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## **The Commission proposes to simplify the settlement of international successions and to make the rules governing them more predictable**

**IP/09/1508**

Brussels, 14 October 2009 The Commission proposes to simplify the settlement of international successions and to make the rules governing them more predictable

The Commission today adopted a proposal that should considerably simplify the rules on successions with an international dimension in the European Union. The aim is to make life easier for citizens by laying down common rules enabling the competent authority and law applicable to the body of assets making up a succession, wherever they may be, to be easily identified. In addition to providing more effective guarantees for the rights of heirs, legatees and other interested parties, the proposed Regulation will take some of the stress out of succession planning by enabling people to choose the law that will govern the transmission of all their assets. The Commission is also proposing the creation of a European Certificate of Succession enabling an heir or the administrator of a succession to prove their capacity easily throughout the EU.

Welcoming the proposal's adoption, Vice-President Jacques Barrot, the Member of the Commission for Justice, Liberty and Security said: " It is imperative that citizens and legal practitioners be able to understand and, to a certain extent, choose the rules applicable to the assets making up a succession, wherever they may be located. By proposing that the place of habitual residence determine the competent authority and the law applicable by default while allowing a person to opt to have their succession governed by the law of their country of nationality, we are offering greater legal certainty and greater flexibility, enabling people to contemplate the future more serenely. As for the European Certificate of Succession, it will enable people to prove that they are heirs or administrators of a succession without further formalities throughout the EU. It brings us one step closer to a genuine European Civil Judicial Area."

The 450 000 international successions opened in the EU every year represent a considerable legacy, estimated by some to be worth more than EUR 120 billion. The rules applicable to these successions are, however, highly complex and difficult to predict. The rules governing jurisdiction and the law applicable vary considerably from one Member State to another. The result is great legal uncertainty and often distress: not just for heirs, who find themselves embroiled in legal and administrative difficulties on inheriting property in another Member State, but also for people wanting to plan their own succession.

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The proposed Regulation pursues a threefold objective: to increase legal certainty by guaranteeing the predictability and consistency of the rules applicable; to offer people greater flexibility in the choice of the law applicable to their succession; to guarantee the rights not just of heirs and/or legatees but of other interested parties (e.g. creditors).

However, the initiative in no way alters the substantive national rules on successions. Issues such as who is to inherit or the share of assets going to children or spouses continue to be governed by national rules. Property law and family law in a Member State are not affected either. Nor does the proposed Regulation change the tax arrangements for assets making up a succession, which remain a matter of national law.

### **How will the future Regulation work?**

The proposal provides for the application of a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession: the deceased's habitual place of residence. **People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entirety of their succession. All assets making up a succession will thus be governed by one and the same law,** thereby reducing the risk that different Member States will issue contradictory decisions. Likewise, a single authority - that of the country of habitual residence - will be competent for settling the succession; it will, however, be able to refer the matter to the competent authority of the country of nationality where the latter is better placed to hear the case. Lastly, there will be full mutual recognition of decisions and authentic acts in succession matters.

A European Certificate of Succession will also be created to enable a person to prove their capacity as heir or their powers as administrator or executor of a succession without further formalities. This will represent a considerable improvement on the present situation where people sometimes have great difficulty exercising their rights. The result will be faster, cheaper procedures.

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Simplification of regulation on international successions

What is the aim of this proposal?

The proposed Regulation on successions is aimed at helping settle international successions involving people living in the European Union. It is also aimed at unifying and simplifying the rules governing successions, increasing their predictability and providing more effective guarantees for the rights of heirs (children and spouses) and/or legatees and other persons linked to the deceased, as well as creditors of the succession.

Why propose such a Regulation?

In a Europe whose citizens are ever more mobile, the great difficulties caused by the disparate rules applicable to successions in the Member States can no longer be ignored. It is reckoned that there are 4.5 million successions a year in the EU, about 10% of which have an international dimension. This means there are almost 450 000 successions in the EU with a cross-border dimension. The value of these international successions is estimated at EUR 123 billion a year.

What are the problems most often encountered by European citizens in this area?

The main problems fall into three categories:

(1) A number of authorities may be competent for settling a given succession, with the result that:

- the rules applicable to an international succession are highly complex and place the people concerned in a position of legal uncertainty,
- people have difficulty planning and organising their succession beforehand,
- heirs and legatees sometimes have to wait a long time before receiving the assets due to them,

- the costs generated by the settlement of international successions can be very high.

(2) A succession is subject to a number of different laws according to the location of the goods, with the result that:

- people wishing to organise their succession come up against the complex rules that will apply,
- assets belonging to the same succession but located in different countries are subject to different laws and different authorities,
- at the time of succession, the person who inherits is not always the one expected,
- the shares inherited by each heir can differ incomprehensibly,
- these difficulties sometimes cause citizens to give up their legitimate claims.

(3) Decisions and authentic instruments in matters of succession are not immediately and automatically recognised in all Member States:

- depending on the Member States concerned, additional conditions may be imposed,
- the procedures for proving a person's capacity as heir or legatee in another Member State, for instance to unblock a bank account or collect on a life assurance policy, may be long and costly,
- Not only do these procedures entail the translation of numerous documents, they sometimes require proof of the contents of the law applicable to the succession and a person's capacity as heir.

What are the proposed solutions?

First and foremost, the proposed Regulation allows a single competent authority - that of the deceased's habitual residence to be appointed to settle the succession. It also provides for a succession to be governed by one and the same law. By default, the applicable law will be that of the deceased's last habitual residence. However, someone wishing to do so may choose in their will to have the inheritance law of their country of nationality apply to the whole of their succession.

The proposal is also aimed at guaranteeing that decisions and authentic acts in the matter of successions can move freely in the European Union without the Member State in which assets are located being able to impose additional conditions..

Lastly, the proposal will make it easier for heirs to prove their capacity in the Member State of the succession by means of a European Certificate of Succession that will

constitute uniform proof of a person's capacity as heir or powers as an administrator of the succession. The certificate will be recognised throughout the EU and will thereby simplify and speed up the procedure.

To conclude, the Regulation on succession will make life much easier for European citizens and will bring greater legal certainty and predictability in matters of succession.

Does the Regulation effectively replace national laws on succession and property?

Absolutely not. This initiative is aimed neither at replacing nor harmonising succession law, property law or family law in the Member States. National laws in the matter will continue to apply as they are. The Regulation will, however, enable people to clearly stipulate and, to a certain extent, choose the law applicable to cross-border successions. It will help facilitate mutual recognition between Member States of a person's capacity as heir. Of course, given the close links between succession rules and property rules, the Regulation provides for the exceptional competence of the authorities of the Member State where the property is located if the law of this Member State requires the intervention of its authorities in order to take measures covered by property law relating to the transmission of this property and its recording in the land registers.

Is the Regulation aimed at replacing or changing national legislation on the taxation of inheritances?

No, absolutely not, the proposal is fiscally neutral. The proposal does not affect the taxation of inheritances, which remains a matter for the Member States' national law. As is currently the case, heirs will pay tax only on the assets they inherit.

Does the Regulation preserve mechanisms intended to guarantee support for the relatives of the deceased, and especially the mechanisms concerning the reserved portion of an estate?

Such measures exist in every Member State's legal system. A key objective of the Regulation is to ensure that these mechanisms are respected. When allowing the testator a choice of law, it was necessary to strike a balance between the benefits of such a choice, which include legal certainty and easier succession planning, and the protection of the legitimate interests of the relatives of the deceased, in particular the surviving spouse and children. This is why the Regulation allows testators to choose only the law of their country of nationality as an alternative to the default criterion, which results in the application of the law of the country of residence.

Does the Regulation preserve the legal certainty of gifts made previously by the deceased?

The validity of gifts is preserved and governed by contract law. The Regulation therefore in no way impinges on the possibility for testators to make inter vivos gifts. However, to avoid undermining the mechanisms for protecting relatives (reserved portion of an estate), it is the succession law determined pursuant to the Regulation that must stipulate whether such gifts are to be restored or taken into account when sharing out an inheritance under succession law.

Testators who are nationals of a Member State in which inter vivos gifts are irrevocable may confirm their validity by choosing to have their national law apply to their succession.

Will the Regulation not affect the succession arrangements for family firms and farms?

Absolutely not. The Regulation does not stand in the way of the application of certain mandatory rules of law of the place in which a farm or family firm is located. When, by virtue of their economic, family or social purpose, buildings, enterprises, farms or other categories of property are subject to special succession arrangements in the Member State in which they are located, the Regulation provides for these arrangements to be respected.

Does the Regulation permit notaries and other legal professionals to continue executing successions as they currently do in some countries?

Of course it does. It also stipulates that other national authorities delegated to perform judicial functions in the Member States (e.g. notaries) are to be treated as courts, thereby enabling them to issue the European Certificate of Succession.

The Regulation also guarantees the recognition and enforcement of authentic instruments.

Will the Regulation not discriminate between couples or heirs in inheritance matters?

No, of course not. The Regulation observes the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, and in particular Article 21 prohibiting all forms of discrimination. The Member States' courts must apply the Regulation in a manner consistent with these rights and principles.

The Regulation provides for the application of the law of a third country if it is that of the deceased's nationality, but only if these laws are compatible with the EU's values of

equality and non-discrimination. This enables Member States' courts to disregard a foreign law where its application in a given case would be contrary to public policy.