# Succession and wills. Green Paper

2005/2148(INL) - 01/03/2005 - Non-legislative basic document

PURPOSE: To open a broad-based consultation process on intestate and testate succession where there is an international dimension.

CONTENT: The adoption of a European instrument relating to successions and wills was among the priorities of the 1998 Vienna Action Plan. The presentation of this Green Paper is based on the 2000 Hague Programme, which called on the Commission to present a Paper covering a whole range of issues such as applicable law, jurisdiction and recognition, administrative measures (certificate of inheritance, registration of wills etc.).

Increased mobility combined with a growing number of unions between nationals of different Member States has prompted the EU to examine issues related to succession and wills in greater detail. The acquisition of territory in several EU countries can lead to a major source of complication when it comes to the succession of the estates. Most of the difficulties associated with cross-border succession stem from substantive differences in national rules. Although there is currently an absence of Community rules in private international law, the Commission suggests that there is a clear need for the adoption of harmonised European rules. This Green Paper covers a wide range of related matters and is an exhaustive examination of the challenges associated with successions and wills within the context of private international law.

The Commission is keen to stress that a full harmonisation of the rules of substantive law in the Member States would be neither practical nor desirable. Rather, the purpose of this Green Paper is to focus on the *conflict* rules with an emphasis on a *connecting* factor in order to simplify matters for those involved in a trans-national succession. The first question, therefore posed, would be the scope of the conflict rules. What range, for example, could potential EU legislation have – should it cover the validity of will, status as heir, reserved portion, administration and distribution of the estate etc. Questions on the connecting factor are also singled out for particular attention. This might be nationality or habitual residence. As is the case in much of private international law however, in both cases, there are drawbacks. The Commission poses the questions – Is it worth insisting on seeking a single connecting factor? Would it not be preferable to accept a degree of flexibility such as giving the parties concerned a choice?

A further key element associated with succession and wills is the question of jurisdiction. This needs to be examined in equal detail if the Community is to act effectively. Again, the huge disparities in the Member States' legal systems challenge the development of an EU response. For example, in some Member States the courts always have to be involved; in others they are involved only in complex or contentious successions. In many Member States the majority of successions are settled outside the courts, sometimes with the support of public bodies or certain legal professions. In some Member States the use of mutual wills, reserved portions and trusts are common. In others the concept is unknown.

Bearing all of the above in mind, the Commission presents the reader with a number of queries which it claims need to be addressed prior to the presentation of a Community legislative response. On a more general note, the Green Paper asks:

Should the conflict rules be confined to the determination of heirs and their rights or also cover the administration and distribution of the estate? What connecting factor should be used to determine the applicable law? Should the same factor apply to the whole range of issues covered by the applicable law

or might different criteria apply to different aspect of the succession? Should the Community conflict rule distinguish between movable and immovable property/ Should there be a role for the law of the country where immovable property is situated?

The Commission calls on all interested parties to sent their responses no later than 30 September 2005.