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*Committee on Civil Liberties, Justice and Home Affairs*

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**2011/0060(CNS)**

13.2.2012

## **DRAFT 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

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## 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*

*Amendment*

(18) To facilitate the partners' management of their property, the law *of the Member*

(18) To facilitate the partners' management of their property, *this Regulation*

***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.***

***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.***

Or. en

#### *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.*

Or. en

### **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.***

Or. en

*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.***

Or. en

### *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.***

Or. en

### *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.*

Or. en

#### *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.*

Or. en

## Amendment 8

### 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.***

Or. en

## Amendment 9

### 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 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.

(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, **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 10****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 11****Proposal for a regulation****Article 4 – paragraph 2***Text proposed by the Commission**Amendment*

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.

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 12

### 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:

Or. en

## Amendment 13

### 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,***

Or. en

## Amendment 14

### Proposal for a regulation

#### Article 5 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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.

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.

Or. en

## Amendment 15

### 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.***

Or. en

*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 16

### 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.***

Or. en

## Amendment 17

### Proposal for a regulation Article 15

*Text proposed by the Commission*

**Determination** 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.**

*Amendment*

**Choice** of the applicable law

**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:**

Or. en

*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 18

### 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**

Or. en

*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 19**

**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***

Or. en

**Amendment 20**

**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***

Or. en

**Amendment 21**

**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***

Or. en

**Amendment 22**

**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***

Or. en

**Amendment 23**

**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***

Or. en

**Amendment 24**

**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.***

Or. en

## **Amendment 25**

### **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.***

Or. en

*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 26**

### **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 27****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 28**

### **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.*

Or. en

#### *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 29**

### **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.*

Or. en

*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 30**

**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.***

Or. en

*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 31**

**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 the property consequences of registered partnerships under the terms of this Regulation.*

Or. en

#### *Justification*

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

### **Amendment 32**

#### **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.*

Or. en

### **Amendment 33**

#### **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.*

