



EUROPEAN COMMISSION

Brussels, 29.5.2012
C(2012) 3386 final

Dear President,

The European Commission would like to thank the Polish Senate for its reasoned Opinion concerning the Commission's 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}.

In reply to the main issues raised in the Polish Senate's submission, the Commission would like to give the following clarifications.

Concerning the compliance with 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 proposed Regulation will not affect the national substantive law of the Member States. It deals only with the property consequences of partners who have registered their partnerships in cross-border cases, at the end of their union, by death of one of the partners or separation. As explained in the Impact Assessment Report {SEC(2011) 327 final} the problems encountered by citizens in this field can only be addressed and the proposal's objectives achieved by action at EU 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 principle underlying the proposal is a principle of mutual recognition of judicial decisions between Member States, established as cornerstone of judicial co-operation in civil matters by the Conclusions of the Tampere Council in 1999 and also recalled in the "TFEU" (Article 67).

Furthermore, the proposal responds to the call made by the European Council in the Stockholm Programme (An open and secure Europe serving and protecting citizens) which asked that mutual recognition be extended to areas crucial for the daily lives of citizens.

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Issues relating to the property consequences of the separation of couples are explicitly included among them.

As stated in the Communication of the Commission "Bringing legal clarity to property rights for international couples" {COM (2011) 125 final}, there is a registered partnership where two people live as a couple and have registered their union with a public authority of their Member State of residence. This is a recent institution which does not indeed exist in all Member States but it is known currently by fourteen Member States. Moreover, as stated in the above mentioned Impact Assessment Report, there were approximately 211,000 new registered partnerships in the EU in 2007, of which over 41,000 had an international dimension with regard to their property consequences.

The proposed Regulation relates to the property consequences of registered partnerships and does not intervene in national law. It does not have effects on the creation of the institution of registered partnership in the Member States and will not introduce this institution in the Member States where this kind of union does not exist. It deals only with the property consequences of registered partnerships in cross-border cases.

The proposal will not touch the substantive family law of the Member States since it covers only rules on international private law and will deal with the pragmatic consequences of the registered partnerships to provide legal certainty to international couples. The national family law remains as it is and no change is made to the national substantive law. Moreover, the proposal does not intervene in the recognition of the relevant institution. Indeed, the personal effects of registered partnership are expressly excluded from the scope of application of the Regulation (Article 1, (3), point a).

Taking into account the above mentioned considerations, the Commission is of the opinion that the proposal is in compliance with the principle of subsidiarity.

The Commission hopes that the clarifications provided above address the main issues expressed in your opinion and apologises for the delay in replying to the Senate's opinion.

Yours faithfully,

*Maroš Šefčovič
Vice-President*