



EUROPEAN COMMISSION

Brussels, 26.01.2012
C(2012)454 final

Dear President,

The European Commission would like to thank the Romanian Senate for its reasoned opinion on 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), and apologies for the delay in replying to your opinion.

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

As regards 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 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, in the end of their union, by death of one of the partners or separation. The problems encountered by citizens in this field as explained in the Impact Assessment Report (SEC (2011) 327 final) and the proposal's objectives can only be achieved at European Union level.

The proposed Regulation has as legal basis 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.

A Member State which does not recognise the institution of registered partnership is not obliged to introduce such an institution in its legal system. It should be noted that more than half of the Member States do recognise this institution.

Since the proposed Regulation will cover property consequences of registered partnership in cross-border cases, it is not possible to limit the application of the future instrument to the Member States where the institution of registered partnership is known. The Regulation is legally binding with all its elements and provisions.

Mr Vasile BLAGA
President of the Senate
Calea 13 Septembrie, Nr 1-3
Intrarea A1, sector 5
RO - BUCHAREST

As regards the choice of the instruments, the Commission opted for a Regulation and not for a Directive. To establish a common set of rules for determining jurisdiction and the law applicable to the property consequences of registered partnerships, and to facilitate the free movement of decisions and instruments among the Member States, it is more appropriate to propose a Regulation which creates the same rules on international private law and thus ensuring the legal certainty.

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. It deals with the pragmatic consequences of the registered partnerships to provide legal certainty to international couples.

The proposed Regulation does not intervene in the recognition of the registered partnerships. Moreover, the personal effects of registered partnership are expressly excluded from the scope of application of the Regulation (Article 1, (3), point a).

The proposed Regulation (Article 18) provides for the public policy exception. Under this rule, the application of the foreign law designated by the conflict of law rules can be refused by the judge of the forum if this application is considered to be manifestly incompatible with public policy of the forum Member State (e. g. applicable law provision discriminates between men and women). However, the application of the law can not be refused if the Member State of the forum does not know the registered partnership.

Otherwise, 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, 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).

The Commission hopes that the clarifications provided above address the main issues expressed in the Opinion of the Romanian Senate and looks forward to continuing our political dialogue in future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*