

# **Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession**

2009/0157(COD) - 14/10/2009 - Legislative proposal

**PURPOSE:** to eliminate all the obstacles to the free movement of persons arising out of the differences between the rules of the Member States governing international successions.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND:** the significance of cross-border successions within the European Union has been highlighted in the impact assessment attached to the proposal. The diversity of both the rules under substantive law and the rules of international jurisdiction or of applicable law, the multitude of authorities to which international succession matters can be referred and the fragmentation of successions which can result from these divergent rules are obstacles to the free movement of persons in the Union. Today, such persons are therefore faced with considerable difficulties in asserting their rights with regard to an international succession. These divergent rules also prevent the full exercise of private property law, which, in accordance with the settled case law of the Court of Justice, forms an integral part of the fundamental rights which the Court ensures are respected.

**The adoption of a European instrument in the area of successions** was already one of the priorities of the 1998 Vienna Action Plan. The Hague Programme calls for the presentation of an instrument covering all the issues involved: applicable law, jurisdiction and recognition, administrative measures (certificates of inheritance, registration of wills).

Before this proposal was drawn up, a wide-ranging consultation exercise took place within the Member States, the other institutions and the public. The Commission was sent a “Study on international successions in the European Union”, which had been drawn up by the German Institute of Notaries in November 2002. Its [Green Paper on successions and wills](#), which was published on 1 March 2005, elicited 60 or so replies and was followed by a public hearing on 30 November 2006.

The contributions received confirm the need for a Community instrument in this area and support the adoption of a proposal covering, among other things, questions concerning applicable law, jurisdiction, recognition and enforcement of decisions and the creation of a European Certificate of Succession. The adoption of such an instrument has received the support of the European Parliament.

**IMPACT ASSESSMENT:** the policy options have been split into the following two different sets, in order to take account of the different options to be considered:

**1) Definition of policy options that address problems caused by national legislative differences concerning successions with transnational elements (Policy Options A)**

*No common EU level action*

- Policy Option A.1: Status quo.

#### *EU legislative action*

- Policy Option A.2: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds.
- Policy Option A.3: Harmonisation of conflict of law rules.
- Policy Option A.4: Harmonisation of conflict of law rules and introduction of a European Certificate of Heir and Executor / Administrator in transnational successions.
- Policy Option A.5: Harmonisation of conflict of law rules and jurisdiction rules.
- Policy Option A.6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts /deeds (A.2 plus A.3).
- **Policy Option A.7: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds, and introduction of a Certificate of Heir and Executor /Administrator in transnational successions.**

#### *Non-legislative action*

- Policy Option A.8: Establishment of a database / knowledge management system on conflict of laws, jurisdiction rules and competent bodies.
- Policy Option A.9: EU wide information campaign on succession (legislation and existing /forthcoming instruments).

## **2) Definition of policy options that address problems of identifying wills abroad (Policy Options B)**

#### *No common EU level action*

- Policy Option B.1: Status quo

#### *EU level action (legislation and funding)*

- **Policy option B.2: Commission Recommendation on the establishment of interconnected national registers of wills and organisation of information campaigns.**
- Policy option B.3 Compulsory establishment of interconnected national registers of wills.
- Policy option B.4 Establishment of a central EU Register of Wills.

#### *Non-legislative action*

- Policy Option B.5: Creation of a webpage on existing registers of wills and national rules.
- Policy Option B.6: National information campaigns on wills (legislation and existing / forthcoming instruments).

**The preferred option is a combination of policy options A.7 and B.2.** A.7 is the preferred one as it would address most of the current problems and lead to the greatest cost reduction (maximum 30%). B.2 obtains is also preferred in that it takes account of the fact that the identification of wills is to a certain extent a national problem and is likely to remain such even in the long term (despite the trend towards citizens having increasing cross-border links). This preference is also in line with the rating made by the stakeholders.

CONTENT: the objective of this proposal is to enable people living in the European Union to organise their succession in advance and effectively to guarantee the rights of heirs and/or legatees and of other persons linked to the deceased, as well as creditors of the succession.

The main elements of the proposal are as follows:

**Scope and definitions:** the concept of “succession” must be interpreted in an autonomous manner and encompasses all the elements of a succession, in particular its handover, administration and liquidation.

This proposal shall apply to successions to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters. Other areas to be excluded include: maintenance obligations; questions covered by company law; the constitution, functioning and dissolving of trusts; the nature of rights *in rem* relating to property and publicising these rights.

**Jurisdiction:** the rules of legal jurisdiction relating to succession vary considerably between the Member States. This leads to positive conflicts, where the courts in several States declare themselves to be competent, or negative conflicts, where no court declares itself to be competent. In order to avoid these difficulties for citizens, a uniform rule is required.

**As regards applicable law,** the choice to create a single scheme by means of a regulation allows the succession to be subjected to a single law, thereby avoiding these disadvantages.

The proposal provides for the application of a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession: the deceased's habitual place of residence.

People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entirety of their succession. All assets making up a succession will thus be governed by one and the same law, thereby reducing the risk that different Member States will issue contradictory decisions. Likewise, a single authority - that of the country of habitual residence - will be competent for settling the succession; it will, however, be able to refer the matter to the competent authority of the country of nationality where the latter is better placed to hear the case.

The Regulation has removed the possibility of choosing as the law applicable to succession the law applicable to matrimonial property scheme of the testator. Such a provision would have allowed multiple choices where, for the matrimonial property schemes, the spouses benefit from greater flexibility in their choice of applicable law.

The proposal includes rules governing the law applicable to the agreements as to succession and joint wills used in certain States, e.g. in order to organise the transfer of a company and for couples to allow the surviving spouse to benefit from joint property.

The proposal also includes an Article which takes into account the specific features of *common law* legal systems, such as the English legal system, where the heirs do not directly acquire the rights of the deceased upon the latter's death but where the succession is managed by an administrator appointed and supervised by the judge.

Lastly, recourse to public policy must occur in exceptional circumstances only. Differences between the laws relating to the protection of the legitimate interests of the relatives of the deceased must not be used to justify its use, as this would be incompatible with the objective of ensuring the application of a single law to all of the succession property.

**Recognition and enforcement:** provision is made for the recognition of all the decisions and legal transactions in order to give substance in succession matters to the principle of mutual recognition, which is based on the principle of mutual trust. The grounds for non-recognition have therefore been kept to the necessary minimum.

**Authentic instruments:** in view of the practical importance of authentic instruments in succession matters, this Regulation should ensure their recognition in order to allow their free movement. This recognition means that they will enjoy the same full and complete evidentiary effect in respect of the contents of the recorded instruments and the facts contained therein as that of national authentic instruments or on the same basis as in their country of origin, a presumption of authenticity, and an enforceable nature within the limits set by this Regulation.

**European Certificate of Succession:** in order to enable international successions to be settled rapidly, this Regulation introduces a European Certificate of Succession. To facilitate its circulation in the Union, a uniform model certificate should be adopted and an authority appointed which would have the international competence to issue it. This certificate does not replace existing certificates in certain Member States. In the Member State of the competent authority, the capacity of heir and the powers of an administrator or executor of the succession must therefore be proven according to the domestic procedure.

**BUDGETARY IMPLICATIONS:** the proposal has no implications for the Community budget.