



EUROPEAN COMMISSION

Brussels, 8.6.2012
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Dear President,

The European Commission would like to thank the Austrian Nationalrat for its Opinion concerning the Commission's proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes {COM(2011)126 final} 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 {COM(2011)127 final}. The Commission welcomes the support of the Austrian Nationalrat for the proposals and its positive feedback concerning both proposals, whilst apologising for the delay in replying to this opinion.

As regards the main issues raised in the Austrian Nationalrat's submission, the Commission would like to give the following clarifications.

Formal requirement of choice of law

The aim of the formal requirement foreseen in the proposed Regulation on "matrimonial property regimes" is to provide legal certainty for both spouses and avoid an unfair situation for one of them through the minimum standards (the choice must at least be made expressly in writing with a date and signed by both spouses).

Even if according to the paragraph 1 of Articles 19 and 20, the formal requirements that will apply will be those of the State whose law is chosen or those of the State in which the document is drawn up, the additional formal requirements provided by the Member State in which spouses have their common habitual residence must be complied with. Like that, unfavourable situations could be avoided and the protective effect is ensured.

Obviously, the Commission is open to discuss with the Legislator whether the provisions on formal requirements could be improved.

Exclusion of choice of law for registered partnerships {COM(2011)127 final}

As stated in the Communication of the Commission "Bringing legal clarity to property rights for international couples" (COM (2011)125 final), the registered partnership is a recent institution which does not exist in all Member States.

Frau Mag. Barbara PRAMMER
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Given these differences existing between the Member States and the differences as regards the applicable law in the Member States which know this institution, the proposal does not offer a possibility of choice of the applicable law for the partners. The applicable law is the law of the State where the partnership is registered. The principle adopted in the Regulation is in line, in general, with the Member States' laws on registered partnerships, which usually provide for application of the law of the State of registration.

The Commission takes note of the fact that the parties in Austria can choose the law applicable to the property consequences of registered partnerships and is open to discuss the issue in the course of the negotiations in Council and Parliament with the aim to provide choice of law for partners. Nevertheless, if the choice is provided it will be quite limited since all Member States do not have a legislation which covers the registered partnerships and also because of the application of connecting factors. The partners could not choose any applicable law. The applicable law should be the law of the State which has links with the couple. For instance, if they are habitual residents in a Member State which does not know the registered partnership, they could not choose the applicable law of their habitual residence. Thus, the choice will be restricted.

Definition of 'habitual residence' and legal basis

The proposed Regulations are designed to simplify the lives of international couples in often difficult moments of their lives and aim to offer legal certainty in cross-border situations that they may find themselves in.

Habitual residence is the common and modern connecting factor used in private international law concerning matrimonial property regimes and the consequences of registered partnership. It coincides with the centre of interest of the couple and often with the place where most of the property is located. It favours integration into the Member State of habitual residence and avoids any discrimination regarding persons who are residents there without possessing the relevant nationality. In accordance with established case law of the European Court of Justice, the concept of "habitual residence" is to be interpreted in an autonomous manner, independently from the meaning of such concept or related concepts in national law. It is for the national court to establish the habitual residence, taking account of the circumstances specific for each case. The interpretation of the concept by national courts is subject to control by the European Court of Justice, which gradually establishes guidelines for the interpretation. In the case C-523/07 of 2 April 2009, the Court has interpreted the concept for the first time in the area of civil justice. Such guidelines will help the courts in the Member States when applying this autonomous concept, which, in general, seems to be applied without major difficulties.

Therefore, the habitual residence constitutes the more appropriate connecting factor as regards the international couples who move frequently and takes into account adequately the needs of the citizens.

Besides the habitual residence, nationality is also taken into account as a connecting factor.

The Commission hopes that the clarifications provided above address the main issues expressed in your opinion.

Yours faithfully,

*Maroš Šefčovič
Vice-President*