



EUROPEAN COMMISSION

Brussels, 26.01.2012
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Dear President,

I would like to thank the Polish Sejm 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. Let me also apologise for our late reply.

The Commission takes particular note of the Sejm's conclusion that this proposal would be in breach of the principle of subsidiarity.

Concerning the main issues raised in the Polish Sejm's submission, the Commission would like to give the following clarifications.

As regards 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 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 addressed 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.

The principle underlying the proposal and referred to is the 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, in Article 67.

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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. 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 indeed does not exist in all Member States. The proposed Regulation related to the property consequences of registered partnerships does not intervene in national law and does not have effects on the creation of such institution in the Member States. It deals only with the property consequences of registered partnerships in cross-border cases.

The proposed Regulation will not introduce the institution of registered partnership in the Member States where this kind of union does not exist. 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.

Moreover, the proposal does not intervene in the recognition of the concerned institution either. Indeed, 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 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.

It should be recalled that under the proposed Regulation (Articles 3 and 5), the possibility is provided for the court to decline its jurisdiction if its domestic law does not recognise the institution of registered partnership. The proposal provides also grounds for non-recognition of decisions (Article 22) which correspond to those of Regulation 44/2001 (Article 34).

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 satisfactorily address the main concerns expressed in your Opinion.

Yours faithfully,

*Maroš Šefčovič
Vice-President*