



Parlamentul României
Senat

Bucharest, 25th June, 2013

Courtesy translation

REASONED OPINION

of the ROMANIAN SENATE, on the

Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of the citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012

COM (2013) 228 final

The Senate of Romania has examined the compliance with the subsidiarity and proportionality principles of *the Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of the citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012 - COM (2012) 228 final*, according to the provisions of the Treaty of Lisbon (Protocol no.2).

Taking into account the report of our permanent Committee on European Affairs and Juridical Committee on Nominations, Discipline, Immunities and Validations, **the Plenum of the Senate**, during its session on the 25th of June 2013, has found that the mentioned proposal **is in compliance with the principle of proportionality, but is not in compliance with the subsidiarity principle for the following reasons:**

- a) According to the provisions of article 2 from the proposal of Regulation, the public documents issued by the Member States, as they are defined in this proposal, and which are presented to the authorities of another Member State, are to be accepted as official documents, with a formal probative value, but without the obligation to recognize the content of these public documents. The proposal for a Regulation refers, too, to the official documents issued by the authorities of the Member States relating to the registered partnerships – art. 3 par. (1) point (d).
- b) In Romania, according to the art. 277 par. (3) of the Civil Code: „*Civil partnerships between persons of the opposite sex or same sex concluded or contracted abroad by Romanian citizens or foreign citizens are not recognized in Romania*”.
- c) The proposed regulation establishes therefore the requirement that certain legal acts issued by another Member State to be recognized as official documents, and in relation to areas which, *expressis verbis*, are not recognize by our national legislation.

Thus, it is considered that this draft regulation can not bring added value in terms of legal regulations, and that this regulation, in terms of registered partnerships, is incompatible with our national legal system.

d) **The right of European Union legislative intervention in family law is limited**, and, as it is shown in the provisions of art. 81 par. (3) of the Treaty on the Functioning of the European Union, **those measures with cross-border implications are included among the exceptions**. These provisions can not be applied in respect of jurisdiction, applicable law, recognition and enforcement of decisions regarding the property consequences of registered partnerships.

e) **The provisions of art. 4 - Exemption from legalisation and similar formality, of art. 5 par (2)**

„Where the original of a public document issued by the authorities of one Member State is presented together with its copy, the authorities of the other Member States shall accept such copy without certification”,

and, especially, those of **art. 6 par. (1) – Non-certified translations**

„Authorities shall accept non-certified translations of public documents issued by the authorities of other Member States.”

are likely to create a strong contradiction with the formalism imposed by our national law on the recognition of the acts issued by the authorities of the other states, be they members of the European Union.

f) the grounds to achieve certain negative effects may be created, through a use in bad faith by those who are engaged in certain criminal activities, of the facilities that need to be set in order to support the third country nationals, effects that are in total conflict with the purpose for which are created such facilities.

The Senate of Romania issued an argued **reasoned opinion** on COM(2011) 127 – *Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships* on the infringements of the principle of subsidiarity. The Senate of Romania considered that *„this legislation can be a very good legal instrument, but with application only in countries that recognize partnerships, in our country it is not required as long as registered partnerships are not legally recognized.”*

p. President
Cristian – Sorin DUMITRESCU

