



EUROPEAN COMMISSION

Brussels, 23.02.2012  
C/2012/1092 final

*Dear President,*

*The European Commission would like to thank the Italian Senate for its Opinion on the Commission Proposal for a Regulation of the Council on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes {COM(2011)126 final}.*

*The Commission would like to provide the following clarifications, concerning the main issues raised in the Italian Senate's submission:*

*Concerning the principle of subsidiarity, it should be noted that the aim of the proposed Regulation is to establish a common set of rules of international private law applicable on matrimonial property regimes only in cross-border cases. This common set of rules will guarantee legal certainty and predictability for spouses. The proposed Regulation will not affect the national substantive law of the Member States; it deals with the property consequences of spouses in the end of their union, by death or divorce or separation, in cross-border cases. As explained in the Impact Assessment report (SEC(2011) 327 final), the problems encountered by citizens in this field can only be achieved at European Union level.*

*The proposed Regulation has as legal basis the Article 81(3) of the Treaty on the Functioning of the European Union (hereafter "TFEU"). This Article covers measures concerning family law having cross-border implications. Since the concept of matrimonial property regimes finds its sources in a family relationship between the persons involved and it is so closely linked with marriage, it is considered to be a part of family law. This is why Article 81 (3) of the TFEU was proposed as legal basis.*

*The notion of marriage is not defined in the proposal since it is for the Member State to define this institution. The proposed Regulation covers only cross-border matrimonial consequences of the spouses. Moreover, the proposed Regulation does not deal with the substantive family law of the Member States. It deals with the pragmatic consequences of the marriage, matrimonial property regime, to provide legal certainty to international couples. The proposed Regulation does not intervene in the recognition of the marriage.*

*Sen. Renato SCHIFANI  
Presidente  
Senato della Repubblica  
Palazzo Madama  
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*The Commission has adopted two separate proposals to cover the property consequences for married couples and for couples who have registered their partnership. The Commission is of the opinion that two separate instruments take the particularities of each union adequately into account. Therefore, it is not possible for the Commission to agree on the proposed suggestion made by the Italian Senate to insert the "marriages between the same sex persons" in the proposal on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011) 127 final).*

*The Commission would like to thank the Italian Senate for the alternative proposals as regards Articles 5, 23 and 27 of the proposed Regulation. However, since the recognition of the institution of marriage is not concerned because the proposed Regulation covers only the property consequences for married couples, there is no need for such provisions.*

*The Commission hopes that the clarifications provided above satisfactorily address the main issues expressed in the Italian Senate's Opinion, whilst apologising for the delay of the response.*

*Yours faithfully,*

*Maroš Šefčovič*  
*Vice-President*