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NOTE

from: Slovenian delegation
to: Working Party on Civil Law Matters (Matrimonial Property Regimes and Registered Partnerships)

No. Cion prop.: 8160/11 JUSTCIV 64, 8253/11 JUSTCIV 69 + ADD 1
8163/11 JUSTCIV 65, 8253/11 JUSTCIV 69 + ADD 1

Subject: Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships
– Comments from the Slovenian delegation on Chapters I and II

Introduction

Slovenia welcomes the two proposals on the matrimonial property regimes and the property regime for registered partnerships. Both have been needed for a long time since the level of forum shopping is particularly high in matters of property regimes for partners and it can have very serious financial consequences for EU citizens.
As we already pointed out at the meeting of the Working Party on Civil Law Matters, Slovenia regrets that the proposals do not also apply to couples who are neither married nor registered as partners but actually live together and so are "de facto" couples. Over 50% of couples in Slovenia are in that situation and under Slovenian law they are "de facto" couples having exactly the same rights as married couples. Thus, the two Commission proposals mean that in Slovenia we will be providing legal certainty for less than half of all the couples in the country.

Slovenia strongly supports the gender neutrality of the two proposals and the fact that they are intended to ensure non-discriminatory effects for all married couples and registered partners in the EU.

In general, the prime objective of our negotiations should be to ensure consistency between all the provisions governing the consequences of separation. That means particularly Council Regulation (EC) No 4/2009 (maintenance), Council Regulation (EC) No 2201/2003 (Brussels IIa) and Council Regulation (EU) No 1259/2010 (Rome III). Following an initial examination of the two proposals for Regulations, we consider that the rules are not entirely consistent and complementary. If they are to have real added value, we must at least ensure that the Regulations are mutually complementary, complete and clear.

We would advocate an identical regime in both proposals, wherever possible, and would be prepared to accept distinctions only where they are indispensable.

We set out below Slovenia's comments and the suggestions it considers important at this stage. Where the articles in both proposals are identical, the comments apply to both.
Married couples

Article 1 - Scope
We would like the list of exclusions to be more precise and clarification of point 3(c) which excludes gifts between spouses from the Regulation. Under Slovenian law, in the event of divorce couples return gifts to each other which are out of proportion to the giver's financial situation. Gifts thus fall within the scope of the matrimonial property regime. Additional detail would also be desirable in point 3(e) which provides that companies set up between spouses are excluded from the Regulation. Slovenian law provides that matrimonial property rules do not apply in such cases if the spouses have concluded a business agreement, an employment contract or other such contract. If they have not concluded such an agreement, matrimonial property rules apply.

Article 4 - Jurisdiction in cases of divorce, legal separation or marriage annulment
We strongly support the provision that the court having jurisdiction to rule on the divorce should also have jurisdiction to rule on matrimonial property. We wonder if it is necessary to have the spouses agree on that. Forum shopping, which was to some extent possible under Council Regulation (EC) No 2201/2003 (Brussels IIa), has to a large extent been ruled out by Council Regulation (EU) No 1259/2010 (Rome III).

Article 5 - Jurisdiction in other cases
The connecting factors covered are the same as in Council Regulation (EC) No 2201/2003 (Brussels IIa) and we support that. The wording of point (d) needs to be improved to leave no doubt that it is referring to the common nationality of the spouses.
**Article 6 - Subsidiary jurisdiction**

In practice, this Article will be used only rarely, in cases where no court has jurisdiction under Articles 3, 4 and 5, thus requiring us to consider what added value it brings. Why should the criterion be the property of one of the spouses and not the common matrimonial property? The Article should be restricted to the courts of the Member States (Where no court of a Member State has jurisdiction according to Articles 3, 4 and 5 …). Consideration needs to be given to a clearer definition of property in order to exclude jurisdiction on the basis of property of negligible value. An addition to that effect should be made to the Article.

**Article 7 - Forum necessitatis**

This Article should not refer to Article 6 since, under Article 6, the court may rule only on the property located in the territory of that Member State and not on all of the matrimonial property. The purpose of Article 7 is to ensure access to justice where such access is not possible before the courts of a third State having jurisdiction to rule.

**Article 12 - Lis pendens**

Article 12 is the same as Article 29 of the current proposal to revise the Brussels I Regulation. As in that proposal, we would advocate deleting the six-month time-limit from Article 12(2).

**Article 13 – Related actions**

In view of the need to prevent a risk of irreconcilable court decisions, we support this Article.

**Registered partnerships**

**Articles 5 and 6 - Jurisdiction in other cases and Subsidiary jurisdiction**

Common nationality should be one of the main connecting factors in Article 5.