the absolute necessity to have a more precise definition of habitual residence.

The CCBE called for this definition both in its response to the Green Paper on succession and in its response to the Green Paper on matrimonial property regimes.

This point is considered as essential by all lawyers of Member States.

The majority of the CCBE welcomes the place given to the autonomy of parties in the choice of the applicable law. Some delegations, while supporting in theory the introduction of greater party autonomy as regards applicable law in specific cases, do not support the introduction of default rules in relation to applicable law as proposed under the regulation. Members of one delegation do not support the introduction of applicable law in this field at all. The delegations from common law countries believe that any EU regime in relation to divorce should be based on simplicity, efficacy, and legal certainty and that in the majority of cases this is best served by a system of *lex fori*.

It is noted that on the 26th October 2006 the Governments of the United Kingdom and the Republic of Ireland chose not to opt-in to this draft Regulation.

The majority also approves the modifications made to the questions concerning jurisdiction. Furthermore, efforts should be made to ensure that choice-of-law and choice-of-jurisdiction rules have a close relationship to the procedural law in question.