Basic information

2005/2148(INL) INL - Legislative initiative procedure	Procedure completed
Succession and wills. Green Paper **Subject** 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	GARGANI Giuseppe (PPE-DE)	20/06/2005

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
01/03/2005	Non-legislative basic document published	COM(2005)0065	Summary
08/09/2005	Committee referral announced in Parliament		
03/10/2006	Vote in committee		
16/10/2006	Committee report tabled for plenary	A6-0359/2006	
15/11/2006	Debate in Parliament		
16/11/2006	Decision by Parliament	T6-0496/2006	Summary
16/11/2006	Results of vote in Parliament		
16/11/2006	End of procedure in Parliament		

Technical information	
Procedure reference	2005/2148(INL)
Procedure type	INL - Legislative initiative procedure
Procedure subtype	Request for legislative proposal
Legal basis	Rules of Procedure EP 47
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/29436

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE367.975	10/05/2006	
Amendments tabled in committee		PE376.336	30/06/2006	
Committee report tabled for plenary, single reading		A6-0359/2006	16/10/2006	
Text adopted by Parliament, single reading		T6-0496/2006	16/11/2006	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2005)0065	01/03/2005	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1242/2005 OJ C 028 03.02.2006, p. 0001-0005	26/10/2005	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

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.

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.