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EUROPEAN COMMISSION

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2011/0060 (CNS)

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) 125 final}

{COM(2011) 126 final}

{SEC(2011) 327 final}

{SEC(2011) 328 final}

EXPLANATORY MEMORANDUM

1. BACKGROUND TO THE PROPOSAL

1.1. General background

Article 67(1) of the Treaty on the Functioning of the European Union provides that the Union is to constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. Paragraph 4 of that article lays down that the Union is to facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. Article 81 of the Treaty explicitly refers to measures aimed at ensuring 'the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases' and 'the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction'. Many instruments have already been adopted on this basis, in particular Regulation (EC) No 2201/2003. None of them, however, cover the property consequences of registered partnerships.

The programme on mutual recognition of decisions in civil and commercial matters adopted by the Council on 30 November 2000¹ provided for the drafting of legislation on jurisdiction and the recognition and enforcement of decisions as regards 'rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple'. The Hague programme², which was adopted by the European Council on 4 and 5 November 2004, set the implementation of the mutual recognition programme as a top priority and called on the Commission to submit a Green Paper on 'the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition', and stressed the need to adopt such legislation by 2011.

The Stockholm Programme, which was adopted by the European Council on 11 December 2009, also states that mutual recognition should be extended to matrimonial property regimes and the property consequences of the separation of unmarried couples.

In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010³, the Commission identified uncertainty surrounding the property rights of international couples as one of the main obstacles faced by EU citizens in their daily lives when they tried to exercise the rights the EU conferred on them across national borders. To remedy this, it announced that it would adopt in 2011 a proposal for legislation to make it easier for international couples (either married or registered partners) to know which courts had jurisdiction and which law applied to their property rights.

1.2. Grounds for and objectives of the proposal

The increased mobility of persons within an area without internal frontiers leads to a marked increase in the number of couples, of whatever form, made up of nationals of different Member States who may live in a Member State of which they do not have the nationality and often acquire property in more than one Union country. A study carried out by the consortium ASSER-UCL in

¹ OJ L 12, 15.1.2001, p. 1.

² OJ L 53, 3.3.2005, p. 1.

³ COM(2010) 603.

2003⁴ showed the large number of transnational couples within the Union and the practical and legal difficulties such couples face, both in the daily management of their property and in its division if the couple separate or one of its members dies. While marriage is the most common form of couple, new forms of union have emerged, including the registered partnership, by which two people in a stable relationship formally register their union with a public authority. The difficulties encountered by couples in a registered partnership often arise from the great disparities between the applicable rules governing the property effects of such unions, both in substantive law and in private international law .

Because of the features that distinguish registered partnerships and marriage, and the different legal consequences resulting from these forms of union, the Commission is presenting two separate proposals for Regulations: one on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, and the other on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

The purpose of this proposal is to establish a clear legal framework in the European Union for determining jurisdiction and the law applicable to the property consequences of registered partnerships, and to facilitate the movement of decisions and instruments among the Member States.

2. RESULT OF THE CONSULTATIONS – IMPACT ASSESSMENT

Before this proposal was drawn up, a broad consultation exercise took place with the Member States, the other institutions and the public. Following the 2003 study, on 17 July 2006 the Commission published a Green Paper on conflict of laws in matters concerning matrimonial property regimes⁵, including the question of jurisdiction and mutual recognition, that launched wide-ranging consultations on the subject. A group of experts, PRM/III, was set up by the Commission to draw up the proposal. The group was made up of experts representing the range of professions concerned and the different European legal traditions; it met five times between 2008 and 2010. The Commission also held a public hearing on 28 September 2009 involving some hundred participants; the debates confirmed the need for an EU instrument in this area that covered in particular applicable law, jurisdiction and the recognition and enforcement of decisions. A meeting with national experts was held on 23 March 2010 to discuss the thrust of the proposal being drafted.

Finally, the Commission conducted a joint impact study on the proposals for regulations on the property consequences of registered partnerships and matrimonial property regimes. It is attached to this proposal.

⁴ ASSER-UCL Consortium, *Study in comparative law on the rules governing conflicts of jurisdiction and laws on matrimonial property regimes and the implementation for property issues of the separation of unmarried couples in the Member States.* See:

⁵ http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm
COM(2006) 400.

3. LEGAL ASPECTS OF THE PROPOSAL

3.1. Legal basis

The legal basis for this proposal is Article 81(3) of the Treaty on the Functioning of the European Union, which confers on the Council the power to adopt measures concerning family law having cross-border implications after consulting the European Parliament.

As with matrimonial property regimes, property relationships between registered partners, and between the partners and third parties, derive from the prior existence of the registered partnership. The property consequences of registered partnerships are created by the registration of the partnership – just as a matrimonial regime is created by marriage – and they disappear with its dissolution. By registering their partnership with a public authority, partners establish a stable, legally recognised relationship with each other. Most Member States with legal provision for partnerships make the rules as similar as possible to those of marriage.

The aim of this proposal is to establish a comprehensive set of rules of international private law applicable to the property consequences of registered partnerships. It therefore touches on matters of legal jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of a registered partnership. The rules proposed are concerned only with cross-border cases. The cross-border requirement in Article 81(3) is consequently fulfilled.

3.2. Subsidiarity principle

The only way of achieving the proposal's objectives is through common rules on the property consequences of registered partnerships, rules which must be identical in order to guarantee legal certainty and predictability for citizens. Unilateral action by Member States would therefore run counter to this objective. No international agreements are applicable here, other than the Convention on the recognition of registered partnerships of 5 September 2007 of the International Commission on Civil Status. But that Convention covers only the recognition of partnerships, and has not entered into force, so it is not likely to offer the solutions needed given the magnitude of the problems addressed by this proposal, as revealed by both the impact study and the public hearings. Given the nature and the scale of the problems experienced by European citizens, the objectives can be achieved only at Union level.

3.3. Proportionality principle

The proposal complies with the principle of proportionality in that it is strictly limited to what is necessary to achieve its objectives. It does not try to harmonise the laws of the Member States concerning the property aspects of registered partnerships. Nor does it affect the way in which the liquidation of the property of registered partnerships is taxed by Member States. This proposal will not entail any financial or administrative burdens on citizens and only a very limited additional burden on national authorities.

3.4. Impact on fundamental rights

In accordance with the strategy for the effective implementation of the Charter of Fundamental Rights by the European Union⁶, the Commission has checked that the proposal complies with the rights set out in the Charter.

It does not affect the right to respect for private and family life nor the right to marry and to found a family according to national laws, as provided for in Articles 7 and 9 of the Charter.

The right to property referred to in Article 17 of the Charter is strengthened. The predictability of the law applicable to all the couple's property will in fact enable the partners to exercise their property rights more fully.

The Commission has also checked that the proposal complies with Article 21, prohibiting any discrimination.

Finally, the proposal would increase citizens' access to justice in the EU, in particular for registered partnerships. It would facilitate implementation of Article 47 of the Charter of Fundamental Rights, which guarantees the right to an effective remedy and to a fair trial. By setting out objective criteria for determining the court having jurisdiction, parallel proceedings and appeals precipitated by the most active party can be avoided.

3.5. Choice of instrument

The need for legal certainty and predictability calls for clear and uniform rules and requires that the legislation take the form of a regulation. The proposed rules on jurisdiction, applicable law and free movement of decisions are set out clearly and in detail, requiring no transposition into national law. The objectives of legal certainty and predictability would be compromised if the Member States had discretion with regard to implementing the rules.

4. BUDGETARY IMPACT, SIMPLIFICATION AND CONSISTENCY WITH OTHER UNION POLICIES

4.1. Budgetary impact

The proposal will have no impact on the Union budget.

4.2. Simplification

The harmonisation of the rules on jurisdiction will greatly simplify procedures by making it possible to determine the court with jurisdiction to deal with the property consequences of registered partnerships on the basis of common rules. If courts handling the separation of the partners, or, in application of future EU legislation, a succession case following the death of one of the partners, have their jurisdiction over those matters extended to the property consequences of the partnership, citizens will be able to have the same court dealing with all aspects of their situation.

The harmonisation of conflict-of-law rules will considerably simplify procedures by establishing which law is applicable.

⁶ Communication from the Commission, COM(2010) 573 of 19.10.2010.

Finally, the rules proposed for the recognition and enforcement of court decisions will facilitate their movement between different Member States.

4.3. Consistency with other Union policies

This proposal is part of the Commission's efforts to dismantle the obstacles faced by EU citizens in their daily lives when they try to exercise the rights the EU confers on them, as outlined in the 2010 EU Citizenship Report referred to earlier.

5. COMMENTS ON THE ARTICLES

5.1. Chapter I: Scope and definitions

Article 1

The personal effects of registered partnerships are specifically excluded from the scope of this Regulation, which covers the property consequences of such partnerships. These property consequences relate both to the partners' daily management of their property and to the liquidation of the property as a result of the couple's separation or the death of one of the partners.

To determine the areas that will be covered it seemed preferable to compile a comprehensive list of matters excluded from the Regulation. Thus, matters already covered by existing EU regulations, such as maintenance obligations⁷, especially between partners, and issues concerning the validity and effect of gifts⁸, will be excluded from the scope of the Regulation. Matters arising from the law of succession are also excluded.

The Regulation does not affect the nature of rights in rem relating to property, the classification of property and rights, nor the determination of the prerogatives of the holder of such rights. The disclosure of property rights, in particular the functioning of the land register and the effects of an entry or failure to make an entry in this register, is also excluded from the scope of the Regulation.

Article 2

For the sake of consistency and to facilitate understanding and uniformity of implementation, some definitions of terms appearing in this Regulation are common to other EU instruments currently in force or under negotiation.

The property consequences of registered partnerships, which are the sole subject matter of this Regulation, are given a specific definition limiting them solely to existing property relationships between the partners and between the partners and third parties arising from the institutionalised relationship created by the registration of the partnership.

The definition of a 'court' includes authorities and persons who exercise their functions by delegation or designation of a court, so that their decisions are to be treated as court decisions for

⁷ Governed by Regulation (EC) No 4/2009, OJ L 7, 10.1.2009, p. 1.

⁸ Governed by Regulation (EC) No 593/2008, OJ L 177, 4.7.2008, p. 6.

the purposes of recognition and enforcement in a Member State other than the State where they were delivered.

5.2. Chapter II: Jurisdiction

Legal proceedings over the property consequences of registered partnerships often arise from the liquidation of the property when the couple ceases to exist, either as a result of the death of one of them or of their separation.

The aim of this Regulation is to enable citizens to have the related procedures handled by the courts of the same Member State. To do this, the Regulation is designed to ensure that the rules for determining the jurisdiction of the courts called on to deal with the property aspects of registered partnerships are in line with the existing or proposed rules in other European legislation.

Article 3

The courts of a Member State with territorial jurisdiction to deal with the liquidation of the succession of a partner who has died, in accordance with the rules of 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*], should have their jurisdiction extended to include the liquidation of the property relationship of the registered partnership as a result of the opening of the succession.

However, the courts of that Member State will be able to refuse this extension of jurisdiction if the domestic law of that State does not provide for the institution of registered partnership.

Article 4

Similarly, to ensure that if the partners separate a court seised in a Member State can deal with all aspects of this separation without forcing the partners to undertake different proceedings in different States, the jurisdiction of the court of a Member State dealing with the dissolution or annulment of a registered partnership may, if the partners agree, be extended to the property consequences of the registered partnership arising from the dissolution or annulment of the partnership.

Article 5

The Regulation also provides for rules governing jurisdiction that would apply in other cases, independently of any succession or separation proceedings. To establish the Member State whose courts have jurisdiction to deal with proceedings concerning the property consequences of registered partnerships there would be a list of connecting factors, in order of precedence.

The proposed criteria include the common habitual residence of the spouses, their last common habitual residence if one of them still resides there or the habitual residence of the defendant. As in Articles 3 and 4, the courts of the Member State designated in accordance with the criteria set out above may refuse this extension of jurisdiction if the domestic law of that State does not provide

for the institution of registered partnership, and the last criterion for establishing jurisdiction in Article 5 is the Member State where the partnership was registered.

Article 6

Where no Member State has jurisdiction in application of the previous articles, this article makes provision for establishing the Member State whose courts may handle the case by way of exception. This rule ensures access to justice for the partners and interested third parties when the property or properties of either partners or of both partners is located on the territory of a particular Member State, and also where both partners have the nationality of a particular Member State.

5.3. Chapter III: Applicable law

Article 15

In view of the differences between the national laws of those Member States that make provision for registered partnerships, the principle adopted in the Regulation is that the property consequences of registered partnerships should be governed by the law of the State of registration. This principle 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 law other than the State of registration, even though they may be entitled to conclude agreements between themselves.

This principle ensures the unity of the law applicable to all properties owned by the couple that are subject to the property consequences of registered partnerships, whatever their form or location.

Article 16

The conflict-of-law rule laid down in the previous article applies to all forms of registered partnership, in whatever State they are registered, not merely to partnerships registered in a Member State.

Article 17

To take account of the rules on application needed in each Member State, in particular those for protection of the family home, this provision allows a Member State to set aside the application of a foreign law in favour of its own. Accordingly, to protect the family home, a Member State where the home is located may apply its own rules for the protection of the family home. Exceptionally, this Member State may apply its own law to all persons living on its territory in 'preference' to the partnership contract a person may have concluded in another Member State.

5.4. Chapter IV: Recognition, enforceability and enforcement

The proposed Regulation provides for the free movement of decisions, authentic instruments and court settlements concerning the property consequences of registered partnerships. It would thus introduce mutual recognition based on the mutual trust arising out of the integration of the Member States within the European Union.

This free movement would take the form of a uniform procedure for the recognition and enforcement of judgments, authentic acts and legal transactions originating in another Member State. The procedure replaces the national procedures currently in force in the different Member States. The grounds for non-recognition or refusal to enforce are also harmonised at European level or reduced to the absolute minimum. They replace the varied, and often broader, grounds that exist at national level at present.

Decisions

The proposed rules on the recognition and enforcement of judgments are in line with those proposed for successions. They therefore refer to the exequatur procedure existing in civil and commercial matters. So any decision of a Member States would be recognised in other Member States without any special procedure. To have a decision enforced, applicants would have to follow a uniform procedure in the State of enforcement to obtain a declaration of enforceability. The procedure is unilateral and is initially confined to a verification of documents. Only at a later stage, if the defendant objects, would the judge proceed to consider possible grounds for refusal. This offers adequate protection of the rights of defendants.

These rules are a major step forward compared with the present situation. At present, the recognition and enforcement of judgments is governed by the Member States' national laws, or bilateral agreements between some Member States. The procedures to be followed vary with the Member States concerned, as do the documents required for obtaining a declaration of enforceability and the grounds on which foreign judgments may be rejected.

As was explained earlier, this Regulation is a first step in the area of the property consequences of registered partnerships and it concerns family law (see point 3.1). Given the specific circumstances, the free movement of judgments is subject to the exequatur procedure as currently laid down in the Brussels I Regulation⁹.

Nevertheless, the removal of intermediate proceedings (exequatur) could, as in other areas, be considered after an evaluation of the rules in this Regulation and the development of judicial cooperation on the property consequences of registered partnerships.

The acts of authorities exercising their powers by delegation or designation in accordance with the definition of a court in Article 2 of this Regulation will be treated as court decisions and thus covered by the provisions on recognition and enforcement under this chapter

Authentic instruments

Given the practical importance of authentic documents for the property consequences of registered partnerships and in order to ensure the consistency of this Regulation with other EU instruments, this Regulation should ensure their recognition for the purposes of their free movement.

This recognition means that they will enjoy the same evidentiary effect in respect of the contents of the recorded instrument and the facts contained therein and the same presumption of authenticity and enforceability as in the country of origin.

⁹ OJ L 12, 16.1.2001, p. 1.

5.5. Chapter V: Effects in respect of third parties

These provisions are designed to ensure that legal certainty for the partners in their relations with third parties is reconciled with the protection of third parties against the application of a rule they could not have known or foreseen. Member States are therefore given the possibility, in cases of transactions between a partner and a third party residing on their territory, of providing that the partner may not rely on the rules applicable to the property consequences of the partnership unless those rules had been disclosed there, or the third party was aware of them or ought to have been aware of them.

Proposal for a

COUNCIL REGULATION

on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹⁰,

Having regard to the opinion of the European Economic and Social Committee¹¹,

Having regard to the opinion of the Committee of the Regions¹²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union must adopt measures relating to judicial cooperation in civil matters having cross-border implications.
- (2) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (3) On 30 November 2000 the Council adopted a draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters¹³. The programme identifies measures relating to the harmonisation of conflict-of-law rules that will facilitate the mutual recognition of judgments. It provides for the

¹⁰ OJ C [...], [...], p. [...].

¹¹ OJ C [...], [...], p. [...].

¹² OJ C [...], [...], p. [...].

¹³ OJ L 12, 15.1.2001, p. 1.

development of one or more mutual-recognition instruments in matters of matrimonial property regimes and the property consequences of the separation of unmarried couples.

- (4) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme entitled 'The Hague Programme: strengthening freedom, security and justice in the European Union'¹⁴. In this programme the Council asked the Commission to present a Green Paper on conflicts of law in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area by 2011.
- (5) On 17 July 2006 the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition¹⁵. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available. The Green Paper also addressed all issues of private international law encountered by couples in unions other than marriage, including couples with registered partnerships, and issues specific to them.
- (6) The Stockholm programme of 2009¹⁶, which directs the Commission's work programme from 2010 to 2014, also states that mutual recognition should be extended to the property consequences of the separation of couples.
- (7) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010¹⁷, the Commission announced it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.
- (8) The specific features of these two 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.
- (9) The way in which forms of union other than marriage are recognised in the Member States' legislation differs from one State to another, and a distinction must be drawn between couples whose union is institutionally sanctioned by the registration of their partnership with a public authority and couples in de facto cohabitation. While some Member States do make provision for such de facto unions, they must be considered separately from registered partnerships, which have an official character that makes it possible to take account of their specific features and lay down rules on the subject in Union legislation. To ensure the smooth functioning of the internal market, barriers to the free movement of people who have entered into a registered partnership need to be eliminated, particularly those creating difficulties for such couples in the administration and division of their property. In order to achieve these objectives, this Regulation brings together in one instrument the provisions on

¹⁴ OJ L 53, 3.3.2005, p. 1.

¹⁵ COM(2006) 400.

¹⁶ 'The Stockholm Programme — An open and secure Europe serving and protecting citizens', OJ C 115, 4.5.2010, p. 1.

¹⁷ COM(2010) 603.

jurisdiction, applicable law, the recognition and enforcement of decisions and authentic instruments, and reliance on the property relationships arising from registered partnerships in dealings with third parties.

- (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 national laws of the Member States.
- (11) The scope of the Regulation should extend to all civil matters in relation to the property consequences of registered partnerships, both the daily management of the partners' property and its liquidation, in particular as a result of the couple's separation or the death of one of the partners.
- (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 obligations¹⁸, they must be excluded from 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 obligations¹⁹.
- (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*]²⁰. 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.
- (14) To facilitate the proper administration of justice and the liquidation of the property of couples in a registered partnership following the death of one of the partners, matters relating to the property consequences of the registered partnership arising from death will be dealt with by the courts of the Member State with jurisdiction over the succession of the deceased partner, as laid down 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*].
- (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.

¹⁸ OJ L 7, 10.1.2009, p. 1.

¹⁹ OJ L 177, 4.7.2008, p. 6.

²⁰ OJ C [...], [...], p. [...].

- (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.
- (17) The proper functioning of justice requires that irreconcilable decisions should not be pronounced in two different Member States. To this end, this Regulation should provide for general rules of procedure based on Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters²¹.
- (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.
- (19) To facilitate the application of one Member State's law by another Member State's courts, the European Judicial Network in civil and commercial matters set up by Council Decision 2001/470/EC of 28 May 2001²² can help inform the courts about the substance of the foreign law.
- (20) Considerations of public interest may, in exceptional circumstances, justify the courts of the Member States invoking overriding mandatory provisions which must be complied with in order to safeguard the political, social or economic organisation of those States. Similarly, in exceptional circumstances, the courts of the Member States should be allowed to set aside the foreign law in a given case where its application would be manifestly incompatible with the public policy of the forum.
- (21) However, the courts must not be able to invoke overriding mandatory provisions or public policy as exceptions in order to set aside the law of another Member State or to refuse to recognise or enforce a decision, an authentic instrument, a legal transaction or a European Certificate of Succession drawn up in another Member State where application of such an exception would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination. Nor may these courts set aside the law applicable to registered partnerships merely on the grounds that the public policy of the forum does not recognise registered partnerships.
- (22) Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.
- (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

²¹ OJ L 12, 16.1.2001, p. 1.

²² OJ L 174, 27.6.2001, p. 25.

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

- (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.
- (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.
- (26) Given the international commitments entered into by the Member States, this Regulation should not affect international conventions to which one or more Member States are party when it is adopted. Consistency with the general objectives of this Regulation requires, however, that the Regulation take precedence over the conventions between Member States.
- (27) The objectives of this Regulation, namely the free movement of persons in the European Union, the opportunity for partners to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at European Union level; under the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union, therefore, the Union has competence to act. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (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.
- (29) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [the United

Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].

- (30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark will not participate in the adoption of this Regulation and is not therefore bound by it or required to apply it,

HAS ADOPTED THIS REGULATION:

Chapter I

Scope and definition

Article 1

Scope

1. This Regulation shall apply to matters of the property consequences of registered partnerships.

It shall not apply in particular to revenue, customs or administrative matters.
2. In this Regulation, 'Member State' means any Member State with the exception of Denmark, [the United Kingdom and Ireland].
3. The following are excluded from the scope of this Regulation:
 - (a) the personal effects of registered partnerships,
 - (b) the capacity of partners,
 - (c) maintenance obligations,
 - (d) gifts between partners,
 - (e) the succession rights of a surviving partner,
 - (f) companies set up between registered partners,
 - (g) the nature of rights in rem relating to a property and the disclosure of such rights.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) (a) 'property consequences': the set of rules concerning the property relationships of the partners, between themselves and in respect of third parties, resulting from the link created by the registration of the partnership;
- (b) 'registered partnership': regime governing the shared life of two people which is provided for in law and is registered by an official authority;
- (c) 'authentic instrument': an instrument which has been officially drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
 - (i) relates to the signature and the content of the authentic instrument, and
 - (ii) has been established by a public authority or other authority empowered for that purpose;
- (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;
- (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;
- (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;
- (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;
- (h) 'court settlement': a settlement relating to the property consequences of a registered partnership which has been approved by a court or concluded before a court in the course of proceedings.

Chapter II

Jurisdiction

Article 3

Jurisdiction in the event of the death of one of the partners

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.
2. The court may decline jurisdiction if its law does not recognise the institution of registered partnership. The court with jurisdiction shall then be established in accordance with Article 5.

Article 4

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 in connection with the application.

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.

Article 5

Jurisdiction in other cases

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

Article 6
Subsidiary jurisdiction

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.

Article 7
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.

Article 8
Counterclaim

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.

Article 9
Seising a court

A court shall be deemed to be seised:

- (a) on the date when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he or she 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.

Article 10
Examination as to jurisdiction

Where a court of a Member State is seized of a case concerning the property consequences of a registered partnership over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 11
Examination as to admissibility

1. Where a defendant habitually resident in a Member State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall be responsible for staying the proceedings until it be shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to defend himself or herself or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters²³ shall apply in place of paragraph 1 of this article if the document instituting the proceedings or an equivalent document had to be sent from one Member State to another pursuant to that Regulation.
3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 12
Lis pendens

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 seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
2. In the cases referred to in paragraph 1 the first court seized shall establish its jurisdiction within six months, unless this proves impossible because of exceptional circumstances. At the request of any other court seized of the case, the court first seized shall inform it of the date on which it was seized and whether it has established its jurisdiction over the case or, failing that, inform it of the estimated time needed to establish its jurisdiction.
3. If the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.

²³ OJ L 324, 10.12.2007, p. 79.

Article 13

Related actions

1. Where related actions are pending before courts of different Member States, any court other than the court first seised may stay its proceedings.
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.
3. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 14

Provisional, including protective, measures

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.

Chapter III

Applicable law

Article 15

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.

Article 16

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.

Article 17

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.

Article 18

Public policy

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.
2. The application of a rule of the law determined by this Regulation may not be regarded as contrary to the public policy of the forum merely on the grounds that the law of the forum does not recognise registered partnerships.

Article 19

Exclusion of renvoi

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.

Article 20

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

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.

Chapter IV

Recognition, enforceability and enforcement

SECTION 1

DECISIONS

Subsection 1

Recognition

Article 21

Recognition of decisions

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.
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.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 22

Grounds for non-recognition of decisions

A decision shall not be recognised if:

- (a) such recognition is manifestly contrary to public policy in the Member State addressed;
- (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;
- (c) it is irreconcilable with a decision given in a matter between the same parties in the Member State addressed;

- (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.

Article 23

Prohibition of review of jurisdiction of the court of origin

1. The jurisdiction of the court of the Member State of origin may not be reviewed.
2. The public policy criterion referred to in Article 18 shall not apply to the rules on jurisdiction set out in Articles 3 to 8.

Article 24

Differences in applicable law

The recognition and enforcement of a decision, in whole or in part, concerning the property consequences of a registered partnership may not be refused merely on the grounds that the law of the Member State addressed does not recognise registered partnerships or does not accord them the same property consequences.

Article 25

No review as to substance

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

Article 26

Stay of proceedings

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.

Subsection 2

Enforcement

Article 27

Enforceability of decisions

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.

SECTION 2

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 28

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

Article 29

Enforceability of authentic instruments

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.

Article 30

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 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.

Chapter V

Effects in respect of third parties

Article 31

Effects in respect of third parties

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.
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.
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.

Chapter VI

General final provisions

Article 32

Relations with existing international conventions

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation and which relate to the subjects covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 of the Treaty.
2. Notwithstanding paragraph 1, this Regulation shall, between Member States, take precedence over conventions which relate to subjects governed by this Regulation and to which the Member States are party.

Article 33

Information made available to the public and the relevant authorities

1. The Member States shall send the Commission, no later than ..., in the official language(s) they judge appropriate:
 - (a) a description of their national legislation and procedures relating to the law on the property consequences of registered partnerships, and the relevant texts;

- (b) the national provisions on the effects in respect of third parties referred to in Article 31(2) and (3).
2. Member States shall notify the Commission of any subsequent changes in this information.
 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.

Article 34

Review clause

1. No later than [five years after the date of application...], and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. Where necessary, the report shall be accompanied by proposals to amend this Regulation.
2. To that end, the participating Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.

Article 35

Transitional provisions

1. Chapters II and IV of this Regulation shall apply to legal proceedings instituted, authentic instruments received, court settlements concluded and decisions given after the date of its application.
2. However, if the proceedings in the Member State of origin were instituted before the date of application of this Regulation, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.
3. Chapter III shall apply only to partners who have registered their partnership.

Article 36

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from [one year after the date of its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at [...]

For the Council
The President