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NOTE

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

No prev. doc.:	13969/12 JUSTCIV 282
No. Cion prop.:	8163/11 JUSTCIV 65

Subject:	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (MPR) - The role of non-judicial authorities in the future regulation on matrimonial property regimes ¹
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The Romanian delegation wishes to thank the Presidency for the invitation addressed to the MS that consider that their system does not fall within the current definition of the court to submit suggestions and to provide an explanation for the respective systems. Thus, the Romanian delegation wishes to address the scope of the definition of “court” and the role of non-judicial authorities in the future regulation.

¹ This document corresponds to the working document by the Romanian delegation which was distributed during the meeting of the Working Party on Civil Law Matters (Matrimonial Property Regimes and Registered Partnerships) on 27 and 28 September 2012.

1. As previously mentioned during the discussions held so far on the two proposals as well as in the written comments submitted by the Romanian delegation, the role of non-judicial authorities under the future Regulation should be a clear and inclusive one. This issue constitutes a key element in the negotiations for Romania due to the nature of the national procedures in matters of divorce, successions and matrimonial property as well as to the need of keeping legislative coherency and compatibility with previous provisions of the EU law in these matters.

2. In the recently entered into force national legislation¹ the public notaries (non-judicial authorities) and civil status officers exercise, since 2010, competences in the matter of divorce. These competences are exercised directly by law and not on the basis of a delegation or designation by a judicial authority. The Romanian legislator opted for such a solution in order to reduce the excessive workload of courts while insuring efficiency and a high standard of legal security and certainty for citizens who mutually agree to divorce. Since 2010, several thousands of divorces have been settled by notaries and civil status officers via a procedure that can be fulfilled in about one month and at reasonable costs.

3. Bearing in mind the abovementioned, it appears that neither the definition of the “court” as provided in article 2 (g) from the initial proposal of the Commission², nor the definition from article 2 (3) as it stands in the Presidency’s last proposal³ is not comprehensive enough towards the role of non-judicial authorities that exercise competences stemming directly from the law, as is the Romanian case, and not by delegation. In our opinion there is a need for coherence both with the EU and national legislation and the text of the Regulations has to provide sufficient guarantees in order not to affect the national procedures that work effectively. The current definition of the court, read in conjunction with the rules on jurisdiction, leads to the conclusion that in the cross border cases only the judicial authorities and the authorities assimilated to the judicial ones would exercise competences in the matter of matrimonial property regimes. This appears as contrary to the Romanian system. The fact that couples would have to revert to a judicial procedure when confronted with a cross-border element in their divorce would be neither desirable nor acceptable.

¹ The new Civil Code (Law no. 287/2009) and the Law no. 202/2010 (“The Small Reform law”)

² See document COM(2011) 126/2 from 16/03/2011

³ See document 13969/12 JUSTCIV 282 from 19 September 2012

4. Since we have mentioned the need for coherence with other EU legislation, we would like to refer to the solutions from these. Firstly, we consider that the definition of “court” in the “Brussels II a” Regulation¹ is more comprehensive and responds to the need of those member states who decided to delegate, by law, to non-judicial authorities a series of competencies in civil law matters. Romanian notaries have been appointed as competent authority to issue the certificates provided in annex I, II and III of this Regulation. Thus, keeping the terminology “competent authority” as in the Brussels II a Regulation or introducing it in a more precise manner could constitute a first and satisfactory solution for ensuring the fact that the future regulations on matrimonial property regimes would not prohibit the couples to divorce in front of a notary or a civil status officer in Romania, or to settle their matrimonial property regimes amicably, where a cross-border element is present.

5. Secondly, the definition of “court” as it currently stands in the working document of the Presidency was inspired by the Regulation on successions (no.650 from 4 July 2012). However, unfortunately, the solution provided for by this Regulation was taken on board in an incomplete manner, without the corresponding article 2 on the non-affectation of the nature of national procedures (being it understood that this refers to the amicable procedures). Therefore, in case that the definition of “court” would remain the same as in the current Presidency’s proposal, i.e. as in the Regulation on successions, the Romanian delegation considers indispensable to add (and adapt) the definition by inserting a provision based on article 2 of the successions’ Regulation. The text would be the following:

“Article 2 - Competence in matters of matrimonial property within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of matrimonial property regimes/(registered partnerships).”

The definition of “court” together with this provision could be complemented together in the preamble by texts based on Recitals 20, 21 and 22 of the Regulation on successions.

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

6. The Regulation on successions provides a series of guarantees as a result of a compromise obtained at that time at political level, which constitute for the Romanian delegation the minimum acceptable standard also for the current negotiations. In the case of a legislative parallelism between the two current proposals and the Regulation on successions, the Romanian delegation would appreciate if all guarantees for non-judicial proceedings provided in the Regulation on successions¹ would be retained in the Regulations on matrimonial property and registered partnerships.

7. In conclusion, since the proposal(s) on matrimonial property regimes (and registered partnerships) refer in matters of jurisdiction to the rules of the Regulations no. 2201/2003 and no. 650/2012, the Romanian delegation considers essential that the solution retained on the authorities should ensure the legislative coherence and the full respect of the legal systems of the Member States. Following this course of action would be in line with the principles of the Stockholm Programme² which states, in section 3.1.2 (on Civil Law), that: “Mutual recognition should, moreover, be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, matrimonial property rights and the property consequences of the separation of couples, while taking into consideration Member States’ legal systems, including public policy, and national traditions in this area.”

¹ We remind the solution from points 16-22 of the political agreement reached in June 2011 at ministers’ level under the Hungarian presidency - See document 9677/11 JUSTCIV 117 CODEC 741 translated into articles 2, 8, etc. of the Regulation on Successions as well as in recitals 20-22; 29, 43, etc.

² The Stockholm Programme — An open and secure Europe serving and protecting citizens, published in the Official Journal of the European Union 2010/C 115/01