Succession and wills. Green Paper

2005/2148(INL) - 16/11/2006 - Text adopted by Parliament, single reading

In adopting a report on succession and wills by 457 votes in favour to 51 against with 22 abstentions, Parliament called on the Commission to put forward a legislative proposal to deal with succession and wills according to the detailed recommendations annexed to the text. The rapporteur was Giuseppe **Gargani** (EPP-ED, IT).

The report was adopted by a majority of Members composing the European Parliament (i.e more than 367) as Rule 39 of the Rules of Procedure requires this majority when the Parliament asks the Commission to come forward with a new specific proposal.

According to a study commissioned by the European Commission in 2002, between 50 000 and 100 000 transnational successions arise in the EU every year. At present there are significant differences between the Member States' systems of private international law and their respective substantive law on succession and wills. Testators' heirs experience difficulties when seeking to take possession of their inheritance. Parliament called on the Commission to submit during the course of 2007 a legislative proposal under Article 65, (b), and Article 67(5) of the EC Treaty in order to deal with succession and wills. Such a proposal should aim to regulate succession exhaustively in private international law and at the same time:

- harmonise the rules concerning jurisdiction, the applicable law (the "conflict rules") and the recognition and enforcement of judgments and public instruments issued abroad, except for the material substantive law and procedural law of the Member States; and

- introduce a 'European Certificate of Inheritance'.

With regard to the criteria for establishing jurisdiction and the objective connecting factor, Parliament stated that it tended to prefer the habitual place of residence as the criterion for establishing both principal jurisdiction and the connecting factor. Nevertheless, the legislative act to be adopted should allow a degree of freedom of choice, in particular by permitting the parties concerned to choose the competent court, along the lines laid down in Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgments, and also by permitting the testator to choose which law should govern the succession. This would be either the law of the country of which he is a national or the law of the country of his habitual residence at the time the choice is made. This choice should be indicated in a statement taking the form of a testamentary clause.

Parliament recommended the introduction of a "European certificate of inheritance" indicating, with binding effect, the law applicable to the succession, the beneficiaries of the estate, the persons responsible for administering the estate and their powers and the property comprising the estate. This certificate would be issued by an authority empowered to issue or authenticate official documents under the relevant national legislation.

The certificate, which is to specify the law applicable to the succession, would be drawn up in accordance with a standard model and would constitute appropriate title on the basis of which the acquisition of inherited property might be entered in a public register of the Member State in which the property is located. The certificate would also offer protection for third parties who have dealings with the person who appears to be entitled to dispose of the property comprised in the estate on the basis of the certificate. Parliament hoped that, eventually, a European network of national registers of wills would be set up by linking existing national registers, to simplify the task of finding and ascertaining the content of a deceased person's will.