



EUROPEAN COMMISSION

Brussels, 12.03.2012
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Dear President,

The European Commission would like to thank the Italian Senate for its opinion on the Commission 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}. Our apologies for the extremely long delay in replying.

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

As regards 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 property consequences of registered partnerships only in cross-border cases. This common set of rules will guarantee legal certainty and predictability for partners. The proposal will not affect the national substantive law of the Member States. It deals with the property consequences of partners who have registered their partnerships in cross-border cases, in the end of their union, by death of one of the partners or separation. Taking into account the problems encountered by citizens in this field as explained in the Impact Assessment Report {SEC(2011) 327 final}, they 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 "registered partnership" finds its sources in a family relationship between the persons involved and it is so closely linked with the family, it is considered to be part of family law.

The proposal complies with the rights set out in the Charter of fundamental rights, in particular with Article 7 (Respect for private and family life), 9 (Right to marry and right to found a family), 17 (Right to property), 21 (Non-discrimination) and 47 (Right to an effective remedy and to a fair trial).

The notion of registered partnership is defined in Article 2 for the purposes of the Regulation as a "regime governing the shared life of two people which is provided for in law and is registered by an official authority". The proposal covers only cross-border property consequences of registered partnerships. Repeating De facto union are not covered by the proposed Regulation. Moreover, the proposal does not deal with the substantive family law of the Member States. It deals with the pragmatic consequences of the registered partnerships to

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provide legal certainty to international couples. The proposal does not intervene in the recognition of the concerned institution either. It is clearly stated in the proposal and excluded from the scope of application in Article 1 (3), point a). Moreover, the legislation on civil status of persons within the jurisdiction of Member States is not affected by the proposed Regulation which deals only with property consequences and not with the recognition of the institution.

Under the proposed Regulation (Article 24), the recognition and enforcement of a decision concerning the property consequences of a registered partnership may not be refused on the grounds that the Member States addressed does not recognise the institution of registered partnership or does not accord them the same property consequences. Apart from that situation which is related to a difference in applicable law, the proposed Regulation maintains the grounds for non-recognition of decisions (Article 22) which correspond to those of Regulation 44/2001 (Article 34).

Moreover, the proposal (Article 18) provides the public policy (ordre public) provision. This means the possibility to refuse the application of a foreign law on the basis of public policy of the forum but not in the case when the law of the forum does not recognise the registered partnership.

The Commission has adopted two separate proposals to cover the property consequences for couples who have registered their partnerships and for married couples. 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 rules governing property relations between same-sex (married) couples in this proposal rather than the proposal on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes {COM(2011) 126 final}.

The Commission hopes that the clarifications provided above address the main issues expressed in the Italian Senate's opinion, and looks forward to continuing our very active political dialogue.

Yours faithfully,

Maroš Šefčovič
Vice-President