

REPORT

Concerning a hearing of representatives of the Ministry of Justice on 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 succession and the creation of a European Certificate of Inheritance and the Council of Ministers' Framework Position

On December, 10th 2009 a joint meeting of the Committee on European Affairs and Oversight of the European Funds and the Legal Affairs Committee was held, with the purpose of discussing 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 succession and the creation of a European Certificate of Inheritance, and the government Framework Position on the draft act.

The Framework Position of the Republic of Bulgaria was presented by Mr. Borislav Petkov, Director of the "International legal cooperation and European Affairs Directorate" and Ms. Elena Doycheva, Head of "International cooperation and legal assistance in civil proceedings Department" at the Ministry of Justice.

European citizens who acquire succession property in another Member State within the EU, face exceptional administrative and financial difficulties, due to the complicated rules, applicable to those successions which are often hard to predict. The legislation in this area also varies widely from Member State to Member State and thus it is hard to define the applicable rules according to the national legislation.

The Proposal for a Regulation aims to facilitate the free movement of citizens, establishing common rules in the field of jurisdiction, the applicable law, recognition and enforcement of judgments and authentic instruments in cross-border succession, and the European Certificate of Inheritance.

The European Commission proposes the habitual residence as a common criterion for determining the applicable law in international succession cases by the competent authorities. According to Art. 4 of the Proposal for a Regulation, the criterion for the competence in the succession case is the last habitual residence of the deceased. But the competent judicial authority could refer the case to the national law if it finds it more appropriate (Art. 5). The common rule stipulates that the applicable law is the law of the state where the deceased had his/her last habitual residence (Art. 16).

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Article 17 of the Proposal foresees limited freedom of choice. The citizens could decide the applicable law for the succession property (movable and immovable) to be the national law of the state whose nationality they possess. Art. 18 foresees some regulations that determine the applicable law to the agreements concerning the succession and those concerning the succession of joint wills, used in some Member States.

It is provided that the principle of mutual recognition is applicable in the court decisions and in the authentic instruments in succession (Art. 29 and next).

The Art. 36 of the Proposal stipulates that the European Inheritance Certificate constitutes a legal proof of the capacity of heir or legatee and of the powers of the executors of wills or third-party administrators all over the territory of the EU without any other formalities needed.

II. The Council of Ministers Framework Position specifies that **the Republic of Bulgaria supports the approval** of a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Inheritance. The objective of this proposal is to enable people living in the European Union to organize their succession in advance and effectively to guarantee the rights of heirs and/or legatees and of other persons linked to the deceased. The Position also mentions that the diversity, existing in the legal systems and traditions of every Member State in the field of succession and testament and the lack of harmonized rules concerning the competence and the conflict of laws in the field of international succession cases should be dealt on EU level. The Republic of Bulgaria supports the implementation of a European Certificate of Inheritance, as a measure for rapid and complete exercising of their succession rights.

There are some remarks on the essence of the proposal. According to the expressed national Position it is necessary to define the criteria “habitual residence”. Although Bulgarian legislation accepts the different status of movable and immovable property, the Government would approve a uniform approach in the Proposal, where the criteria is the habitual residence which the deceased had at the time of his/her death. Reserves are stated with regards to the instruments - agreement of succession and joint will. The Republic of Bulgaria would approve if the draft proposal regulates also the form of the testaments. The idea of elaboration of a national testament registers and establishing connection between them within the Member States is also supported.

Within the procedure of parliamentary scrutiny and control the Supreme Judicial Council and the Chamber of Notaries were consulted. The Chamber of Notaries gives its general approval of the Proposal, considering in its statement from 30th November 2009 that it has many advantages, but it’s also possible to make some improvements in the text.

The Proposal for a Regulation does not contradict to the principle of subsidiarity. The European Commission reckons that the objectives of the Proposal could be reached only in the form of common rules in the area of international succession, which should be uniform in order to provide the citizens with legal certainty and predictability. That’s why unilateral actions launched by the Member States would contradict to the above mentioned objectives. The European Commission, on the other side, points that The Hague Convention governing the legal conflicts regarding the form of last Wills and Testaments has been ratified by 16 Member States only.

It should be noticed that the European Commission has included in the Proposal for a Regulation a reasoned motivation on the observation of the principle of subsidiarity. The involvement of the EU is legitimate, because the diversity of national laws in these area impedes the free movement of persons in the Union. Because of the transnational character of the issues, related to jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of international succession, they should be regulated at EU level.

IV. After a discussion held during the session, both committees accepted the following conclusions:

1. The Draft Proposal for a Regulation should be approved, because it would help EU citizens to better organize their succession in advance and to guarantee effectively the rights of heirs and/or legatees. The Proposal will contribute to eliminate the parallel proceedings, enhance the mutual recognition of the respective documents and court decisions, as well as it will facilitate the approach to information concerning the successions in the EU Member States.

2. The Proposal for a Regulation corresponds to the principle of subsidiarity, because the variety of national laws in this field impedes the free movement of persons in the Union. Having in mind the increasing mobility of the EU citizens and the transnational character of the questions, related to the international successions, it could be concluded that the mentioned issues could be more effectively regulated on EU level.

3. The presented Position, according to which the Republic of Bulgaria approves in general the Proposal for a Regulation, pointing out that it is necessary to define certain terms in the text, corresponds to the policy, which our country carries out in this area and thus could be supported.

4. In order to avoid different interpretations it is advisable to define in the text of the draft proposal the criterion - habitual residence. Within the negotiations in the Council, the Republic of Bulgaria should explicitly declare that succession agreements and joint wills won't be admitted when Bulgarian law is applicable.