



EUROPEAN COMMISSION

Brussels, 20 AVR. 2010
C/2010/ 2291

Ms Rodoula ZISSI
Chairwoman of the Special Standing
Committee on European Affairs of the
Hellenic Parliament

Dear Chairwoman,

The European Commission would like to thank the Special Standing Committee on European Affairs and the Standing Committee for Public Administration, Public Order and Justice of the Hellenic Parliament for its opinion of 11 December 2009 concerning the Commission's 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 {COM (2009)154}.

In line with the Commission's decision to encourage National Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response and I hope you will find this a valuable contribution to your own deliberations.

I am looking forward to continuing this fruitful exchange of information.

Yours sincerely

Maroš Šefčovič
Vice-President of the European Commission



EUROPEAN COMMISSION

COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE HELLENIC PARLIAMENT

COM (2009) 154 - 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 Commission welcomes the favourable opinion of the Hellenic Parliament on this proposal and considers the political dialogue with the National Parliaments through the transmission of its new proposals as an important step with a view to improving the process of policy formulation.

As regards the main issues raised in the Hellenic Parliament's submission, the Commission would like to give the following clarifications:

Habitual residence is the most common and modern connecting factor used in private international law concerning successions. It coincides with the centre of interest of the deceased and often with the place where most of the property is located. It favours integration into the Member State of habitual residence and avoids any discrimination regarding persons who are resident there without possessing the relevant nationality. If a person wishes that the law of his/her nationality should apply to his/her succession, he/she can always choose this law to govern the succession. The risk of forum shopping in order to artificially establish habitual residence for succession purposes seems very limited in practice.

The proposal does not touch national substantive or procedural law on succession or any national property law. The Regulation does not impose any obligation to Member States to introduce legal concepts which they do not know. Article 18 defines the law applicable to agreements as to succession. If the law applicable to the succession does not know this concept, Article 18 does not apply to this succession. However, the principle of mutual trust underlying civil justice cooperation in Europe mandates the recognition of agreements as to succession which are validly concluded under the applicable law.

The proposed Regulation (Articles 38 and 40) includes procedural rules on the application and issuance of the European Certificate of Succession aiming, among other things, to guarantee the authenticity of its content. The Commission has estimated that these rules are both appropriate and sufficient to guarantee an appropriate and fair procedure. The appeal procedures are left to national law (Article 44). However, the Commission is open to discuss other or additional procedural standards and the need to have specific provisions on appeal

procedures together with the Member States and the European Parliament. The Commission has not proposed the creation of a central data base for the Certificate. However, the Commission will in the coming years present a communication on the interconnection of national registries of wills and may in this context consider whether a data base for the European Certificates of Succession would be necessary.

The proposed Regulation (Article 6) provides for residual jurisdiction if there is property located in the Member State that exercises jurisdiction. The Commission takes note of the Hellenic Parliament's suggestion to take into account the value of such property compared to the entire estate, which will certainly be discussed during the negotiations of the proposal. Subparagraph (c) is intended to give access to justice to the heirs of the millions of European expatriates or heirs of third country nationals who might have lived and worked for years in the Union but have returned to their country of origin. However, the Commission is open to re-estimate, together with the Member States and the European Parliament, whether certain limitations are needed to the proposed article.

The Commission is aware of the important policy of family protection which underlies the national laws on succession of almost all the Member States. In this respect, the proposed Regulation contains a balanced solution regarding the law applicable to the succession. Firstly, it aims to guarantee legal certainty and the possibility of persons to plan their successions and secondly, it pays full attention to protection of legitimate interests of a spouse and children through the system of reserved portions. To reach the balance the proposed Regulation introduces a single criterion, last habitual residence of the deceased, to define the jurisdiction of the courts and the applicable law.

The proposed Regulation also allows a person to choose the law of his/her nationality as applicable to his/her succession. This possibility is important to allow people to plan their successions beforehand without any negative effects to their mobility in the Union, and allows them to maintain close links to their country of origin.

This important balance combines the two main objectives of the Regulation in a way that respects the national traditions of the Member States. The Commission emphasises that maintaining the systems of reserved portions is a main objective of the Regulation which, however, is also based on the mutual recognition of systems of other Member States. National laws on reserved portion vary for example in reserving different shares to different heirs. Under the proposed Regulation application of the law determined by the Regulation may not be considered to be contrary to the public policy of the forum on the sole ground that the details of its rules concerning the reserved portion differ from those in force in the forum Member State (Article 27(2)). However, the proposed Regulation maintains the possibility to refuse the application of a foreign law on the basis of public policy of the forum in other concrete and exceptional cases (Article 27(1)).

The grounds of non-recognition of the proposed Regulation (Article 30) correspond to those of Regulation 44/2001 (Article 34 Regulation 44/2001). The Commission is not aware of any incompatibility between the proposed provision and the European Convention on Human Rights or any other fundamental principles.

The Commission hopes that the clarifications provided above satisfactorily address the main concerns expressed in your Opinion.