

Brussels, 14 OCT. 2010
C/2010/ 7148

Dear President,

Thank you very much for your letter of 21 June 2010 enclosing the opinion of the Senate of the Italian Republic concerning the Commission's proposal of 24 March 2010 for a Council Regulation (EU) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation {COM(2010) 105} ('the Rome III proposal').

The Commission has taken note that the Senate expresses a favourable view of the Rome III proposal with respect to its compliance with the principles of subsidiarity and proportionality.

As far as the remarks of the Senate on the formal requirements for a choice of law agreement are concerned, the Commission would like to make the following comments and observations:

The Commission shares the Senate's concern that the choice of the spouses should be an informed one. The European Parliament in its 2008 opinion on the Commission's 2006 Rome III proposal highlighted the need for protection of the 'weaker' spouse. The Commission in its proposal of 24 March 2010 therefore included a number of amendments suggested by the European Parliament which are designed to ensure an informed choice of law and protect the 'weaker' spouse.

The wording of Article 3 of the proposal of 24 March 2010 has been modelled on Article 20a of the 2006 proposal as amended in Council negotiations (see document 9712/08 JUSTCIV 106 of the Council of the European Union). Article 3 represents a carefully balanced compromise.

If this compromise is confirmed, it would seem that, in the absence of a common rule on the termination of the agreement, the law applicable to its termination will be governed by the national law of the court before which the divorce or legal separation is brought.

I trust that you will find the above comments and observations useful and that they help to clarify the Commission's intentions regarding the formal requirements for a choice of law agreement in its Rome III proposal.

Yours sincerely,

Mr Renato Giuseppe Schifani
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