



EUROPEAN COMMISSION

Brussels,
C/2010/ 885

8 FEB. 2010

Dear Mr Eörsi,

The Commission would like to thank the Committee of European Affairs of the Hungarian National Assembly for its analysis 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 {COM (2009) 154}.

The Commission welcomes the favourable opinion of the Hungarian National Assembly on this proposal and considers the political dialogue with the National Parliaments through the transmission of its new proposals as an important step of the Union's legislative process.

As regards the main issues raised in your submissions, please find attached the relevant clarifications.

I look forward to developing our policy dialogue further in the future.

Yours sincerely

Margot WALLSTRÖM
Vice-President of the European Commission

Mr. Mátyás Eörsi
Chairman of the Committee
on European Affairs
National Assembly
Hungary



EUROPEAN COMMISSION

**COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM
THE HUNGARIAN NATIONAL ASSEMBLY**

**COM(2009)154 – PROPOSAL FOR A REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL ON JURSDICTION, APPLICABLE
LAW, RECOGNITION AND ENFORCEMENT OF DECISIONS AND
AUTHENTIC INSTRUMENTS IN MATTERS OF SUCCESSION AND THE
CREATION OF A EUROPEAN CERTIFICATE OF SUCCESSION.**

The proposed Regulation seeks to respect different national traditions. It does not harmonise Member States' substantive rules on succession, in particular with respect to *inter vivos gifts*. On this latter point, the proposed Regulation excludes from its scope the validity and effects of gifts, since these matters are covered by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Also, national substantive rules concerning the effects of *inter vivos gifts* are not affected.

The Regulation does address, however, the question of the obligations which exist in several Member States to restore or account for gifts at the time of succession. In order to ensure respect for the respective national traditions, the proposed Regulation ensures that the law on succession defined according to the uniform conflict rules laid down in the Regulation will determine whether *inter vivos gifts* give rise to any obligation to restore or account for the gifts when determining the shares of heirs or legatees. This will ensure the protection of heirs, in particular children and spouses, who under the law applied to succession are entitled to mandatory heirship (reserved portion) after the death of a family member. At the same time, the Regulation seeks to ensure respect for the tradition of those Member States where *inter vivos gifts* are irrevocable, by allowing nationals of such Member States to choose as the law applicable to their succession the law of the Member State of which they are nationals.

The European Certificate of Succession can be issued in the Member State whose authorities have jurisdiction under the Regulation. The issue, content and effects of the European Certificate of Succession are regulated in detail in Chapter VI of the Regulation. A decision as defined under Article 2(g) will be recognised and enforced under Chapter IV and an authentic instrument as defined under Article 2(h) will be recognised under Chapter V. First, it should be noted that because of the harmonised conflict rules, the risk of contradictory decisions or deeds will be minimised. Should any contradiction still arise, the Commission shares the opinion of the Hungarian Parliament

that the future Regulation should aim at preventing such contradictory documents to circulate in the Union. The Commission will assess with the European Parliament and the Member States if this point needs a clarification in the final text of the Regulation.

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. In accordance with established case law of the European Court of Justice, the concept of "habitual residence" is to be interpreted in an autonomous manner, independently from the meaning of such concept or related concepts in national law. The interpretation of the concept by national courts is subject to control by the European Court of Justice, which gradually establishes guidelines for the interpretation. In the recent case C-523/07 of 2 April 2009, the Court has interpreted the concept for the first time in the area of civil justice. Such guidelines will help the courts in the Member States when applying this autonomous concept, which in general seems to be applied without major difficulties.

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