



EU COUNCIL SECRETARIAT

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EU SUCCESSION RULES - THE COUNCIL APPROVES A SET OF POLITICAL GUIDELINES

4 June 2010

The Council, on 4 June 2010, approved a set of political guidelines for the future work on proposed European rules concerning matters of succession as well as an European certificate of succession.

Making the lives of citizens easier

The proposed regulation, submitted by the Commission in October 2009 ([14722/09](#)), aims at creating a legal framework in matters of succession at EU level and is of paramount importance for the creation of a European Judicial Area.

Today, more and more European citizens live in another member state than that of which they are nationals and have family members or own property (houses, bank accounts etc.) in more than one member state. On the death of a family member, heirs often face great difficulty, long delays and high legal costs in trying to obtain their inheritance. Many rightful heirs, particularly the most vulnerable, do not receive all of their inheritance. The process is protracted, expensive and stressful. There is therefore a strong need for action to be taken at EU level.

The proposed regulation will make the lives of citizens - all citizens residing in the EU, irrespective of nationality - finding themselves involved in the settlement of a succession with a cross-border element easier by providing for rules which will speed up proceedings and reduce costs.

Focus on six issues

The political guidelines focus on six issues which have been discussed over the last months in the competent Council Working Party. They confirm the tendencies which have emerged from the discussions and set the course for future work.

The six issues on which the political guidelines focus are: (A) a comprehensive instrument, (B) one single succession, (C) one applicable law, (D) habitual residence as connecting factor for jurisdiction, (E) rules of jurisdiction, and (F) choice of law.

P R E S S

(A) *A comprehensive instrument*

The political guidelines confirm that the objective is to arrive at a comprehensive instrument which will cover all issues of relevance for the settlement of cross-border succession cases and thus contain rules on jurisdiction, on applicable law and on recognition and enforcement. They furthermore create a European Certificate of Succession.

One single comprehensive instrument at EU level will be of great benefit to the practitioners when dealing with a cross-border succession case as they will have all necessary rules at hand in one regulation.

(B) *One single succession*

The political guidelines confirm that the future work on the proposed regulation should keep as an objective that, as a general principle, one single authority - a court or a notary depending on the system of the individual member state - should deal with the succession to a given estate as a whole, irrespective of the nature and the location of the assets belonging to the estate.

(C) *One applicable law*

The political guidelines confirm that the future work should go in the direction of achieving that the same law should be applicable to a given succession as a whole, irrespective of the nature and the location of the assets belonging to the estate. The future discussions will show to what extent it might be necessary to provide for specific limited exceptions.

To achieve one single succession and one single applicable law would be of great benefit for citizens who would no longer have to open proceedings in more than one member state and would no longer have to bear the extra costs and put up with the extra delays entailed by multiple proceedings and more than one applicable law.

(D) *Habitual residence as connecting factor for jurisdiction*

The political guidelines confirm that the connecting factor for general jurisdiction should be the habitual residence of the deceased at the time of death. The future discussions, also on other parts of the proposed regulation, will show to what extent some fine tuning will be necessary to arrive at a result in a form which is acceptable to all member states.

The reason for choosing as the connecting factor for jurisdiction the habitual residence of the deceased is that that place may reasonably be assumed to have constituted the main centre of interest of the deceased. It would therefore seem fair to attribute jurisdiction to deal with the succession to the estate of the deceased to the courts of that place. Having one single connecting factor for jurisdiction would avoid conflicts of jurisdiction and would indirectly lead to speedier proceedings and therefore to fewer costs for the people involved.

(E) *Rules of jurisdiction*

The political guidelines confirm the approach taken so far. In addition to the general rule of jurisdiction referred to above (that of the habitual residence of the deceased at the time of death) the proposed regulation should contain a rule which would allow the court having jurisdiction under the general rule to transfer the case to the courts of another member state in situations where the deceased had made a choice of law in favour of the law of that member state. It should also contain some rules which would allow a court in a member state to assume jurisdiction, on subsidiary grounds or as a *forum necessitatis* (a court of last resort), even if the deceased was not habitually resident in a member state at the time of death. This should however only be allowed in some well specified circumstances.

Rules of jurisdiction at EU level of the abovementioned kind would create more legal certainty and ensure equal access to justice for all. Of particular importance would be the rule of jurisdiction which would allow the transfer of a case to the courts of another member state in a situation where the deceased had made a choice of law in favour of the law of that member state. This would allow the court eventually dealing with the succession to apply its own law, with which it will probably be more familiar. That the court seized should as a rule apply its own law is in fact the objective pursued by the Commission in its proposal which operates with the same connecting factor for jurisdiction and for applicable law. This last issue is however not dealt with in the political guidelines.

(F) Choice of law

The political guidelines confirm the principle that the proposed regulation should provide for a limited degree of party autonomy, that is, should allow a person, within certain limits to be determined, to choose the law which he wants to govern his succession.

To allow for such a choice of law would be of great benefit to all those who would like to make detailed arrangements for their succession well in advance of their death - which would often be the case for people owning property in more than one state or with potential heirs in more than one state.

Next steps

The political guidelines will be a valuable contribution to the future work on the proposed regulation and constitute an important milestone. They acknowledge that the various parts are interlinked and that a lot of work still needs to be done before an overall agreement can be reached at Council level.

Since the Commission proposal qualifies succession right as a matter different to family law, the final regulation will be adopted under the ordinary legislative procedure (formerly the co-decision procedure) with qualified majority voting in the Council and full co-legislative powers of the European Parliament.

Finally, it is to be noted that Denmark, the United Kingdom and Ireland will not take part in the adoption and application of the proposed regulation.

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