

Commission proposal on successions

COM-CNUE Conference on cross-border
successions

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Background

- Objective to establish the area of freedom, security and justice (Treaty Art 67, ex-Art 61);
- Judicial cooperation in civil matters (Treaty Art 81, ex-Art 65);
- Vienna Action Plan in 1998;
- The Hague Programme in 2004: applicable law, jurisdiction, recognition and enforcement of decisions, European certificate of inheritance, registration of wills.

Preparatory work

- "Study on Conflict of Law of Succession in the European Union" drawn up by the German Notary Institute in 2002;
- Green paper on successions and wills in 2005 to launch the consultation;
- 60 replies and a public hearing in 2006;
- Expert group "PMR III/IV" in 2006-2008;
- Meeting for Member States in 2008;
- Impact assessment;
- Adoption of the Commission proposal on 14 October 2009.

Legal basis

- Cooperation in civil matters, Article 81 of the Treaty (ex-Article 65);
- Ordinary legislative procedure (Council acts by qualified majority and the European Parliament has equal powers);
- Not seen as family law (Council acts unanimously, EP is consulted);
- Succession law mainly covers property, majority of Member States does not qualify succession law as family law.

Problems today

- Difficulties for citizens to predict which country will have jurisdiction to handle the succession; authorities of different MS may be simultaneously competent to settle the succession depending on the property's location;
 - Various national laws may simultaneously apply to one and the same cross-border succession;
 - Excessively limited freedom of choice of law for the testator;
 - Difficulties in organising succession in a coherent way;
 - Insufficient recognition and enforcement of relevant decisions and documents;
 - Unsatisfactory recognition of the status of heir and administrator.
- Lengthy proceedings, uncertain outcomes, high legal costs.

Main features of the proposal

- A given cross-border succession is treated coherently, under a single law and by one single authority;
- Citizens living abroad can decide whether the law of their nationality applies to their succession instead of the law of their habitual residence;
- Parallel proceedings and conflicting judicial decisions are avoided;
- Mutual recognition of decisions in the EU is ensured;
- The status of heir, administrator and executor is recognised in all the MS on the basis of the European Certificate of Succession.

Jurisdiction rules

- Apply to courts and judicial authorities which carry out judicial functions;
- Court of the last habitual residence of the deceased has jurisdiction;
- Limited possibility to transfer to a court better placed;
- No possibility of choice-of-court agreements;
- Wide provision on subsidiary jurisdiction;
- Measures under property law not affected.

Applicable law

- One law applies to the whole estate (all movable and immovable property), from the opening of the succession to the final transfer;
- Main rule: law of the last habitual residence of the deceased;
- A person may choose the law of his nationality to govern his succession;
- Wide scope of the applicable law, also administration included;
- Formal validity of wills not covered; the Hague 1961 Convention applies to 16 MS which have ratified it;

Applicable law

- Special rule on agreements as to succession;
- Exception for common-law countries on the administration;
- Special inheritance regimes for economic, family or social considerations;
- The Hague 1989 Convention rules on simultaneous death and estate without a claimant;
- Universal application, renvoi excluded;
- Public policy rule included; cannot be applied on the sole ground that the detailed provisions on the reserved portion differ.

Recognition and enforcement

- Follows the rules of Regulation 44/2001;
- Decisions of courts and authorities which are subjects to jurisdiction rules enforced as decisions;
- Free circulation of authentic instruments ensured.

European Certificate of Succession

- Proof of status as heir or legatee: who are the heirs and legatees and what are their rights;
- Proof of powers of the administrators and executors of the will;
- Does not replace national certificates; once issued for cross-border purposes, effects recognised also in the MS which issued it;
- Use not obligatory;
- Flexible document; possibility of partial certificate;
- Content laid down in a standard form;

European Certificate of Succession

- Can be issued by a court/authority having jurisdiction and also by a notary in the MS with jurisdiction;
- Issuing authority applies applicable law and complies with the minimum procedural standards;
- Circulates freely and is automatically recognised;
- Proof of the rights and powers of the heir, legatee, administrator or executor of will;
- Basis for registration of transfer of property rights;
- Rights of third parties acting in good faith protected.

Future challenges

- Coordination between various types of succession proceedings in various MS; finding rules that work for each MS;
- Line between succession law and property law;
- Inclusion of administration in the scope of applicable law;
- Balance between the right to choose the law of nationality and the protection of reserved portions;
- Formal validity of wills;
- Free circulation of authentic instruments;
- Effects of the European Certificate of Succession.