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THE EUROPEAN UNION**

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INST 294
PARLNAT 162**

COVER NOTE

from: Mircea Dan Geoană, President of the Romanian Senate
date of receipt: 31 May 2011
to: Viktor Orbán, President of the Council of the European Union

Subject: Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships
[doc. 8163/11 JUSTCIV 65 - COM(2011) 127 final]

- Opinion¹ on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a copy of the above mentioned opinion.

¹ For other available language versions of the opinion, reference is made to the Interparliamentary EU information exchange Internet site (IPEX) at the following address: <http://www.ipex.eu/ipex/cms/home/Documents/pid/10>



Parlamentul României
Senat

Bucharest, 30-th May 2011
Courtesy translation

REASONED OPINION

**of the ROMANIAN SENATE, 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) 127 final

The Senate of Romania has checked the compliance with the subsidiarity and proportionality principles of **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) 127 final, according to the provisions of the Treaty of Lisbon (Protocol no.2).

Taking into account the report of our permanent Juridical Committee on Nominations, Discipline, Immunities and Validations, **the Plenum of the Senate**, during its session of the 30-th of May 2011, has found that the mentioned proposal, elaborated according to Articles 81 paragraph (3) of the Treaty on the Functioning of the European Union (TFEU), **is not in compliance with the subsidiarity principle nor the proportionality principle for the following reasons:**

1. Romanian legislation in force led to the consideration regarding the infringement of the principle of subsidiarity by the proposal for a Regulation. Law no. 287/2009 - Civil Code stipulates in art. 277 par. (3) that "civil partnerships between persons of the opposite sex or same sex concluded or contracted abroad by Romanian citizens or foreign citizens are not recognized in Romania". Law no. 4 / 1953 - Family Code as amended and supplemented does not foresee the conclusion of civil partnerships. The only legitimate way for of a link between two people that the Romanian state authorities recognize is family resulting from a marriage between a man and a woman

Belonging to the European space means compliance of the social values, of the national entity of each state, as well to respect the established legal order and tradition which must have a continued applicability, must be uninterrupted and must not be affected in areas that define the nation.

This draft regulation can not bring added value in terms of legal regulations applicable in Europe since only part of the EU Member States recognize the institution of registered partnership.

Taking into consideration the effectiveness of regulation by action at EU level it appears that legislative intervention is not justified at this level because registered partnerships are recognized by a few Member States.

Therefore, using the legal basis of Article 81 paragraph 3 of the Treaty on European Union, which governs the adoption of measures of family law with cross-border implications, can not be applied in respect of jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

The Romanian Constitution, enshrined in the Article 26 that public authorities shall respect and protect the intimate, family and private life, and that any person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals.

It was considered that this legislation can be a very good legal instrument, but with application only in countries that recognize registered partnerships, in our country it is not required as long as registered partnerships are not legally recognized.

2. The reasons underlying to infringement of the principle of proportionality by the proposal for a regulation was the fact that this type of legal instrument is legally binding in all elements and its provisions, thus particularities and specificities of each EU member state regulations can not be envisaged. Therefore, having regard to the considerations of national legislation and regulation, there is reserve that the choice of this instrument at the expense of a directive would obtain the desired outcome.

Respecting the principle of mutual recognition of judgments from one Member State to another, it is considered that the Article 18 of Regulation interferes on what should be defined and accepted by each state through the concept of "public order".

President of Senate
Mircea GEOANĂ

