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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.10.2009
SEC(2009) 411 final

COMMISSION STAFF WORKING DOCUMENT

Accompanying the

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of successions and on the introduction of a European Certificate of Succession

SUMMARY OF THE IMPACT ASSESSMENT

{COM(2009) 154 final}
{SEC(2009) 410}

1. PROCEDURAL ISSUES AND THE CONSULTATION OF INTERESTED PARTIES

The Impact Assessment has been prepared on the basis of a Study (hereinafter "the external study")¹ which was undertaken for the Commission by an external contractor with the input of the Inter-service Steering Group convened by the Directorate General Justice, Freedom and Security. Representatives of the Directorates-Generals Enterprise and Industry, Internal Market and Services and Taxation and Customs Union, as well as the Secretariat General and the Legal Service of the Commission participated.

The Impact Assessment was informed by a "Study on Conflict of Law of Succession in the European Union", prepared by the German Notary Institute in November 2002², which confirmed the existence of practical problems in devolution of estates and drafting of wills in cross-border successions. It was also informed by the analysis of the 60 responses³ to the Commission's Green Paper *on Succession and wills* [COM(2005) 65] on March 1, 2005⁴. Finally it was informed by the work of an expert group (PRM III/IV) set up by the Commission and made up of experts acting independently of the Member States, representing the different legal traditions of the EU. A public hearing on the applicable law on successions was held in 2006.

2. PROBLEM DEFINITION

2.1. The causes of the current problems

The outcome of international successions in the EU often does not meet the expectations of those who die. In addition the rights of (potential) heirs, persons formally or otherwise related to the deceased, private and public creditors, etc. are not fulfilled.

Although their harmonisation remains outside the competence of the European Community, it is important to understand that the starting point for the problems currently faced by citizens are the national substantive rules on successions which diverge widely between the Member States.

2.1.1. Divergences in national substantive rules on successions

1. The shares that the family members inherit vary widely.

¹ EPEC, Impact Assessment Study on Community Instruments on Successions and Wills, under framework contract No DG BUDG No BUDG06/PO/01/Lot no.2, ABAC 101908, available at the following website: [...].

² http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm.

³ Available at: http://ec.europa.eu/justice_home/news/consulting_public/successions/news_contributions_successions_en.htm.

⁴ Available at: <http://europa.eu/scadplus/leg/en/lvb/l16017.htm>.

2. While all Member States recognize testaments, some Member States accept more elaborate instruments to plan successions (e.g. **joint and reciprocal wills**) which are not recognised in all Member State.
3. All Member States except for the UK (specifically, England and Wales) grant a **compulsory share of the inheritance to close family members**, regardless of any testamentary dispositions by the deceased.
4. The procedural rules governing succession differ among Member States.
5. The **rights of unmarried or same-sex partners** vary widely between the Member States.

2.1.2. *Negative consequences faced by citizens*

Problem 1 - Difficulties for citizens to predict which country and body has competence to handle the succession. The authorities of two or more Member States may accept to handle the same succession (positive conflict of jurisdiction) or none of them might accept to handle it (negative conflict of jurisdiction). Even once citizens have identified the Member State the authorities of which have competence, they often do not know which body is competent in this Member State (court, notary, public administration).

Problem 2 - Conflicting laws applicable to the same succession. In matters of private law, a court is not obliged to apply the law of its own country. Member States therefore have rules to decide the law of which country should be applied to which case ("conflict of laws rules"). In matters of successions, these rules differ from one Member State to the other. Since the authorities of several Member States may be competent to deal with a given succession, they might come to different results as regards the question "what belongs to whom". This situation creates legal uncertainty, prevents efficient estate planning and the mutual recognition of judgments between Member States.

Problem 3 - Insufficient (limited) freedom of choice of law for the testator. When a citizen taking advantage of the Internal market is aware of the differences in substantive succession law and in the conflict of laws rules, he/she may wish to get around this by drawing up a will and choosing a single law applicable to his/her entire estate. However, most Member States do not yet allow a person to choose the law applicable to his/her succession⁵.

Problem 4 - Restricted recognition and enforcement of decisions and documents. A judgment given by a court in one country is not automatically recognised and enforced in another country the courts of which may render a conflicting judgment on the same question. There is also a lack of recognition and enforcement of documents prepared by notaries and other authorities.

⁵ No choice of law admitted in Austria, Cyprus, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Czech Republic. Information is unavailable for Hungary, Malta and Northern Ireland.

Problem 5 - Restricted recognition of the status as an heir or as an administrator/executor. Currently there are various types of evidence to prove the status as an heir or an administrator of a succession in the Member States. Documents executed in one Member State are normally not automatically recognised in other Member States. This gives rise to duplication of procedures to prove one's status as an heir or administrator in the country where the property is situated and additional costs and time delays.

Problem 6 – Difficulties identifying wills abroad. Even in purely national cases, it is not always easy for heirs to know whether the deceased had established a will. This question is even more problematic for citizens looking for a will abroad. This situation triggers severe time delays and greater cost, and uncertainty as to whether other heirs will step forward.

2.2. Size of the problems

It is difficult to assess the scope of the problems identified due to lack of relevant statistics and limited empirical data. The consultations show however that practical importance of the legal insecurity faced by citizens.

Around 4.5 million people die each year in the EU. Assuming that the value of the average estate is about 137,000 euro (about 5.5 times the average per capita gross national income), then the total value of the estates per annum would be 646 billion euro.

It can also be reasonably assumed that around 9-10% of the total number of successions (ca. 450,000) involves an 'international' dimension. The average value of such estates would be around double the value of an average estate (i.e. 274,000 euro), totalling some 123.3 billion euro per annum.

These estates are liable to problems. Even if resolved in a reasonable manner the costs of legal fees might be from 2% (2.466 bn. euro) to as much as 5% of the total value of international successions (6.165 bn. euro). An average of 3% (3.699 bn. euro) of the value of estates can be considered realistic. Moreover, the costs of delays, which may be measured in terms of years rather than months, might be of the same order of magnitude.

Addressing the problems could thus generate, as calculated by the external contractor, benefits to EU citizens of in the order of some 4 bn. euro per annum.

3. OBJECTIVES

The overall objective of the Proposal is to contribute to the creation of a genuine European area of civil justice in the field of successions.

The general, specific and operational objectives are summarised in the following table:

Overview of general, specific and operational objectives

General objectives	Specific objectives	Operational objectives
<ul style="list-style-type: none"> To allow citizens to efficiently plan and to organise their succession in advance in a cross border context To increase the likelihood that the rights of potential heirs, persons formally or otherwise related to the deceased, private and public creditors etc. are respected in an efficient way 	To achieve a situation where parallel proceedings do not occur and where different substantive laws are not applied to the same international succession	<ul style="list-style-type: none"> To adopt common rules on jurisdiction To adopt common rules on applicable law
	To provide a (limited) choice of law for the testator	To introduce harmonised rules providing a limited choice of law to the testator
	To ensure the recognition of rights, relevant acts and decisions regarding successions.	<ul style="list-style-type: none"> To harmonise rules on the recognition and enforcement of judgments, other decisions and authentic acts / deeds To ensure recognition of the powers of administrators/executors To ensure recognition of the status as an heir
	To increase the accessibility of information on the existence of wills abroad	To create a European system for registering wills and obtaining information on the existence of wills abroad.

4. POLICY OPTIONS

4.1. Description of the policy options

The policy options have been split into two different sets, in order to take account of the different options to be considered (see table below).

<p>Definition of policy options that address problems caused by national legislative differences concerning successions with transnational elements (Policy Option A)</p> <p><i>No common EU level action</i></p> <ul style="list-style-type: none"> Policy Option A.1: Status quo <p><i>EU legislative action</i></p> <ul style="list-style-type: none"> 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)
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- 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 (A.2 plus A.4)

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 / forth-coming instruments)

Definition of policy options that address problems of identifying wills abroad (Policy Option 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 / forth-coming instruments)

4.2. Comparison of the options

Table 1 provides a comparison of the ‘ratings’ of the nine A policy options.

Table 2 compares the ratings of the six B policy options.

The policy options are categorised according to their potential to meet the objectives defined above in section 5, with ten checkmarks (✓✓✓✓✓✓✓✓✓✓) indicating that an option fully meets all objectives.

Table 1 – Comparison of ratings of policy options A

Objective/costs	Policy Option A.1 (Status quo)	Policy Option A.2 (Jurisdiction rules & recognition)	Policy Option A.3 (C-O-L rules)	Policy Option A.4 (C-O-L rules & certificate)	Policy Option A.5 (C-O-L rules & jurisdiction rules)	Policy Option A.6 (A.2 plus A.3)	Policy Option A.7 (A.2 plus A.4)	Policy Option A.8 (Database)	Policy Option A.9 (National information campaigns)
To achieve a situation where parallel proceedings do not occur and where different substantive laws are not applied to the same international succession	0	√√	√√√√	√√√√√√	√√√√√√√√	√√√√√√√√	√√√√√√√√√√	√	√
To provide a (limited) choice of law for the testator	0	0	√√√√√	√√√√√	√√√√√	√√√√√√√√	√√√√√√√√√√	0	0
To ensure the recognition of: (i) Judgments, other decisions and authentic acts / deeds on international successions; (ii) The powers of administrators/executors; and, (iii) The status as an heir	0	√√√√√	√√	√√√√√√	√√√	√√√√√√√√	√√√√√√√√√√	0	0
To increase the accessibility of information on the existence of wills abroad	0	0	-	-	-	-	-	0	0
Total score:	0	7	11	18	10	25	30	1	1
Economic effects	Present: 4 bn euro/year; potential doubling of costs in 10 years.	Costs savings: Max 10%	Costs savings: Max 15%	Costs savings: Max 15%	Costs savings: Max 15%	Costs savings: Max 20%	Costs savings: Max 30%	Costs savings: Insignificant	Costs savings: Insignificant

Table 2 – Comparison of ratings of policy options B

Objective/costs	Policy Option B.1 (Status quo)	Policy Option B.2 (EC Recommendation on interconnected national registers & info campaigns)	Policy Option B.3 (Compulsory establishment of national registers of wills that are interconnected)	Policy Option B.4 (EU central register of wills)	Policy Option B.5 (Webpage on national registers of wills and national rules)	Policy Option B.6 (National information campaigns)
To achieve a situation where parallel proceedings do not occur and where different substantive laws are not applied to the same international succession	0	√√	√√√	√√√√	√	√
To provide a (limited) choice of law for the testator	0	0	0	0	0	0
To ensure the recognition of:						
(i) Judgments, other decisions and authentic acts / deeds on international successions;	0	√	√	√	0	0
(ii) The powers of administrators /executors; and,						
(iii) The status as an heir						
To increase the accessibility of information on the existence of wills abroad	0	√√	√√√	√√√√	√	√
Total score	0	5	7	9	2	2
Economic effects	Present: 4 bn euro/year; potential doubling of costs in 10 years.	Costs savings: Max 1-2%	Costs savings: Max 1-2%	Costs savings: Max 2%	Costs savings: Insignificant	Costs savings: Insignificant

4.3. The preferred option

In the light of the assessment in Table 1 and 2 the preferred option is a combination of Policy options A7 and B.2. The first would address current problems as well as possible and lead to the greatest cost reductions (maximum 30%). Indeed, it is in effect the most ambitious option and so therefore represents further development of the options identified in terms of the challenges that it is designed to address. Although Policy option B.2 does not receive the highest rating, it is the preferred option on the basis that the identification of wills is primarily a national problem and is likely to remain such even in the long term and because it is not compulsory to register wills (which means that the register can only confirm that no will was registered, not that no will exists). This analysis is confirmed by stakeholders.

4.4. The potential scale and nature of impacts of the preferred option

The preferred policy options would eliminate the potential for conflicts of jurisdiction. It would allow for a faster finalisation of the succession, as the competent authorities would no longer have to deal with potentially contradictory national rules to identify the substantive law governing the question of who inherits. The introduction a limited choice of law for the testator would allow citizens to better plan their succession

The recognition of the status of an heir or the powers of executors/administrators and decisions would be ensured. As a consequence, legal fees and time delays would be reduced.

The Commission Recommendation would speed up Member States' creation of registers of wills that are compatible and interoperable, facilitating the identification of wills in other Member States. Information campaigns could lead a higher number of citizens to draw up wills and register them, speeding up the succession proceedings, and thereby lead to less delay and decreased legal costs. However, the positive impact of the register may be limited because there would be no obligation to register wills.

Overall, the preferred option would increase the likelihood that the rights of all persons involved in the succession would be fulfilled in an effective and efficient way.

The preferred policy option respects the fundamental rights of the Charter of Fundamental Rights of the European Union.

4.5. The costs of the preferred option

In summary, the preferred option could lead to cost reductions of up to an estimated 32% of the costs of € 4 bn. caused by the current problems, i.e. € 1.3 billion.

The process of adoption and implementation of the preferred option would create **financial costs** both at the EU level and at national level, mainly costs for administrative work to produce the necessary legislation, the costs for establishing and running a register of wills and for information campaigns.

Although the preferred option through harmonisation of applicable law would result in a reduction of fees for **legal professionals**, it would nevertheless also increase their turnover in view of the rise in value of legacies and the increasing numbers of international cases. In addition, the new rules will improve predictability for citizens. It is likely that more of them will wish to organise their succession in advance, therefore using the services of legal

professionals. Within the legal profession, as with every other professional service, there are always market changes, and the magnitude of those associated with the preferred option is likely to be small and gradual⁶.

Since rules on taxation are expressly excluded from the scope of the proposed Regulation, the preferred option would be **tax neutral**. It would therefore not entail any changes to the Member States' national legislation on inheritance taxation. This is because the rules determining which Member State is competent to collect inheritance taxes on a given succession (resulting, in general, from bilateral conventions), are totally independent from those rules determining the civil law governing this succession.

The preferred option would potentially have indirect implications on the amount of inheritance tax revenue collected by a given Member State (e.g. for a bank account, if, under the law applicable today the heir is a person living in Member State A, whereas, under the law applicable under the future Regulation, the heir is located in Member State B, Member State A will not longer be able to collect inheritance taxes). However, these effects would be marginal and indirect.

The proposed Regulation does not contribute to reducing the complexities of tax systems applicable to international successions and to preventing citizens of being subject to double taxation. Indeed, it is clearly impossible, for legal and political reasons, to modify the existing regime in the framework of the present Regulation. Inheritances in a cross-border context can then give rise to mismatches between national taxation regimes which can result in double taxation or discrimination. The Commission intends to bring forward a communication to address these issues during 2010.

4.6. EU added value

The preferred option would generate significant EU added value. It has the potential to promote trust in the internal market and facilitate mobility of EU citizens. The problems addressed are in part a consequence of the internal market, if they are not solved, the trust in the EU internal market and the EU area of freedom, security and justice without internal borders may be damaged. Cross-border successions are both more costly and time-consuming for citizens than national successions. The preferred option would facilitate the life of the modern and mobile EU citizen.

5. MONITORING AND EVALUTION

In order to monitor the effective implementation of the Regulation as well as the success of the Recommendation on the creation of interconnected registers of wills and the information campaigns, regular evaluation and reporting by the Commission will take place. The external study contains many useful suggestions on potential monitoring and evaluation instruments and concrete indicators that will be taken into consideration by the Commission.

⁶ See also Annex 4 for more information.