



HELLENIC PARLIAMENT

JOINT SESSION

- **SPECIAL STANDING COMMITTEE ON EUROPEAN AFFAIRS**
- **STANDING COMMITTEE ON PUBLIC ADMINISTRATION, PUBLIC ORDER AND JUSTICE**

On **Friday, December 11, 2009**, the aforementioned committees of the Hellenic Parliament convened to a Joint Session in order to adopt an:

OPINION

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 Succession

The members of the aforementioned Committees having considered:

- The Proposal for a regulation, of the European Parliament and 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 Succession,
- The Commission Staff Working Document accompanying the proposal for a regulation (Impact assessment),
- The memoranda provided by the Ministry for Justice, Transparency, and Human Rights and by the Notary Association of Athens-Piraeus-Aegean-Dodecanese.
- The oral presentation by the Minister for Justice, Transparency, and Human Rights, Mr Haris Kastanidis,

Have adopted by majority the following opinion:

The proposal for a Regulation under consideration comports with the **subsidiarity principle** as its objectives (arrangement of cross-border succession disputes) can not be adequately served individually by the member-states.

It also complies with **the proportionality principle**, as its scope is limited to the necessary extent: It does neither harmonize law governing property, nor succession law of member states and does not affect their succession taxation status.

However, the members of the Committees wish to express the following **reservations on the proposal's actual content**:

- The Proposal for a Regulation stipulates by the provision of article 16 the law of habitual residence of the testator at his time of death as applicable both to succession to movable assets and property (estate). Article 28 of the Greek Civil Code stipulates as applicable to succession relations the law of nationality of the deceased at his time of death and, therefore is in opposition to article's 16 provision of the Proposal. The law governing nationality provides greater protection and legal certainty as compared to the law of habitual residence, which may provide grounds for contestation or dispute. The opening of borders and markets for EU citizens facilitates their frequent movement, which could possibly challenge the specification of habitual residence. Moreover, the law of habitual residence may lead to the "forum shopping" phenomenon (e.g. retired persons choosing to reside at a certain country during the last years of their lives, based on the criterion of it's law application concerning regulation of succession).
- Article 18 introduces the legal formulas of agreements as to succession and joint wills, which contravene an interdictory statute and therefore are null and void according to internal law (368 C.C *Agreement as to succession of a living person*, 1717 C.C *Joint will*)
- In what concerns the European Certificate of Succession, further clarification should be provided regarding the authenticity of its content and its contestation process, as well as the issues of creating a European Certificate of Succession central data basis , which will allow for central internet or intranet administration/management , but also the appointment of the whole system's administrator.
- Article 6 (*Residual jurisdiction*): the categories of assets or succession properties, as well as the value of the critical asset in relation to the assets' or properties' total value could be jointly assessed, which would lead to the applicability of the said provision. Moreover, sub-case c could lead to "forum actoris" (action at law at the courts of the

plaintiff's habitual residence), something not considered advisable in general , as providing the plaintiff with special privileges.

- Article 24 (*Estate without a claimant*): these provisions should be examined within the spirit of protecting citizens' property in third countries against potential adverse measures of the country where their property is located. Protection may be drawn from the provision of article 27 par.1 as well.
- Article 27 (*Public policy*): regarding par.2 provisions and specifically regarding the protection of the reserved portion of an estate. Our national law attributes great importance to family cohesion and therefore regards the protection of the reserved portion of an estate solely as a matter of public policy.
- Article 30 (*Grounds of non-recognition*) : provisions of this article are met on a permanent basis in texts of similar regulations of a juridical nature. Moreover, in the frame of a detailed examination of the said article, issues of relevant provisions' compatibility with EHRC and fundamental juridical principles may be examined.
- Article 38 (*Content of the application*) : the article contains a list of information to be written on a special form by the person applying for the issue of a certificate of succession. The issue of whether the claimant should be aware of contestation/disputation possibility concerning rights to succession needs further examination.