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REPORT

on the 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)0127 – C7-0094/2011 – 2011/0060(CNS))

Committee on Legal Affairs

Rapporteur: Alexandra Thein

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT.....	70
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS	73
PROCEDURE	92

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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)0127 – C7-0094/2011 – 2011/0060(CNS))**

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2011)0127),
 - having regard to Article 81(3) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0094/2011),
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Italian Senate, the Polish Sejm, the Polish Senate and the Romanian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to Article 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A7-0254/2013),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 8

Text proposed by the Commission

Amendment

(8) *The specific features of these two*

deleted

forms of union, namely marriage and registered partnerships, and the resultant differences in the principles applicable to them, are the grounds for enacting two separate instruments containing the provisions governing matrimonial property regimes and those governing the property consequences of registered partnerships, which are the subject of this Regulation.

Amendment 2

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Recognition in a Member State of a decision relating to the property consequences of a registered partnership has as its only object to allow the enforcement of the property consequences determined in that decision. It does not imply recognition by that Member State of the partnership underlying the property consequences which gave rise to that decision. Member States where the institution of a registered partnership does not exist are not obliged by this Regulation to create such an institution.

Amendment 3

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) *The Regulation covers matters arising from the property consequences of registered partnerships. 'Registered partnership' is defined here solely for the purposes of this Regulation. The actual substance of the concept is defined in the*

(10) *This Regulation covers matters arising from the property consequences of registered partnerships. 'Registered partnership' is defined here solely for the purposes of this Regulation. **For the purposes of this Regulation, a registered partnership is a form of union other than***

national laws of the Member States.

marriage. The actual substance of the concept of *a registered partnership* is defined in the national laws of the Member States.

Amendment 4
Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) This Regulation should not, however, apply to areas of civil law concerning matters other than the property regime of a registered partnership. For reasons of clarity, therefore, a number of questions which could be seen as having a link with matters of that regime should be explicitly excluded from the scope of this Regulation.

(Corresponds to recital 11 in Regulation (EU) No 650/2012 and AM 3 of the report in 2011/0059 (CNS).)

Justification

The new recital stresses that the scope of the regulation needs to be precisely defined and the dividing lines between it and other areas of law must be clear. Recital 11 of the Regulation on wills and succession would be suitable and is also proposed for the Regulation on matrimonial property regimes.

Amendment 5
Proposal for a regulation
Recital 12

Text proposed by the Commission

Amendment

(12) *As* the maintenance obligations between registered partners are provided for in Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, ***they must*** be excluded from

(12) The maintenance obligations between registered partners, ***which*** are provided for in Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, ***should*** be excluded from the

the scope of this Regulation, as should issues relating to *the validity and effects of gifts* covered by *Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations*.

scope of this Regulation, as should issues relating to *succession, which are* covered by *Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession*¹.

¹ OJ L 201, 27.7.2012, p. 107.

(Corresponds to AM 4 of the report in 2011/0059 (CNS).)

Amendment 6
Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) *Issues relating to the nature* of rights in rem *that may exist under* the national law of Member States, *and those linked to the disclosure of such rights, should also be excluded from the scope of this Regulation, as they are in Regulation (EU) No ... [of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession]. This means that the courts of the Member State in which a property of one or both partners is located may take measures under property law, regarding such things as the recording of a transfer of the property in the public register, where the law of that Member State so provides.*

Amendment

(13) *This Regulation – like Regulation (EU) No 650/2012 – should not affect the limited number ('numerus clausus') of rights in rem known in the national law of some Member States. A Member State should not be required to recognise a right in rem relating to property located in that Member State if the right in rem in question is not known in its law.*

(Corresponds to AM 5 of the report in 2011/0059 (CNS).)

Amendment 7
Proposal for a regulation
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by the liquidation of the property regime of a registered partnership, this Regulation should provide for the adaptation of an unknown right in rem to the closest equivalent right in rem under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right in rem and the effects attached to it. For the purposes of determining the closest equivalent national right in rem, the authorities or competent persons of the State whose law applies to the property regime of the registered partnership may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used as well as any other available means facilitating the understanding of foreign law.

(Corresponds to recital 16 in Regulation (EU) No 650/2012 and AM 6 of the report in 2011/0059 (CNS).)

Justification

The property regimes of registered partnerships face similar problems regarding the recognition of rights in rem as do matters of succession. The new recital corresponds to recital 16 of the regulation on wills and succession.

Amendment 8
Proposal for a regulation
Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information.

(Corresponds in part to recital 18 in Regulation (EU) No 650/2012 and AM 7 of the report in 2011/0059 (CNS).)

Justification

As with the Regulation on wills and succession and the Regulation on matrimonial property regimes, the requirements for the recording in a register of rights in movable or immovable property should be excluded from the scope of the Regulation. The new recital corresponds to recital 18 of the regulation on wills and succession.

Amendment 9
Proposal for a regulation
Recital 13 c (new)

Text proposed by the Commission

Amendment

(13c) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in an immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to

ensure the erga omnes effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.

(Corresponds to recital 19 in Regulation (EU) No 650/2012 and AM 8 of the report in 2011/0059 (CNS).)

Justification

As with the Regulation on wills and succession and the Regulation on matrimonial property regimes, the requirements for the recording in a register of rights in movable or immovable property should be excluded from the scope of the Regulation. The new recital corresponds to recital 19 of the regulation on wills and succession.

Amendment 10
Proposal for a regulation
Recital 13 d (new)

Text proposed by the Commission

Amendment

(13d) Like Regulation (EU) No 650/2012, this Regulation should respect the different systems for dealing with property-regime issues applied in the Member States. For the purposes of this Regulation, the term ‘court’ should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of property regimes, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given property-regime matter by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term ‘court’ should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of property regimes, such as the notaries in most Member States where, as is usually the

case, they are not exercising judicial functions.

(Corresponds to recital 20 in Regulation (EU) No 650/2012 and AM 10 of the report in 2011/0059 (CNS).)

Amendment 11
Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) Similarly, this Regulation must provide for extension of the jurisdiction of the courts of a Member State handling an application for dissolution or annulment of a registered partnership to include matters relating to the property consequences of the registered partnership arising in connection with that application, if the *partners so agree*.

Amendment

(15) Similarly, this Regulation must provide for extension of the jurisdiction of the courts of a Member State handling an application for dissolution or annulment of a registered partnership to include matters relating to the property consequences of the registered partnership arising in connection with that application, if the ***jurisdiction of the courts concerned has been recognised expressly or impliedly by the partners***.

Amendment 12
Proposal for a regulation
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Where matters of property regimes are not linked to the dissolution or annulment of the partnership or to the death of a partner, the partners may decide to submit questions related to their property regime to the courts of the Member State of the law they chose as the law applicable to their property regime. This requires an agreement between the partners, which may be concluded, at the latest, until the matter is put before the court and subsequently as provided for by the lex fori.

(Corresponds to AM 12 of the report in 2011/0059 (CNS).)

Justification

The new recital corresponds to recital 16 of the Regulation on matrimonial property regimes.

Amendment 13
Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) ***In other situations***, this Regulation must protect the territorial jurisdiction of a Member State's courts ***to deal with claims relating to*** the property consequences of the registered partnership in accordance with a ***list*** of criteria listed in order of precedence designed to ensure the existence of a close link between the partners and the Member State whose courts have jurisdiction. Courts other than those of the Member State where the partnership was registered ***may*** decline this extension of jurisdiction if their domestic law does not provide for registered partnerships. ***Finally, if no court has jurisdiction to deal with the situation in the light of the other provisions of this Regulation, an alternative jurisdictional rule has been included to avoid any risk of denial of justice.***

Amendment

(16) This Regulation must protect the territorial jurisdiction of a Member State's courts ***over applications concerning*** the property consequences of the registered partnership ***to be determined in cases other than those of separation of the couple or death of the partner*** in accordance with a ***set*** of criteria listed in order of precedence designed to ensure the existence of a close link between the partners and the Member State whose courts have jurisdiction. Courts other than those of the Member State where the partnership was registered ***should be given the opportunity to*** decline this extension of jurisdiction if their domestic law does not provide for registered partnerships.

Justification

Although it would be preferable to exclude the possibility of a declaration of non-jurisdiction in order to achieve better synchronisation between property regimes in the case of marriages and registered partnerships, the different standpoints of the Member States on registered partnerships mean it would be more realistic at the moment to maintain the compromise rules foreseen by the Commission proposal.

Amendment 14
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In order to remedy, in particular,

situations of denial of justice this Regulation should provide a forum necessitatis allowing a court of a Member State, on an exceptional basis, to rule on a property regime case which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on forum necessitatis should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.

(Corresponds to recital 31 in Regulation (EU) No 650/2012 and AM 14 of the report in 2011/0059 (CNS).)

Justification

The new recital corresponds to recital 17a proposed for the Regulation on matrimonial property regimes.

Amendment 15

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) To facilitate *the* partners' management of their property, *the law of the Member State where the partnership was registered will apply to all the partners' property, even if this law is not the law of a Member State.*

Amendment

(18) To facilitate **registered** partners' management of their property, **this Regulation should authorise them to choose the law applicable to their property, regardless of the nature or location of the property, from amongst the legal systems with which they have close links because of residence or their nationality. There is no reason why that choice should be denied to registered partnerships. If the partners choose a law which does not recognise registered partnerships, the choice of law should be**

considered null and void. The law determined by the objective connection should then be applied. Even though the parties concerned are generally well informed about their rights, the requirement concerning particular legal protection should be countered by the requirement for judicial advice on the impact of the choice of law. That requirement will be met, in particular, where the advice is guaranteed by additional formal rules concerning the choice of law, notably on notarisisation.

Amendment 16
Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In order to create legal certainty and clarity, this Regulation should also include a rule concerning multiple registrations of a registered partnership, which should relate to the most recent registration. The Member States should ensure that there are no multiple registrations of registered partnerships.

Amendment 17
Proposal for a regulation
Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the partners, this Regulation must introduce harmonised conflict-of-laws rules to establish the law applicable to all the partners' property on the basis of a scale of connecting factors. The common

habitual residence of the partners at the time of the establishment of the partnership or the first common habitual residence of the partners following the establishment of the partnership should constitute the first criterion, ahead of the partners' common nationality of the at the time of the establishment of the partnership. If neither of those criteria applies, or failing a first common habitual residence in cases where the partners have dual common nationalities at the time of the establishment of the registered partnership, the third criterion should be the State with which the partners have the closest links, taking into account all the circumstances, it being made clear that those links are to be considered as they were at the time of the establishment of the partnership. The laws defined by those criteria should not be applied if they do not recognise registered partnerships. As a default rule the law of the State in which the partnership was registered should apply to the partners' property.

(Corresponds to AM 15 of the report in 2011/0059 (CNS).)

Amendment 18

Proposal for a regulation Recital 18 c (new)

Text proposed by the Commission

Amendment

(18c) If nationality is used to determine the applicable law, account must be taken of the fact that some States with a legal system based on common law use domicile and not nationality as a connecting factor.

Justification

This recital clarifies the role of 'nationality' and 'domicile' in the list of connecting factors.

Amendment 19

Proposal for a regulation Recital 18 d (new)

Text proposed by the Commission

Amendment

(18d) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the property consequences of registered partnerships being made without the partners being notified, no such change should be made save at the express request of the parties. Such a change by the partners should not have retroactive effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties and the validity of transactions entered into previously.

Justification

This recital ensures that the choice of applicable law is not made without the explicit consent of both parties.

Amendment 20

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) All necessary information should be made available in a simple manner and by appropriate means, in particular through a multilingual internet site of the Commission.

Amendment 21

Proposal for a regulation
Recital 19 b (new)

Text of the Commission

Amendment

(19b) Exchanges of good practice among legal practitioners should be encouraged.

Amendment 22

Proposal for a regulation
Recital 19 c (new)

Text proposed by the Commission

Amendment

(19c) The Commission should introduce an information and training tool for the relevant court officials and legal practitioners by setting up an interactive portal in all official languages of the institutions of the Union, including a system for sharing professional expertise and practices.

Amendment 23
Proposal for a regulation
Recital 23

Text proposed by the Commission

Amendment

(23) Since mutual recognition of decisions rendered in the Member States is one of the objectives of this Regulation, this Regulation must lay down rules on the recognition and enforcement of decisions on the basis of ***Regulation (EC) No 44/2001***, adjusted where necessary to meet the specific requirements of matters covered by this Regulation. Therefore it should not be possible in a Member State to refuse the recognition and enforcement, in whole or in part, of a decision concerning the property consequences of a

(23) Since mutual recognition of decisions ***on questions of property regimes concerning registered partnerships*** rendered in the Member States is one of the objectives of this Regulation, this Regulation must lay down rules on the recognition, ***enforceability*** and enforcement of decisions on the basis of ***other legal instruments in the area of judicial cooperation in civil matters***, adjusted where necessary to meet the specific requirements of matters covered by this Regulation. Therefore, it should not

registered partnership if that Member State's national law does not recognise such partnerships or provides for different consequences with regard to the property.

be possible in a Member State to refuse the recognition and enforcement, in whole or in part, of a decision concerning the property consequences of a registered partnership if that Member State's national law does not recognise such partnerships or provides for different consequences with regard to the property.

(Corresponds to AM 19 of the report in 2011/0059 (CNS).)

Amendment 24
Proposal for a regulation
Recital 24

Text proposed by the Commission

Amendment

(24) In order to take into account different **ways of** dealing with matters of the property consequences of registered partnerships in the Member States, this Regulation **must** guarantee the **recognition** and **enforcement** of authentic instruments. **Nevertheless, the authentic instruments cannot be treated as court decisions with regard to their recognition. The recognition of authentic instruments means that they enjoy the same evidentiary effect with regard to their contents and the same effects as in their Member State of origin, and a presumption of validity which may be rebutted if they are contested.**

(24) In order to take into account **the** different **systems for** dealing with matters of the property consequences of registered partnerships in the Member States, this Regulation **should** guarantee the **acceptance** and **enforceability in all Member States** of authentic instruments **in matters of property regimes concerning registered partnerships.**

(Corresponds to recital 60 in Regulation (EU) No 650/2012 and AM 20 of the report in 2011/0059 (CNS).)

Amendment 25
Proposal for a regulation
Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) In terms of the recognition, enforceability and enforcement of judicial decisions and of the acceptance and

enforceability of authentic instruments and the enforceability of court settlements, this Regulation should lay down rules on the basis of, in particular, Regulation (EU) No 650/2012.

(Corresponds to AM 21 of the report in 2011/0059 (CNS).)

Amendment 26

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) ***While*** the law applicable to the property consequences of registered partnerships must govern the legal relationship between a partner and a third party, ***the conditions for relying on that law should be regulated by the law of the Member State of habitual residence of the partner or the third party***, in the interests of the third party's protection. ***The law of that Member State may thus provide that the partner may invoke the law of his or her property regime against the third party only if the conditions of registration or disclosure laid down in that Member State have been complied with, unless the third party was aware or ought to have been aware of the law applicable to the property consequences of the registered partnership.***

Amendment

(25) The law applicable to the property consequences of registered partnerships ***under this Regulation*** must govern the legal relationship between a ***registered*** partner and a third party. ***However***, in the interests of the third party's protection, ***neither partner should be able to invoke that law or overriding mandatory provisions in a legal relationship between one of the partners and a third party if the partner who has a legal relationship with the third party, and the third party, are habitually resident in the same State, which is not the State whose law is applicable to the property regime of the registered partnership. Exceptions should apply if the third party does not merit protection, in other words if he or she was aware, or ought to have been aware, of the law applicable, or if the requirements applicable to registration or publicity in the State were complied with.***

(Corresponds to AM 22 of the report in 2011/0059 (CNS).)

Amendment 27

Proposal for a regulation Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.

1OJ L 55, 28.2.2011, p. 13.

(Corresponds to recital 78 in Regulation (EU) No 650/2012 and AM 23 of the report in 2011/0059 (CNS).)

Amendment 28

Proposal for a regulation Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.

(Corresponds to recital 79 in Regulation (EU) No 650/2012 and AM 24 of the report in 2011/0059 (CNS).)

Amendment 29

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with *these* rights and principles.

Amendment

(28) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, **20**, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, ***equality before the law***, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with *those* rights and principles.

(Corresponds in part to recital 81 in Regulation (EU) No 650/2012 and AM 25 of the report in 2011/0059 (CNS).)

Amendment 30

Proposal for a regulation

Article 1 – paragraph 3 – point a

Text proposed by the Commission

(a) the personal effects of registered partnerships,

Amendment

deleted

Amendment 31

Proposal for a regulation

Article 1 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the legal capacity of partners,

(b) the **general** capacity of partners,

(Corresponds to AM 26 of the report in 2011/0059 (CNS).)

Amendment 32

Proposal for a regulation

Article 1 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the existence, validity or recognition of the partnership,

(Corresponds to AM 27 of the report in 2011/0059 (CNS).)

Amendment 33

Proposal for a regulation

Article 1 – paragraph 3 – point d

Text proposed by the Commission

Amendment

(d) gifts between partners,

deleted

Amendment 34

Proposal for a regulation

Article 1 – paragraph 3 – point e

Text proposed by the Commission

Amendment

(e) ***the succession rights of a*** surviving partner,

(e) ***issues of succession concerning the*** surviving partner,

(Corresponds to AM 29 of the report in 2011/0059 (CNS).)

Amendment 35

Proposal for a regulation

Article 1 – paragraph 3 – point f

Text proposed by the Commission

Amendment

(f) ***companies set up between registered***

(f) ***questions governed by the law of***

partners,

companies and other bodies, corporate or unincorporated,

(Corresponds to Article 1, point (h), of Regulation (EU) No 650/2012 and AM 30 of the report in 2011/0059 (CNS).)

Amendment 36

Proposal for a regulation

Article 1 – paragraph 3 – point g

Text proposed by the Commission

Amendment

*(g) the nature of rights in rem **relating to a property and the disclosure of such rights.***

(g) the nature of rights in rem,

(Corresponds to Article 1, point (k), of Regulation (EU) No 650/2012 and AM 31 of the report in 2011/0059 (CNS).)

Amendment 37

Proposal for a regulation

Article 1 – paragraph 3 – point g a (new)

Text proposed by the Commission

Amendment

(ga) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register, and

(Corresponds to Article 1, point (l), of Regulation (EU) No 650/2012 and AM 32 of the report in 2011/0059 (CNS).)

Amendment 38

Proposal for a regulation

Article 1 – paragraph 3 – point g b (new)

Text proposed by the Commission

Amendment

(gb) questions of entitlement to transfer or adjustment, in the case of a dissolution of the registered partnership, between partners or former partners, of rights to retirement or disability pensions accrued

during the registered partnership.

(Corresponds to AM 33 of the report in 2011/0059 (CNS).)

Justification

The Regulation should look to the future in terms of developments in the Member States and achieving greater equality for registered partnerships and should exclude from its scope pension rights adjustments under German law, along with similar structures in other Member States, in so far as they apply to registered partnerships.

Amendment 39

Proposal for a regulation

Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) 'registered partnership': regime governing the shared life of two people which is provided for in law **and is registered by an official authority**;

Amendment

(b) 'registered partnership': regime governing the shared life of two people which is **established in the manner** provided for in law **in the Member State where the partnership is registered**;

Amendment 40

Proposal for a regulation

Article 2 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) 'partnership agreement': any agreement by means of which the partners or future partners organise the property regime of their partnership;

(Corresponds to AM 35 of the report in 2011/0059 (CNS).)

Amendment 41

Proposal for a regulation

Article 2 – paragraph 1 – point c – introductory part

Text proposed by the Commission

(c) 'authentic instrument': **an instrument** which has been officially drawn up or registered as an authentic instrument in **the**

Amendment

(c) 'authentic instrument': **a document in a matter concerning the property regime in a registered partnership** which has been

Member State *of origin* and the authenticity of which:

formally drawn up or registered as an authentic instrument in *a* Member State and the authenticity of which:

(Corresponds to Article 3(1), point (i), of Regulation (EU) No 650/2012 and AM 36 of the report in 2011/0059 (CNS).)

Amendment 42

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) 'decision': any decision given in a matter of the property consequences of a registered partnership by a court of a Member State, whatever the decision may be called, including *the terms 'decree', 'judgment', 'order' or 'writ of execution', and* the determination of costs or expenses by an officer of the court;

(d) 'decision': any decision given in a matter of the property consequences of a registered partnership by a court of a Member State, whatever the decision may be called, including *a decision on* the determination of costs or expenses by an officer of the court;

(Corresponds to Article 31(1), point (g), of Regulation (EU) No 650/2012 and AM 37 of the report in 2011/0059 (CNS).)

Amendment 43

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) 'Member State of origin': the Member State in which, *as the case may be*, the decision *was* given, *the partnership contract concluded*, the authentic instrument *or the instrument liquidating the common property or any other instrument produced by or before the judicial authority or authority of delegation was drawn up*;

(e) 'Member State of origin': the Member State in which the decision *has been* given the authentic instrument *established or the court settlement approved or concluded*;

(Corresponds to Article 3(1), point (e), of Regulation (EU) No 650/2012 and AM 38 of the report in 2011/0059 (CNS).)

Amendment 44
Proposal for a regulation
Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) 'Member State ***addressed***': the Member State in which ***recognition and/or enforcement of the decision, partnership contract, authentic instrument, instrument of liquidation of the common property or any other instrument produced by or before the judicial authority or authority of delegation is requested***;

Amendment

(f) 'Member State ***of enforcement***': the Member State in which ***the declaration of enforceability or the enforcement of the decision, the court settlement or the authentic instrument is sought***;

(Corresponds to Article 3(1), point (f), of Regulation (EU) No 650/2012 and AM 39 of the report in 2011/0059 (CNS).)

Amendment 45
Proposal for a regulation
Article 2 – paragraph 1 – point g

Text proposed by the Commission

(g) '***court***': ***any competent judicial authority in the Member States which carries out a judicial function in matters of the property consequences of registered partnerships or any other non-judicial authority or person carrying out, by delegation or designation by a judicial authority of a Member State, the functions falling within the jurisdiction of the courts as provided for in this Regulation***;

Amendment

deleted

(Corresponds to AM 40 of the report in 2011/0059 (CNS).)

Amendment 46
Proposal for a regulation
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purposes of this Regulation the term ‘court’ means any judicial authority and all other authorities and legal professionals with competence in matters of property regimes in registered partnerships which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

(a) may be made the subject of an appeal to, or review by, a judicial authority; and

(b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 33a(1).

Justification

It would be advisable to use the term ‘court’ from the Regulation on wills and succession in the Regulation on matrimonial property regimes in order to reflect the various organisational models in the Member States in terms of matrimonial property matters. The proposal corresponds to Article 3(2) of the regulation on succession.

**Amendment 47
Proposal for a regulation
Article -3**

Text proposed by the Commission

Amendment

Article -3

Jurisdiction in matters of property regimes within the Member States

This Regulation shall not affect domestic jurisdiction over property regime cases in the Member States.

(Corresponds to AM 42 of the report in 2011/0059 (CNS).)

Justification

This provision follows Article 2 of the Regulation on wills and succession. It includes a useful clarification for registered partnerships in matters of property regimes.

Amendment 48
Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

1. The courts of a Member State seised ***by an application concerning the*** succession of a registered partner under Regulation (EC) ... ***[of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession]*** shall also have jurisdiction to rule on matters of the property consequences of the partnership arising in connection with the ***application***.

Amendment

1. The courts of a Member State seised ***in matters of the*** succession of a registered partner under Regulation (EU) No ***650/2012*** shall also have jurisdiction to rule on matters of the property consequences of the partnership arising in connection with the ***succession case***.

(Corresponds to AM 43 of the report in 2011/0059 (CNS).)

Amendment 49
Proposal for a regulation
Article 4

Text proposed by the Commission

Jurisdiction in cases of ***separation of the partners***

The courts of a Member State seised *by an application for dissolution or annulment of a registered partnership shall also have jurisdiction, ***if the partners so agree***, to rule on the property consequences arising*

Amendment

Jurisdiction in cases of ***dissolution or annulment***

The courts of a Member State seised *of an application for dissolution or annulment of a registered partnership shall also have jurisdiction to rule on the property consequences arising in connection with*

in connection with the application.

the application *if the jurisdiction of the courts concerned has been recognised, expressly or otherwise in an unequivocal manner by the partners.*

Such an agreement may be concluded at any time, even during the proceedings. If it is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties.

Failing *agreement between the partners*, jurisdiction *is* governed by Article 5.

Failing *recognition of the jurisdiction of the court referred to in paragraph 1*, jurisdiction *shall be* governed by Article 5.

(Corresponds to AM 44 of the report in 2011/0059 (CNS).)

Justification

It would be advisable to avoid automatically imposing a concentration of jurisdictions, even in connected property regime cases, to better safeguard the interests of the parties concerned and ensure that they accept the jurisdiction of the court dealing with the separation. The proposed provision corresponds to Article 12(1)(b) of the 'Brussels IIa' Regulation.

Amendment 50 Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Choice-of-court agreement

1. The partners may agree that the courts of the Member State whose law they have chosen, in accordance with Article 15b, as the law applicable to the property regime of their partnership are to have jurisdiction to rule on that property regime. Such jurisdiction shall be exclusive.

Without prejudice to the third subparagraph, a choice-of-court agreement may be concluded or amended at any time, but at the latest when the court is seised.

If the law of the forum so provides, the partners may also choose the competent jurisdiction after the court has been seised. In that event, such choice shall be recorded in court in accordance with the law of the forum.

If the agreement is concluded before the proceedings, it must be drawn up in writing and dated and signed by both parties. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

2. The partners may also agree that, if no court has been chosen, the courts of the Member State whose law is applicable pursuant to Article 15 to the property regime of their partnership are to have jurisdiction.

Justification

The provision corresponds to the proposed rule in the Regulation on matrimonial property regimes. It incorporates in paragraph 1 a useful rule from Article 5(2) and (3) of the 'Rome III' Regulation. The rule proposed in paragraph 2 responds to a practical requirement.

Amendment 51 Proposal for a regulation Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4b

Jurisdiction based on the appearance of the defendant

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law has been chosen under Article -15b, or whose law is applicable under Article 15, and before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where an appearance was entered to contest the jurisdiction, or

where another court has jurisdiction by virtue of Article 3, Article 4 or Article 4a.

2. Before assuming jurisdiction under paragraph 1, the court shall ensure that the defendant is informed of his or her right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

(Corresponds to AM 46 of the report in 2011/0059 (CNS).)

Amendment 52
Proposal for a regulation
Article 5

Text proposed by the Commission

1. ***In cases other than those provided for in Articles 3 and 4, jurisdiction to rule on proceedings concerning the property consequences of a registered partnership shall lie with the courts of the Member State:***

(a) ***of the partners' common habitual residence, or failing that,***

(b) ***of the last common habitual residence if one of them still resides there, or failing that***

(c) ***of the defendant's habitual residence, or failing that,***

(d) of registration of the partnership.

2. The courts referred to in points (a), (b)

Amendment

1. ***Where no court has jurisdiction pursuant to Articles 3, 4 and 4a, jurisdiction to rule on proceedings concerning property consequences shall lie with the courts of the Member State:***

(a) ***in whose territory the partners are habitually resident at the time when the court is seised, or failing that,***

(b) ***in whose territory the partners were last habitually resident if one of them still resides there at the time when the court is seised, or failing that,***

(c) ***in whose territory the defendant is habitually resident at the time when the court is seised, or failing that,***

(ca) of the nationality of both partners at the time when the court is seised or, in the case of the United Kingdom and Ireland, of their common domicile, or failing that,

(d) of registration of the partnership.

2. The courts referred to in points (a), (b),

and (c) of paragraph 1 may decline jurisdiction if their law does not recognise the institution of registered partnership.

(c) *and (ca)* of paragraph 1 may decline jurisdiction if their law does not recognise the institution of registered partnership.

(Regarding Article 5(ca)(new), see the amendment to Article 6(1)(b), Corresponds to AM 47 of the report in 2011/0059 (CNS).)

Amendment 53
Proposal for a regulation
Article 6

Text proposed by the Commission

Where no court has jurisdiction *under* Articles 3, 4 or 5, or the court *designated by those provisions* has declined jurisdiction, the courts of a Member State shall have jurisdiction in so far as:

(a) property or properties of one or both partners are located in the territory of that Member State, *but in* that event the court seised shall have jurisdiction to rule only in respect of the property or properties in question;

(b) both partners are nationals of that Member State or, in the case of the United Kingdom and Ireland, have their common 'domicile' there.

Amendment

Where no court *of a Member State* has jurisdiction *pursuant to* Articles 3, 4, *4a* or 5, or the court has declined jurisdiction, the courts of a Member State shall have jurisdiction in so far as *immovable* property or *registered assets* of one or both partners are located in the territory of that Member State; *in* that event the court seised shall have jurisdiction to rule only in respect of the *immovable* property or *registered assets* in question.

In such cases the courts of a Member State shall have jurisdiction to rule only on immovable property or registered assets located in that Member State.

(Corresponds to AM 48 of the report in 2011/0059 (CNS).)

Amendment 54
Proposal for a regulation
Article 7

Text proposed by the Commission

Forum necessitatis

Where no court of a Member State has jurisdiction ***under*** Articles 3, 4, 5 or 6, ***or the court designated by those provisions has declined jurisdiction***, the courts of a Member State may, ***exceptionally and if the case has a sufficient connection with that Member State***, rule on ***the property consequences of a registered partnership*** if proceedings ***would be impossible or*** cannot reasonably be brought or conducted in a third State.

Amendment

Forum necessitatis

Where no court of a Member State has jurisdiction ***pursuant to*** Articles 3, 4, ***4a***, 5 or 6, the courts of a Member State may, ***on an exceptional basis***, rule on ***a property regime case*** if proceedings cannot reasonably be brought or conducted, ***or would be impossible***, in a third State ***with which the case is closely connected***.

The case must have a sufficient connection with the Member State of the court seised.

(Corresponds to Article 11 of Regulation (EU) No 650/2012 and AM 49 of the report in 2011/0059 (CNS).)

Amendment 55
Proposal for a regulation
Article 8

Text proposed by the Commission

The court seised pursuant to Articles 3, 4, 5, 6 or 7 before which proceedings are pending shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

Amendment

The court seised pursuant to Articles 3, 4, ***4a***, 5, 6 or 7 before which proceedings are pending shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

If a court has been seised pursuant to Article 6, its jurisdiction to rule on a counterclaim shall be limited to the immovable property or registered assets which form the subject-matter of the main proceedings.

(Corresponds to AM 50 of the report in 2011/0059 (CNS).)

Amendment 56
Proposal for a regulation
Article 9

Text proposed by the Commission

A court shall be deemed to be seised:

(a) at the time when(...) the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant(...) has not subsequently failed to take the steps he (...)was required to take to have service effected on the defendant, **or**

(b) **where** the document has to be served before being lodged with the court, on the date on which it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have the document lodged with the court.

Amendment

For the purposes of this Chapter, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;

(b) **if** the document has to be served before being lodged with the court, on the date on which it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court, **or**

(ba) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

(Corresponds to Article 14 of Regulation (EU) No 650/2012 and AM 51 of the report in 2011/0059 (CNS).)

Amendment 57
Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

1. Where proceedings involving the same cause of action and between the **same parties** are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is

Amendment

1. Where proceedings involving the same cause of action and between the **partners** are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is

established.

established.

(Corresponds to AM 52 of the report in 2011/0059 (CNS).)

Amendment 58
Proposal for a regulation
Article 13 – title

Text proposed by the Commission

Amendment

Related actions

(Does not affect the English version.)

(Corresponds to AM 53 of the report in 2011/0059 (CNS).)

Amendment 59
Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

Amendment

(2) Where *these* actions are pending at first instance, any court other than the court first seised may also, on the application of one of the *parties*, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

(2) Where *those* actions are pending at first instance, any court other than the court first seised may also, on the application of one of the *partners*, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

(Corresponds to Article 18 of Regulation (EU) No 650/2012 and AM 54 of the report in 2011/0059 (CNS).)

Amendment 60
Proposal for a regulation
Article 14

Text proposed by the Commission

Amendment

Provisional, including protective, measures provided for by the law of a Member State ***may be requested from the courts*** of that State, even ***where***, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Application may be made to the courts of a Member State ***for such provisional, including protective, measures as may be available under the law*** of that State, even ***if***, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

(Corresponds to Article 19 of Regulation (EU) No 650/2012 and AM 56 of the report in 2011/0059 (CNS).)

Amendment 61
Proposal for a regulation
Article -15 (new)

Text proposed by the Commission

Amendment

Article -15

Unity and scope of the applicable law

1. The law applicable to the property consequences of a registered partnership shall apply to all assets that are subject to those consequences, regardless of where the assets are located.

2. The law applicable to the property consequences of registered partnerships shall determine, without prejudice to points (g) and (ga) of Article 1(3), inter alia:

(a) the division of the partners' property into different categories before and after the registered partnership;

(b) the transfer of property from one category to another;

(c) liability for the other partner's debts, where necessary;

(d) the partners' rights of disposal during the partnership;

(e) dissolution and liquidation of the property regime of a registered partnership and division of property in the event of dissolution of the registered partnership;

(f) the impact of the property regime of a registered partnership on a legal relationship between one of the partners and a third party on the basis of Article 31.

(Corresponds to AMs 57 and 58 of the report in 2011/0059 (CNS).)

Amendment 62
Proposal for a regulation
Article -15 a (new)

Text proposed by the Commission

Amendment

Article -15a

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

(See amendment to Article 16; the text has been changed. Corresponds to Article 20 of Regulation (EU) No 650/2012 and AM 59 of the report in 2011/0059 (CNS).)

Amendment 63
Proposal for a regulation
Article -15 b (new)

Text proposed by the Commission

Amendment

Article -15b

Choice of law

(1) The partners or future partners may agree on or change the law applicable to the property regime of their registered partnership, provided that that law recognises the institution of registered partnership and attaches property consequences to it, and provided that it is one of the following:

(a) the law of the State in which the partners or future partners, or one of them, is/are habitually resident at the time when the agreement is concluded, or

(b) the law of a State of which one of the partners or future partners is a national at the time when the agreement is concluded, or

(c) the law of a State in which the partnership is registered.

2. If the law chosen does not recognise the institution of registered partnership or does not attach property consequences to it, the applicable law shall be determined in accordance with Article 15.

3. The choice of law pursuant to paragraph 1 shall be valid only if the partners or future partners can prove that, prior to making the choice, they have taken advice on its legal consequences.

This requirement shall be deemed to be fulfilled if the provision of advice is ensured by additional national formal rules governing the choice of law.

4. Unless the partners agree otherwise, a change of the law applicable to the property regime of their registered partnership made during the partnership shall have prospective effect only.

5. If the partners choose to make that change retroactive, its retroactive effect shall not affect the validity of previous transactions entered into under the law hitherto applicable or the rights of third parties under the law previously applicable.

(Corresponds in part to AM 60 of the report in 2011/0059 (CNS).)

Justification

There is no case for not allowing registered partnerships the choice of law. The opinion of the EU Agency for Fundamental Rights confirmed that the Commission proposal does not contain sufficient justification for treating marriage and registered partnerships in an unequal way in this respect and is therefore not in line with Articles 20 and 21 of the Charter of Fundamental Rights.

Amendment 64 Proposal for a regulation Article 15

Text proposed by the Commission

Amendment

Determination of the applicable law

Establishing the applicable law where no

choice is made

The law applicable to the property consequences of registered partnerships is the law of the State in which the partnership was registered.

1. If no choice-of-law agreement is made pursuant to Article -15b, the property consequences of registered partnerships shall be governed by the law of the State:

(a) in which the partners have their first common habitual residence at the time when their partnership was established or where they set up their first common habitual residence after establishing their partnership, or

(b) whose nationality of both partners have at the time when their partnership is established, or

(c) with which the partners have the closest ties at the time when their partnership is established, with due consideration given to all the circumstances, or

(d) in which the partnership is registered.

1a. Points (a), (b) and (c) of paragraph 1 shall not apply if the law in question does not recognise the institution of registered partnership.

1b. Point (b) of paragraph 1 shall not apply if the partners have more than one common nationality.

(Corresponds in part to AM 61 et seq. of the report in 2011/0059 (CNS).)

Amendment 65
Proposal for a regulation
Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Multiple registration

If registered partnerships between the same persons exist in different States, the partnership which was most recently established, dating from the day on which it was established, shall be decisive for the

purposes of determining the applicable law pursuant to point (d) of Article 15(1).

Amendment 66
Proposal for a regulation
Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Universal nature of the conflict-of-law rule

Any law determined in accordance with the provisions of this Chapter shall apply even if it is not the law of a Member State.

(Corresponds to AM 68 of the report in 2011/0059 (CNS).)

Amendment 67
Proposal for a regulation
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Formal requirements for choosing the applicable law

1. The agreement on the choice of law referred to in Article -15b shall be expressed in writing, dated and signed by both partners. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. That agreement shall comply with the formal requirements of the law applicable to the property regime of the registered partnership or the law of the State in which the agreement was concluded.

3. However, if the law of the State in which both partners have their habitual residence at the time of their agreement on the choice of applicable law provides

for additional formal requirements for agreements of that type or, failing that, for the partnership agreement, those requirements shall apply.

4. If the partners are habitually resident in different States at the time when the choice is made and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

(Similar to Article 5(2) of Regulation (EU) No 650/2012. See also AM 65 of the report in 2011/0059 (CNS).)

Amendment 68

Proposal for a regulation Article 16 b (new)

Text proposed by the Commission

Amendment

Article 16b

Formal requirements for a partnership agreement

The formal aspects of a partnership agreement shall be governed mutatis mutandis by Article 16a. Any additional formal requirements within the meaning of Article 16a(3) shall, for the purposes of this Article relate only to the partnership agreement.

(Corresponds to AM 66 of the report in 2011/0059 (CNS).)

Amendment 69

Proposal for a regulation Article 16 c (new)

Text proposed by the Commission

Amendment

Article 16c

Adaptation of rights in rem

Where a person invokes a right in rem to which he or she is entitled under the law applicable to the property regime of the registered partnership and the law of the Member State in which that right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.

(Corresponds to Article 31 of Regulation (EU) No 650/2012 and AM 67 of the report in 2011/0059 (CNS).)

Justification

The situation regarding the recognition of material rights in property regime cases is similar to that in the law of succession. The new provision corresponds to Article 31 of the Regulation on wills and succession and the parallel proposal for the Regulation on matrimonial property regimes.

Amendment 70 **Proposal for a regulation** **Article 17**

Text proposed by the Commission

The provisions of this Regulation shall be without prejudice to the application of imperative provisions the upholding of which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the property consequences of a registered partnership under this Regulation.

Amendment

1. Overriding mandatory provisions are provisions the disregard for which would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. The competent authorities should not interpret the public policy exception in a way that is contrary to the Charter of Fundamental rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

1a. This Regulation shall not restrict the application of the overriding mandatory provisions of the law of the forum, without prejudice to the transaction protection provisions applicable pursuant

to Article 31.

(Corresponds to AM 69 of the report in 2011/0059 (CNS).)

Amendment 71
Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

1. The application of a rule of the law determined by this Regulation may be refused only if **such** application is manifestly incompatible with the public policy of the forum.

Amendment

1. The application of a rule of the law **of any State** determined by this Regulation may be refused only if **its** application is manifestly incompatible with the public policy of the forum.

(Corresponds to Article 35 of Regulation (EU) No 650/2012 and AM 70 of the report in 2011/0059 (CNS).)

Amendment 72
Proposal for a regulation
Article 19

Text proposed by the Commission

Where this Regulation provides for the application of the law of a State, it means the rules of **substantive** law in force in that State other than its rules of private international law.

Amendment

Where this Regulation provides for the application of the law of a State, it **refers to** the rules of law in force in that State other than its rules of private international law.

(Corresponds to AM 71 of the report in 2011/0059 (CNS).)

Amendment 73
Proposal for a regulation
Article 20

Text proposed by the Commission

States with **two or** more legal **systems** — territorial conflicts of laws

Amendment

States with more **than one** legal **system** — territorial conflicts of laws

1. Where the law specified by this Regulation is that of a State which

comprises several territorial units each of which has its own rules of law in respect of property regimes of registered partnerships, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.

Where a State comprises several territorial units, each of which has its own system of law or its own set of rules concerning matters governed by this Regulation:

(a) any reference to the law of that State shall *be construed*, for the purposes of determining the law applicable *under this Regulation*, as a reference to the law in force in the *relevant* territorial unit;

(b) any reference to *habitual residence in that State* shall be construed as *a reference to habitual residence in a* territorial unit;

(c) any reference to *nationality* shall refer to *the territorial unit determined by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of such a choice, to the territorial unit with which the spouse or spouses has or have the closest connection.*

1a. In the absence of such internal conflict-of-laws rules:

(a) any reference to the law of that State *referred to in paragraph 1* shall, for the purposes of determining the law applicable *pursuant to provisions referring to the habitual residence of the partners, be construed as referring* to the law in force in the territorial unit *in which the partners have their habitual residence*;

(b) any reference to *the law of the State referred to in paragraph 1* shall, *for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the partners, be construed as referring to the law of the* territorial unit *with which the partners have the closest connection*;

(c) any reference to *the law of the State referred to in paragraph 1* shall, *for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring* to the law of the territorial unit *in which the relevant element is located.*

(Corresponds to Article 36 of Regulation (EU) No 650/2012 and AM 72 of the report in 2011/0059 (CNS).)

Justification

In line with Article 36 of the Regulation on wills and succession.

Amendment 74
Proposal for a regulation
Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

***States with more than one legal system –
inter-personal conflicts of laws***

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of the property regimes of registered partnerships, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the partners have the closest connection shall apply.

(Corresponds to AM 73 of the report in 2011/0059 (CNS).)

Justification

In line with Article 37 of the Regulation on wills and succession.

Amendment 75
Proposal for a regulation
Article 20 b (new)

Text proposed by the Commission

Amendment

Article 20b

***Non-application of this Regulation to
internal conflicts of laws***

A Member State which comprises several territorial units each of which has its own rules of law in respect of the property regimes of registered partnerships shall not be required to apply this Regulation to conflicts of laws arising between such units only.

(Corresponds to AM 74 of the report in 2011/0059 (CNS).)

Justification

In line with Article 38 of the Regulation on wills and succession.

Amendment 76

**Proposal for a regulation
Article 21 – paragraph 1**

Text of the Commission

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

Amendment

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required. ***The recognition of such decisions shall not, however, imply that Member States recognise registered partnerships as a legal institution in their own law.***

Amendment 77

**Proposal for a regulation
Article 21 – paragraph 2**

Text proposed by the Commission

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures set out in Articles ***[38 to 56]*** of Regulation (EC) No 44/2001, apply for ***the*** decision to be recognised.

Amendment

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures set out in Articles ***27b*** to ***27o***, apply for ***that*** decision to be recognised.

(Corresponds to Article 39 of Regulation (EU) No 650/2012 and AM 75 of the report in 2011/0059 (CNS).)

Amendment 78

**Proposal for a regulation
Article 22 – point a**

Text proposed by the Commission

Amendment

(a) such recognition is manifestly contrary to public policy in the Member State **addressed**;

(a) such recognition is manifestly contrary to public policy in the Member State **in which recognition is sought**;

(Corresponds to Article 40 of Regulation (EU) No 650/2012 and AM 76 of the report in 2011/0059 (CNS).)

Amendment 79
Proposal for a regulation
Article 22 – point b

Text proposed by the Commission

Amendment

(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to **commence proceedings to challenge** the decision when it was possible for him or her to do so;

(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to **appeal against** the decision when it was possible for him or her to do so;

(Corresponds in part to Article 40 of Regulation (EU) No 650/2012.)

Amendment 80
Proposal for a regulation
Article 22 – point c

Text proposed by the Commission

Amendment

(c) it is irreconcilable with a decision given in **a matter** between the same parties in the Member State **addressed**;

(c) it is irreconcilable with a decision given in **proceedings** between the same parties in the Member State **in which recognition is granted**;

(Corresponds to Article 40 of Regulation (EU) No 650/2012 and AM 78 of the report in 2011/0059 (CNS).)

Amendment 81
Proposal for a regulation
Article 22 – point d

Text proposed by the Commission

Amendment

(d) it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State **addressed**.

(d) it is irreconcilable with an earlier decision given in another Member State or in a third State **in proceedings** involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State **in which recognition is sought**;

(Corresponds to Article 40 of Regulation (EU) No 650/2012 and AM 79 of the report in 2011/0059 (CNS).)

Amendment 82
Proposal for a regulation
Article 25

Text proposed by the Commission

Amendment

Under no circumstances may a **foreign** decision be reviewed as to its substance.

Under no circumstances may a decision **given in a Member State** be reviewed as to its substance.

(Corresponds to Article 41 of Regulation (EU) No 650/2012 and AM 80 of the report in 2011/0059 (CNS).)

Amendment 83
Proposal for a regulation
Article 26

Text proposed by the Commission

Amendment

A court of a Member State in which recognition **is sought** of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged.

A court of a Member State in which recognition of a decision given in another Member State **is sought** may stay the proceedings if an ordinary appeal against the decision has been lodged **in the Member State of origin**.

(Corresponds to Article 42 of Regulation (EU) No 650/2012 and AM 81 of the report in 2011/0059 (CNS).)

Amendment 84
Proposal for a regulation
Article 27

Text proposed by the Commission

Decisions given **and enforceable** in a Member State and court settlements shall be **enforced in the other Member States** in accordance with Articles [38 to 56 and 58] of Regulation (EC) No 44/2001.

Amendment

Decisions given in a Member State **and enforceable in that State** and court settlements shall be **enforceable in another Member State if, on the application of any interested party, they have been declared enforceable there** in accordance with **the procedure provided for in** Articles 27b to 27o.

(Corresponds to Article 43 of Regulation (EU) No 650/2012 and AM 82 of the report in 2011/0059 (CNS).)

Amendment 85
Proposal for a regulation
Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Determination of domicile

To determine whether, for the purposes of the procedure provided for in Articles 27b to 27o, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

(Corresponds to Article 44 of Regulation (EU) No 650/2012 and AM 83 of the report in 2011/0059 (CNS).)

Amendment 86
Proposal for a regulation
Article 27 b (new)

Text proposed by the Commission

Amendment

Article 27b

Jurisdiction of local courts

- 1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission in accordance with Article 33.*
- 2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.*

(Corresponds to Article 45 of Regulation (EU) No 650/2012 and AM 84 of the report in 2011/0059 (CNS).)

Amendment 87 **Proposal for a regulation** **Article 27 c (new)**

Text proposed by the Commission

Amendment

Article 27c

Procedure

- 1. The application procedure shall be governed by the law of the Member State of enforcement.*
- 2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.*
- 3. The application shall be accompanied by the following documents:*
 - (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;*
 - (b) the attestation issued by the court or competent authority of the Member State of origin using the form to be established in accordance with the advisory procedure referred to in Article 33c(2), without prejudice to Article 27d.*

(Corresponds to Article 46 of Regulation (EU) No 650/2012 and AM 85 of the report in 2011/0059 (CNS).)

Amendment 88
Proposal for a regulation
Article 27 d (new)

Text proposed by the Commission

Amendment

Article 27d

Non-production of the attestation

1. If the attestation referred to in point (b) of Article 27c(3) is not produced, the court or competent authority may specify a deadline for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

(Corresponds to Article 47 of Regulation (EU) No 650/2012 and AM 86 of the report in 2011/0059 (CNS).)

Amendment 89
Proposal for a regulation
Article 27 e (new)

Text proposed by the Commission

Amendment

Article 27e

Declaration of enforceability

The decision shall be declared enforceable immediately on completion of the formalities in Article 27c without any review under Article 22. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

(Corresponds to Article 48 of Regulation (EU) No 650/2012 and AM 87 of the report in

Amendment 90
Proposal for a regulation
Article 27 f (new)

Text proposed by the Commission

Amendment

Article 27f

***Notice of the decision on the application
for a declaration of enforceability***

***1. The decision on the application for a
declaration of enforceability shall
forthwith be brought to the notice of the
applicant in accordance with the
procedure laid down by the law of the
Member State of enforcement.***

***2. The declaration of enforceability shall
be served on the party against whom
enforcement is sought, accompanied by
the decision, if not already served on that
party.***

*(Corresponds to Article 49 of Regulation (EU) No 650/2012 and AM 88 of the report in
2011/0059 (CNS).)*

Amendment 91
Proposal for a regulation
Article 27 g (new)

Text proposed by the Commission

Amendment

Article 27g

***Appeal against the decision on the
application for a declaration of
enforceability***

***1. The decision on the application for a
declaration of enforceability may be
appealed against by either party.***

***2. The appeal shall be lodged with the
court communicated by the Member State
concerned to the Commission in
accordance with Article 33.***

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 11 shall apply, even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him or her in person or at his or her residence. No extension may be granted on account of distance.

(Corresponds to Article 50 of Regulation (EU) No 650/2012 and AM 89 of the report in 2011/0059 (CNS).)

**Amendment 92
Proposal for a regulation
Article 27 h (new)**

Text proposed by the Commission

Amendment

Article 27h

Procedure to contest the decision given on appeal

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 33.

(Corresponds to Article 51 of Regulation (EU) No 650/2012 and AM 90 of the report in 2011/0059 (CNS).)

Amendment 93
Proposal for a regulation
Article 27 i (new)

Text proposed by the Commission

Amendment

Article 27i

Refusal or revocation of a declaration of enforceability

The court with which an appeal is lodged under Article 27g or Article 27h shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 22. It shall give its decision without delay.

(Corresponds to Article 52 of Regulation (EU) No 650/2012 and AM 91 of the report in 2011/0059 (CNS).)

Amendment 94
Proposal for a regulation
Article 27 j (new)

Text proposed by the Commission

Amendment

Article 27j

Staying of proceedings

The court with which an appeal is lodged under Article 27g or Article 27h shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

(Corresponds to Article 52 of Regulation (EU) No 650/2012 and AM 92 of the report in 2011/0059 (CNS).)

Amendment 95
Proposal for a regulation
Article 27 k (new)

Text proposed by the Commission

Amendment

Article 27k

***Provisional, including protective,
measures***

- 1. When a decision must be recognised in accordance with this Section, nothing shall prevent the applicant from availing himself or herself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 27e being required.***
- 2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.***
- 3. During the time specified for an appeal pursuant to Article 27g(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.***

(Corresponds to Article 54 of Regulation (EU) No 650/2012 and AM 93 of the report in 2011/0059 (CNS).)

**Amendment 96
Proposal for a regulation
Article 27 l (new)**

Text proposed by the Commission

Amendment

Article 27l

Partial enforceability

- 1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.***

2. An applicant may request a declaration of enforceability limited to parts of a decision.

(Corresponds to Article 55 of Regulation (EU) No 650/2012 and AM 94 of the report in 2011/0059 (CNS).)

**Amendment 97
Proposal for a regulation
Article 27 m (new)**

Text proposed by the Commission

Amendment

Article 27m

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

(Corresponds to Article 56 of Regulation (EU) No 650/2012 and AM 95 of the report in 2011/0059 (CNS).)

**Amendment 98
Proposal for a regulation
Article 27 n (new)**

Text proposed by the Commission

Amendment

Article 27n

No security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he or she is a foreign national or that he or she is not

domiciled or resident in the Member State of enforcement.

(Corresponds to Article 57 of Regulation (EU) No 650/2012 and AM 96 of the report in 2011/0059 (CNS).)

Amendment 99
Proposal for a regulation
Article 27 o (new)

Text proposed by the Commission

Amendment

Article 27o

No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

(Corresponds to Article 58 of Regulation (EU) No 650/2012 and AM 97 of the report in 2011/0059 (CNS).)

Amendment 100
Proposal for a regulation
Article 28

Text proposed by the Commission

Amendment

Recognition of authentic instruments

Acceptance of authentic instruments

1. Authentic instruments ***drawn up*** in a Member State shall ***be recognised in the other Member States, unless their validity is disputed in accordance with the applicable law, and*** provided ***such recognition*** is not manifestly contrary to public policy in the Member State ***addressed***.

1. Authentic instruments ***established*** in a Member State shall ***have the same evidentiary effects in another Member State as they have in the Member State of origin or the most comparable effects,*** provided ***this*** is not manifestly contrary to public policy in the Member State ***concerned***.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form to be

established in accordance with the advisory procedure referred to in Article 33(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

1a. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.

1b. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III or the law referred to in Article 32. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.

1c. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in property regime matters, that court shall have jurisdiction over that question.

2. The recognition of authentic instruments confers on them evidentiary effect with regard to their contents and a presumption of validity.

(Corresponds to Article 59 of Regulation (EU) No 650/2012 and AM 98 of the report in 2011/0059 (CNS).)

Amendment 101
Proposal for a regulation
Article 29 – paragraph 1

Text proposed by the Commission

1. Authentic instruments ***drawn up and enforceable in one*** Member State shall, ***on request***, be declared enforceable in another Member State ***following*** the procedure ***set out*** in Articles ***[38 to 57]*** of Regulation (EC) No 44/2001.

2. The court with which an appeal is lodged under ***Articles [43 and 44]*** of Regulation (EC) No 44/2001 may refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the Member State ***addressed***.

(Corresponds to Article 60 of Regulation (EU) No 650/2012 and AM 99 of the report in 2011/0059 (CNS).)

Amendment 102
Proposal for a regulation
Article 30

Text proposed by the Commission

Recognition and enforceability of court settlements

Court settlements ***that*** are enforceable in the Member State of origin shall be ***recognised and*** declared enforceable in another Member State ***at the request*** of any interested party ***under the same conditions as authentic instruments***. The court with

Amendment

1. ***An*** authentic ***instrument which is*** enforceable in ***the*** Member State ***of origin*** shall be declared enforceable in another Member State ***on the application of any interested party in accordance with*** the procedure ***provided for*** in Articles 27b to 27o.

1a. For the purposes of point (b) of Article 27c(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form to be established in accordance with the advisory procedure referred to in Article 33(2).

2. The court with which an appeal is lodged under ***Article 27g or Article 27h*** shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the Member State ***of enforcement***.

which an appeal is lodged under Article [42 or 44] of Regulation (EC) No 44/2001 may refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy in the Member State *addressed*.

provided for in Articles 27b to 27o.

1a. For the purposes of point (b) of Article 27c(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form to be established in accordance with the advisory procedure referred to in Article 33c(2).

1b. The court with which an appeal is lodged under Article 27g or Article 27h shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to the public policy (ordre public) of the Member State of enforcement.

(Corresponds to Article 61 of Regulation (EU) No 650/2012 and AM 100 of the report in 2011/0059 (CNS).)

Amendment 103
Proposal for a regulation
Article 31 – title

Text proposed by the Commission

Amendment

Effects in respect of third parties

Protection of third parties

(Corresponds AM 101 of the report in 2011/0059 (CNS).)

Amendment 104
Proposal for a regulation
Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. The property consequences of a registered partnership for a legal relationship between a partner and a third

1. The property consequences of a registered partnership for a legal relationship between a partner and a third

party are governed by the law *of the State where the partnership was registered in accordance with Article 15.*

party are governed by the law *applicable to property regimes of registered partnerships under this Regulation.*

Amendment 105
Proposal for a regulation
Article 31 – paragraph 2

Text proposed by the Commission

2. However, *the law of a Member State may provide that the law applicable may not be relied on by a partner in dealings with a third party if one or other of the partners or the third party has their habitual residence in the territory of that Member State and the conditions of disclosure or registration provided for in the law of that State are not satisfied, unless the third party was aware of or ought to have been aware of the law applicable to the property consequences of the registered partnership.*

Amendment

2. However, *in a legal relationship between a partner and a third party, neither of the partners may rely on the law applicable to the property regime of a registered partnership if the partner in a legal relationship with the third party and the third party have their habitual residence in the same State, which is not the State whose law is applicable to the property regime of the registered partnership. In such cases, the law of the Member State where the partner concerned and the third party have their habitual residence shall apply to the effects of the property regime on the third party.*

(Corresponds AM 102 of the report in 2011/0059 (CNS).)

Amendment 106
Proposal for a regulation
Article 31 – paragraph 3

Text proposed by the Commission

3. *The law of the Member State in which immovable property is located may provide for a similar rule to that laid down in paragraph 2 in respect of the legal relationship between a partner and a third party in respect of that property.*

Amendment

3. *Paragraph 2 shall not apply if:*

(a) the third party was aware, or ought to have been aware, of the law applicable to the property regime of a registered partnership;

(b) the requirements concerning registration or disclosure of the property regime of the registered partnership in accordance with the law of the State of the habitual residence of the third party and the partner in a legal relationship with the third party were fulfilled, or

(c) in dealings concerning immovable property, the requirements concerning registration or disclosure of the property regime of the registered partnership in respect of the immovable property in accordance with the law of the State of the location of the immovable property were fulfilled.

(Corresponds AM 103 of the report in 2011/0059 (CNS).)

Amendment 107
Proposal for a regulation
Article -32 (new)

Text proposed by the Commission

Amendment

Article -32

Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies, associations and legal persons shall be the place of their central administration. The habitual residence of natural persons acting in the course of their business activities shall be their principal place of business.

2. Where the legal relationship is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in

time shall be the time of conclusion of the legal relationship.

(Corresponds AM 104 of the report in 2011/0059 (CNS).)

Justification

A sensible provision in view of the provisions on the protection of third parties. It is based on Article 19 of the 'Rome I' Regulation and corresponds to a similar proposal on matrimonial property regimes.

Amendment 108

Proposal for a regulation

Article 33 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 27b(1) and with appeals against decisions on such applications in accordance with Article 27g(2);

(Corresponds to Article 78(1), point (a), of Regulation (EU) No 650/2012 and AM 105 of the report in 2011/0059 (CNS).)

Amendment 109

Proposal for a regulation

Article 33 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) the procedures to contest the decision given on appeal referred to in Article 27h

Amendment 110

Proposal for a regulation

Article 33 – paragraph 2

Text proposed by the Commission

Amendment

(2) Member States shall ***notify*** the Commission of any subsequent changes ***in***

(2) Member States shall ***apprise*** the Commission of any subsequent changes ***to***

this information.

this information.

Amendment 111
Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission

3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available by appropriate means, in particular through the multilingual internet site of the European Judicial Network in civil and commercial matters.

Amendment

3. The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available ***in a simple manner*** by appropriate means, in particular through the multilingual internet site of the European Judicial Network in civil and commercial matters.

The Member States shall ensure that the information on that multilingual website is also accessible through any official website they set up, in particular by providing a link to the Commission website.

(Corresponds to Article 78(3) of Regulation (EU) No 650/2012 and AM 108 of the report in 2011/0059 (CNS).)

Amendment 112

Proposal for a regulation
Article 33 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission shall introduce an information and training tool for the relevant court officials and legal practitioners by setting up an interactive portal in all official languages of the institutions of the Union, including a system for sharing professional expertise and practices.

(Corresponds to AM 109 of the report in 2011/0059 (CNS).)

Amendment 113
Proposal for a regulation
Article 33 a (new)

Text proposed by the Commission

Amendment

Article 33a

Establishment and subsequent amendment of the list containing the information referred to in Article 2(1a)

- 1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 2(1a).***
- 2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.***
- 3. The Commission shall publish the list and any subsequent amendments in the Official Journal of the European Union.***
- 4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.***

(Corresponds to Article 79 of Regulation (EU) No 650/2012 and AM 110 of the report in 2011/0059 (CNS).)

Amendment 114
Proposal for a regulation
Article 33 b (new)

Text proposed by the Commission

Amendment

Article 33b

Establishment and subsequent amendment of the attestations and forms referred to in Articles 27c, 28, 29 and 30

The Commission shall adopt implementing acts establishing and/or subsequently amending the attestations and forms referred to in Articles 27c, 28, 29 and 30. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 33c(2).

(Corresponds to Article 80 of Regulation (EU) No 650/2012 and AM 111 of the report in 2011/0059 (CNS).)

**Amendment 115
Proposal for a regulation
Article 33 c (new)**

Text proposed by the Commission

Amendment

Article 33c

Committee procedure

- 1. The Commission shall be assisted by a committee. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***
- 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.***

(Corresponds to Article 81 of Regulation (EU) No 650/2012 and AM 112 of the report in 2011/0059 (CNS).)

**Amendment 116
Proposal for a regulation
Article 34 – paragraph 1 – subparagraph 1 a (new)**

Text proposed by the Commission

Amendment

The Commission shall investigate the following issues in its reports:

- the use made by registered partnerships of the opportunities to agree on the choice of law and court and its practical impact,***
- the effectiveness of the advisory***

requirement in the choice of law,
– *the use made of the possibility of lack of jurisdiction by the courts of those Member States which do not recognise the institution of registered partnership, and the practical impact of this, and*
– *the potential for further convergence of the rules laid down in this Regulation with those laid down in [the Regulation on jurisdiction, applicable law, recognition and enforcement of decisions in matters of matrimonial property regimes], with the objective of increasing equality.*

Amendment 117
Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

3. Chapter III shall apply only to partners who have ***registered their partnership.***

Amendment

3. Chapter III shall apply only to ***registered*** partners who, ***following the date of application of this Regulation,*** have

(a) entered into a registered partnership, or

(b) made a choice of law with respect to the law applicable to their property regime.

An agreement on the choice of law made prior to [date of application of this Regulation] shall likewise be valid if it meets the conditions set out in Chapter III or if it is valid under the law applicable in accordance with the relevant rules of private international law at the time when the agreement on the choice of law is concluded.

Where an agreement on the choice of law has been concluded prior to [date of application of this Regulation] in anticipation of the possibility of choosing the law provided for in this Regulation, but that agreement was not valid under

the law applicable in accordance with the relevant rules of private international law at the time when the agreement on the choice of law was concluded because no possibility of making a choice of law for registered partnerships existed under the applicable law, that agreement shall be valid as from [date of application of this Regulation].

EXPLANATORY STATEMENT

A. The problem

In 2007¹, there were about 211 000 registered partnerships in the EU, of which over 41 000 had implications for property in more than one Member State. Of these, 8 500 (4%) were ended by separation and 1 266 (0.6%) by the death of one partner².

If decisions regarding property have to be taken during a partnership or after it ends, the parties concerned face complex issues, especially in relation to jurisdiction and applicable law. Here – and to an even greater degree than with marriages – there are considerable differences between Member States' rules. This makes for considerable legal uncertainty. In the event of a dispute, it may – as in a marriage – be advantageous for the better-advised party to bring the case as quickly as possible before a court which he or she thinks will apply laws most favourable to him or her.

B. Commission proposal and need to rework the existing rules

In May 2011 the Commission presented two parallel proposals on property issues for marriages and registered partnerships containing provisions on jurisdiction, applicable law and the recognition and enforcement of authentic instruments.

The rapporteur agrees with the Commission that action is needed and that there is considerable room for improvement in the legal position of the couples concerned. The institution of registered partnership is in the development stage; with the mobility of citizens in Europe rising, the number of people concerned will increase.

1. Two proposals

In her working document of 11 November 2011³, the rapporteur tackled the issue of the Commission presenting two separate proposals – even though it recognised that marriages and registered partnerships faced the same problems – and arguing that registered partnerships faced specific problems and two legal acts would be more practical and politically easier to enforce.

She still does not see this separation as mandatory in terms of rules and systems, particularly since she is opposed to any central substantive distinction between the two proposals, namely the denial to registered partnerships of a choice of applicable law and the related choice of jurisdiction (see under point 2). In both her draft reports she recommends parallel regulation, in so far as this appears advisable for political reasons. She considers equality in terms of content to be more important than the (essentially technical) issue of whether there is one document or two, as a single document may contain different rules for two different subjects requiring regulation.

¹ Figures from: Commission staff working document (Impact Assessment) of 16.3.2011, SEC(2011) 0327.

² According to the Commission, there are still few figures on this relatively new institution, SEC(2011) 0321, p. 14. See also Annex VI(2) for figures from Finland, the Netherlands, Sweden and France.

³ PE475.883v01-00.

2. Choice of law for registered partnerships

The main criticism is that the proposal for registered partnerships does not allow a choice of applicable law. The Commission¹ cited the differences between the laws of Member States as the justification for applying the law of the State of registration. This, it says, is in line with the Member States' laws on registered partnerships, which usually provide for application of the law of the State of registration and do not offer partners the option of choosing any other law, even though they may be entitled to conclude agreements between themselves.

The rapporteur had considerable misgivings as to whether the proposal is reconcilable with the principle of equality before the law under Article 20 of the Charter of Fundamental Rights of the Union and the principle of non-discrimination under Article 21 of the same and therefore arranged for Parliament to request an opinion on the matter from the European Agency for Fundamental Rights.

The opinion² examines, in particular, the justification given by the Commission for the different rules governing the possibility of a choice of applicable law for married couples and registered partnerships. She concludes that, in the light of Articles 20 and 21 of the Charter of Fundamental Rights, reasonable justification is needed for curtailing the choice of applicable law for registered partnerships, and that this could not be derived from the explanations provided by the Commission.

In the light of the above, the rapporteur proposes a rule enabling registered partnerships to choose the applicable law for their property regime. The proposed rules remain largely parallel to those governing matrimonial property regimes, deviating only in so far as is necessary to tackle problems which the choice of applicable law might raise for registered partnerships. Partners could then choose a law which does not recognise registered partnerships. This would be managed by limiting the effects of a choice of applicable law. A 'dead-end' choice of law would have no effect under the proposed provision; the objective connection would then operate.

Another requirement is the advisory requirement. Although partners wishing to make a choice of law are usually sufficiently informed and those concerned are generally particularly well informed about their rights, legal assistance should be provided for those most in need of protection. If a Member State has particular formal requirements for the choice of law which ensure the provision of advice, the advisory requirement shall be considered fulfilled (e.g. notarisation).

As a further consequence of the new provision on the choice of law, the rapporteur proposes a provision – in line with that for matrimonial property regimes – on the choice of jurisdiction, which is linked to the choice of law.

3. Other aspects of ensuring equality between the institutions of marriage and registered partnership with respect to property issues

The rapporteur proposes extending the solutions which are appropriate for matrimonial property regimes to registered partnerships. This applies above all to integration of the new

¹ COM(2011) 0127, Explanatory Memorandum, p. 8.

² http://fra.europa.eu/fraWebsite/research/opinions/op-property-regimes_en.htm

matrimonial property regime provisions into other EU legislation, in particular the new Regulation on wills and succession and the ‘Brussels I’ Regulation. In terms of details, this objective of ensuring equality affects the determination of the scope (e.g. excluding maintenance settlements from German law or similar structures in other Member States), reworking the rules on jurisdiction, the provisions on the adaptation of rights in rem and the recognition, enforceability and enforcement of judicial decision to be utilised from the Regulation on wills and succession (as proposed by the rapporteur), and the acceptance and enforceability of authentic instruments.

The rapporteur proposes leaving the graduated rules on jurisdiction proposed by the Commission with regard to the varying arrangements between the Member States on registered partnerships unchanged. For Member States which do not recognise registered partnerships, the proposal provides that courts in such States may decline jurisdiction. However, if they do not, courts may not generally invoke public policy as a reason not to allow foreign law on partnerships to be applied. Although it could be argued that this possibility of declining jurisdiction – which does not exist in the Regulation on matrimonial property regimes – is potentially discriminatory, in the rapporteur’s opinion it would at the moment not be realistic to propose equality across the board as this would mitigate against agreement between those Member States that do not recognise the institution of registered partnerships.

Finally, the rapporteur proposes broadening the revision clause in order to examine in close detail, in particular, the practical impact of the individual points where matrimonial property regimes and property regimes of registered partnerships (still) differ and to use this as a basis for working towards harmonisation.

6.9.2012

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Legal Affairs

on the 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)0127 – C7-0094/2011 – 2011/0060(CNS))

Rapporteur: Michael Cashman

SHORT JUSTIFICATION

The European Commission's proposal is designed to regulate jurisdiction and applicable law as they apply both to the daily management of the property of registered partners and to how issues relating to the distribution of assets in cross-border situations are handled following the ending of a couple's relationship through separation or death. The Commission's objective is to ensure greater legal certainty for parties in order to prevent parallel proceedings and to discourage the practice of plaintiffs seeking to have disputes heard in the court thought most likely to provide a favourable judgment ('forum shopping').

The rapporteur for this opinion agrees with the rapporteur in the Committee on Legal Affairs that a separate approach for registered partnerships on the one hand, and for marriages on the other hand, is unjustified. Therefore these amendments seek to bridge gaps between the two proposals.

The proposal submitted by the Commission excludes the possibility of a choice of applicable law for the property consequences of registered partnerships, providing for mandatory application of the law of the state in which the partnership is registered. The Rapporteur questions the grounds for exclusion of the choice of law, as the choice of law offers greater freedom for the parties concerned, and given the intended broad scope of the regulation, which is intended to cover all property aspects of registered partnerships. Therefore, the amendments to the current proposal ensure that the choices available to spouses or registered partners would be the same, but always on the condition that the laws are those of a State which recognises the institution of registered partnerships in the latter case.

Furthermore, the Rapporteur is of the opinion that excluding personal effects (such as name changes) from the scope of this Regulation in Article 1 is unjustified, and suggests deleting this exception.

Finally, since Article 18 provides for a public policy exception in specific cases the Rapporteur takes the view that a very wide-ranging Article 17 on overriding mandatory provisions should be deleted.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) To facilitate the partners' management of their property, the law *of the Member State where the partnership was registered will apply to* all the *partners'* property, even if this law is not the law of a Member State.

Amendment

(18) To facilitate the partners' management of their property, ***this Regulation authorises them to choose as the law applicable to all the property covered by their property regime, regardless of the nature or location of that property, either the law of the State where the partnership was registered or the law of the State with which the partners have close links by virtue of residence or on account of their nationality, as long as it is the law of a State that recognises the institution of registered partnerships,*** even if this law is not the law of a Member State. ***That choice may be made at any time, whether at the time of establishing the partnership, or after or during the course of the partnership.***

Justification

There is no reason for two separate proposals for Regulations, nor any reason for denying registered partners the right to choose the applicable law. The parties should be accorded a degree of freedom in choosing the applicable law for their property regime. This option must be based on the law of habitual residence or on the nationality of one of the partners or future partners. This recital enables this choice, as long as the chosen law is that of a State that recognises the institution of registered partnerships.

Amendment 2

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Where no applicable law is chosen, the law of the State where the partnership was registered will apply to all the partners' property, even if that law is not the law of a Member State. If more than one registered partnership exists concurrently for the same two partners, for instance in different States, the law of the State in which a partnership was registered and with which the partners jointly have the closest links or, failing that, the law of the State in which the partners last registered a partnership, will apply to all their property.

Amendment 3

Proposal for a regulation Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) The term “habitual residence” should be interpreted in accordance with the purpose of this Regulation. Its meaning should be determined by the judge in each individual case and on the basis of the facts. The term does not refer to a concept of national law but, rather, to a separate concept established in Union law.

Justification

A definition of the term habitual residence should be provided so as to avoid as much as possible arbitrary interpretations. The court, of course, has to examine all relevant facts before it applies the definition.

Amendment 4

Proposal for a regulation Recital 18 c (new)

Text proposed by the Commission

Amendment

(18c) If nationality is used to determine the applicable law, account must be taken of the fact that some States with a legal system based on common law use domicile and not nationality as a connecting factor.

Justification

This recital clarifies the role of 'nationality' and 'domicile' in the list of connecting factors.

Amendment 5

Proposal for a regulation Recital 18 d (new)

Text proposed by the Commission

Amendment

(18d) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the property consequences of registered partnerships being made without the partners being notified, no such change should be made save at the express request of the parties. Such a change by the partners should not have retroactive effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties and the validity of transactions entered into previously.

Justification

This recital ensures that the choice of applicable law is not made without the explicit consent of both parties.

Amendment 6

Proposal for a regulation Recital 18 e (new)

Text proposed by the Commission

Amendment

(18e) Given the importance of choosing the law applicable to the property consequences of registered partnerships, this Regulation must contain guarantees designed to ensure that partners or prospective partners are aware of the consequences of their choice. That choice should be made in the form prescribed for the partnership contract either by the law of the State chosen, as long as it is the law of a State that recognises the institution of registered partnerships, or by that of the State where the partnership was registered, and should at least be in writing and dated and signed by the couple. Any additional formal requirements imposed by the law of the State chosen, or that of the State where the instrument is drawn up, concerning the validity, disclosure or registration of such contracts should be complied with.

Justification

This recital specifies the modalities of choosing the law applicable to the property consequences of registered partnerships, as long as it is the law of a State that recognises the institution of registered partnerships. Any requirements foreseen by the relevant law should be complied with.

Amendment 7

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) All necessary information should be made available in a simple manner and by appropriate means, in particular through a multilingual internet site of the

Commission, so as to ensure that all couples and partners can exercise their rights in an informed way.

Amendment 8

Proposal for a regulation Recital 19 a (new)

Text of the Commission

Amendment

(19a) A multilingual information tool should be established in order to make information more readily accessible to the persons concerned and encourage an exchange of good practice among legal practitioners.

Amendment 9

Proposal for a regulation Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) The Commission should introduce an information and training tool for the relevant court officials and legal practitioners by setting up an interactive portal in all official languages of the Union, including a system for sharing professional expertise and practices.

Amendment 10

Proposal for a regulation Recital 28

Text proposed by the Commission

Amendment

(28) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular

(28) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular

Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the prohibition of any form of discrimination and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles.

Articles 7, 9, 17, **20**, 21, **23** and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, ***equality before the law***, the prohibition of any form of discrimination, ***equality between women and men*** and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles ***enshrined in the Charter of Fundamental Rights, in particular the principles of equality before the law, non-discrimination on grounds of sex or sexual orientation, and equality between women and men.***

Justification

While acknowledging the results of the Commission's fundamental rights impact assessment, the rapporteur underlines that particular attention must be paid to the principles of equality before the law (Art. 20 of the Charter of Fundamental Rights), non-discrimination (Art. 21 of the Charter), and equality between women and men (Art. 23 of the Charter) when courts apply the Regulation.

Amendment 11

Proposal for a regulation

Article 1 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the personal effects of registered partnerships,

deleted

Justification

There is no reason for excluding the personal effects (such as name changes) of registered partners from the scope of the Regulation. Registered partners should benefit from the same harmonisation as spouses under the proposal for a Regulation on matrimonial property regimes.

Amendment 12

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

Such an agreement may be concluded at any time, even during the proceedings. ***If it is concluded before the proceedings***, it must be drawn up in writing and dated and signed by both parties.

Amendment

Such an agreement may be concluded at any time, even during the proceedings. ***It*** must be drawn up in writing and dated and signed by both parties.

Amendment 13

Proposal for a regulation Article 5 – paragraph 1 – introductory wording

Text proposed by the Commission

1. In cases other than those provided for in Articles 3 and 4, jurisdiction to rule on proceedings concerning the property consequences of a registered partnership shall lie with the courts of the Member State:

Amendment

1. In cases other than those provided for in Articles 3 and 4, jurisdiction to rule on proceedings concerning the property consequences of a registered partnership shall lie, ***in descending order***, with the courts of the Member State:

Amendment 14

Proposal for a regulation Article 5 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) of the nationality of both partners or, in the case of the United Kingdom and Ireland, of their common domicile, or failing that,

Amendment 15

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. The courts referred to in points (a), (b) **and** (c) of paragraph 1 may decline jurisdiction if their law does not recognise the institution of registered partnership.

Amendment

2. The courts referred to in points (a), (b), (c) **and (ca)** of paragraph 1 may decline jurisdiction if their law does not recognise the institution of registered partnership.

Amendment 16

Proposal for a regulation Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Both parties may also agree that the courts of the Member State whose law they have chosen as the law applicable to the property consequences of their registered partnership in accordance with Articles 15 and 15b are also to have jurisdiction to rule on the property consequences of their registered partnership.

Justification

This paragraph provides for the courts of the Member State chosen for the applicable law to also have jurisdiction on the property consequences of the registered partnership.

Amendment 17

Proposal for a regulation Article 5 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Such an agreement may be concluded at any time, even during the proceedings. It must be drawn up in writing and dated and signed by both parties.

Compromise amendment 1 18

**Proposal for a regulation
Article 15**

Text proposed by the Commission

Amendment

Determination of the applicable law

Choice of the applicable law

The law applicable to the property consequences of registered **partnerships** is the law of **the State in which the partnership was registered.**

Unless an agreement concluded as private persons provides otherwise, the partners or prospective partners may choose as the law applicable to the property consequences of *their* registered partnership, as long as it is the law of a State that recognises the institution of registered partnerships, one of the following:

Justification

The two proposals for Regulations on matrimonial property regimes and on the property consequences of registered partnerships should offer the same choice of applicable laws. This does not affect the capacity of national courts to decline jurisdiction where they do not recognise the institution of registered partnerships.

Amendment 19

**Proposal for a regulation
Article 15 – point a (new)**

Text proposed by the Commission

Amendment

(a) the law of the State in which the partnership was registered, or

Justification

Amendments 19-25 allow the choice of applicable laws to be limited by these options, which are the same as for married couples under the proposed Regulation for matrimonial property regimes, as long as the chosen law is that of a State which recognises the institution of registered partnerships. Additionally, registered partners may choose the law of the State in which their partnership was registered for the applicable law, as foreseen by Art. 15 in the current version of the Commission's proposal.

Amendment 20

Proposal for a regulation Article 15 – point b (new)

Text proposed by the Commission

Amendment

(b) the law of the State of the common habitual residence of the partners or prospective partners, or

Amendment 21

Proposal for a regulation Article 15 – point c (new)

Text proposed by the Commission

Amendment

(c) the law of the State of habitual residence of one of the partners at the time that choice is made, or

Amendment 22

Proposal for a regulation Article 15 – point d (new)

Text proposed by the Commission

Amendment

(d) the law of the State of which one of the partners or prospective partners is a national at the time that choice is made, or

Amendment 23

Proposal for a regulation Article 15 – point e (new)

Text proposed by the Commission

Amendment

(e) the law of the State with which the partners jointly have the closest links, or

Amendment 24

Proposal for a regulation Article 15 – point f (new)

Text proposed by the Commission

Amendment

(f) the law of the State of the partners' last common habitual residence, or

Amendment 25

Proposal for a regulation Article 15 – point g (new)

Text proposed by the Commission

Amendment

(g) the law of the State of the partners' first common habitual residence after their partnership was registered.

Amendment 26

Proposal for a regulation Article 15 – paragraph 1a (new)

Text proposed by the Commission

Amendment

The term 'habitual residence' shall mean a person's ordinary place of abode.

Justification

A definition of the term habitual residence should be provided so as to avoid as much as possible arbitrary interpretations. The court, of course, has to examine all relevant facts before it applies the definition.

Amendment 27

Proposal for a regulation Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Establishing the applicable law where no choice is made

If the partners do not make a choice, the law applicable to the property regime of their registered partnership shall be the law of the State in which the partnership was registered.

If the partners have entered into more than one registered partnership concurrently, the law applicable to the property consequences of their registered partnerships shall be, in descending order:

(a) the law of the State in which the partners registered a partnership and with which they jointly have the closest links, or failing that,

(b) the law of the State in which the partners last registered a partnership.

Justification

Failing a choice of applicable law by the partners, this new article establishes the applicable law as that of the State in which the partnership was registered, as foreseen by Art. 15 in the current version of the Commission's proposal. If the partners have entered registered partnerships in different States that exist concurrently, the criteria for selecting the applicable law are the State in which the partners have the closest links, or, failing that, the State in which a partnership was last registered.

Amendment 28

Proposal for a regulation
Article 15 b (new)

Text proposed by the Commission

Amendment

Article 15b

Change of applicable law

1. The partners may at any time during their partnership make the property consequences of their registered partnership subject to a law other than the law previously applicable. They may designate only the law of a State that

recognises the institution of registered partnerships, and may choose only from among the laws listed under Article 15.

2. Unless the partners indicate otherwise, a change of the law applicable to the property consequences of their registered partnership made during the partnership shall be effective only in the future. If the partners choose to make that change retroactive, its retroactive effect shall not affect the validity of previous transactions entered into under the law applicable prior to the change or the rights of third parties under the law previously applicable.

Amendment 29

Proposal for a regulation Article 15 c (new)

Text proposed by the Commission

Amendment

Article 15c

Formalities for choosing the applicable law

1. The choice of applicable law shall be made in the way specified for the partnership contract, either by the law of the State chosen or by the law of the State in which the partnership is registered.

2. Notwithstanding paragraph 1, the choice must at least be made expressly in a document dated and signed by both partners.

3. If the law of the State referred to in paragraph 1 lays down additional formal requirements for the partnership contract, those requirements must be complied with.

Justification

This new article is the equivalent of Article 19 of the proposal for a regulation on

matrimonial property regimes, so that registered partners must fulfil the same formalities for choosing the law applicable to the property effects of their contract.

Amendment 30

Proposal for a regulation

Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Overriding mandatory provisions

The provisions of this Regulation shall be without prejudice to the application of imperative provisions the upholding of which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the property consequences of a registered partnership under this Regulation.

Justification

The scope of exceptions allowed by this article is virtually limitless, allowing Member States to disregard any provision contained in the Regulation. Since Article 18 already provides for a public policy exception in specific cases, this article should be deleted.

Amendment 31

Proposal for a regulation

Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Such a refusal may not contravene the Charter of Fundamental Rights of the European Union.

Justification

This addition should make clear that refusals on grounds of public policy are subject to the

Charter of Fundamental Rights, and in particular Article 21 which prohibits all forms of discrimination.

Amendment 32

Proposal for a regulation Article 21 – paragraph 1

Text of the Commission

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

Amendment

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required. ***The recognition of such decisions shall not, however, imply that Member States recognise registered partnerships as a legal institution in their own law.***

Amendment 33

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

1. The property consequences of a registered partnership for a legal relationship between a partner and a third party are governed by the law ***of the State where the partnership was registered in accordance with Article 15.***

Amendment

1. The property consequences of a registered partnership for a legal relationship between a partner and a third party are governed by the law ***applicable to the property consequences of registered partnerships under the terms of this Regulation.***

Justification

This paragraph is amended to reflect the possibility of partners choosing the law applicable to the property consequences of their registered partnership.

Amendment 34

Proposal for a regulation Article 32 a (new)

Text of the Commission

Amendment

Article 32a

Dealings between private persons

Nothing in this Regulation shall prevent two persons who are neither married nor partners in a registered partnership from regulating the property consequences of their cohabitation, or the cessation thereof, on a private-law basis relevant solely to themselves.

Amendment 35

**Proposal for a regulation
Article 33 – paragraph 3**

Text proposed by the Commission

3. The Commission shall make all information ***communicated in accordance with paragraphs 1 and 2*** publicly available by appropriate means, ***in particular*** through ***the*** multilingual internet site of the European Judicial Network in civil and commercial matters.

Amendment

3. The Commission shall make all information publicly available ***in a simple manner*** by appropriate means, through ***a*** multilingual internet site ***complementing that*** of the European Judicial Network in civil and commercial matters, ***so as to ensure that all couples and partners can exercise their rights in an informed way.***

Amendment 36

**Proposal for a regulation
Article 33 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. The Commission shall introduce an information and training tool for the relevant court officials and legal practitioners by setting up an interactive portal in all official languages of the Union, including a system for sharing professional expertise and practices.

PROCEDURE

Title	Decisions regarding the property consequences of registered partnerships
References	COM(2011)0127 – C7-0094/2011 – 2011/0060(CNS)
Committee responsible Date announced in plenary	JURI 10.5.2011
Opinion by Date announced in plenary	LIBE 10.5.2011
Rapporteur Date appointed	Michael Cashman 19.9.2011
Discussed in committee	21.3.2012 3.9.2012
Date adopted	3.9.2012
Result of final vote	+: 46 -: 3 0: 1
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Simon Busuttil, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Monika Flašíková Beňová, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Véronique Mathieu, Anthea McIntyre, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Rui Tavares, Nils Torvalds, Axel Voss, Renate Weber, Josef Weidenholzer, Cecilia Wikström, Auke Zijlstra
Substitute(s) present for the final vote	Anna Maria Corazza Bildt, Cornelis de Jong, Evelyne Gebhardt, Monika Hohlmeier, Franziska Keller, Ádám Kósa, Marian-Jean Marinescu, Antonio Masip Hidalgo, Jan Mulder, Raúl Romeva i Rueda, Marie-Christine Vergiat, Glenis Willmott
Substitute(s) under Rule 187(2) present for the final vote	Justas Vincas Paleckis, Iuliu Winkler

PROCEDURE

Title	Decisions regarding the property consequences of registered partnerships			
References	COM(2011)0127 – C7-0094/2011 – 2011/0060(CNS)			
Date of consulting Parliament	7.4.2011			
Committee responsible Date announced in plenary	JURI 10.5.2011			
Committee(s) asked for opinion(s) Date announced in plenary	LIBE 10.5.2011	FEMM 10.5.2011		
Not delivering opinions Date of decision	FEMM 20.9.2012			
Rapporteur(s) Date appointed	Alexandra Thein 12.4.2011			
Discussed in committee	21.6.2011	21.11.2011	17.9.2012	11.10.2012
	18.12.2012			
Date adopted	20.6.2013			
Result of final vote	+: -: 0:	23 0 2		
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Sergio Gaetano Cofferati, Eva Lichtenberger, Angelika Niebler, Axel Voss			
Substitute(s) under Rule 187(2) present for the final vote	Frédérique Ries, Nikolaos Salavrakos, Jacek Włosowicz			
Date tabled	21.8.2013			