

Brussels,  
C/2010/ 3313

10 JUIN 2010

Dear Secretary General,

The European Commission would like to thank the Italian Senate for its opinion on 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 final*).

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

The Commission is aware of the importance of family protection policy 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.

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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)). Apart from the situation where the details of the rules on the reserved portion differ, 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 proposed Regulation foresees that the European Certificate of Succession may be issued both by courts and/or by notaries. However, the Commission understands that the text of the proposal is not entirely clear on this point and needs to be clarified.

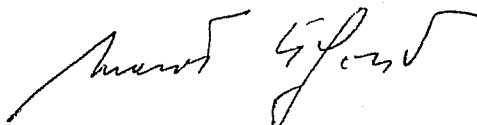
Habitual residence is the most common and modern connecting factor used in private international law concerning successions. It coincides with the centre of interest of the deceased and often with the place where most of the property is located. It favours integration into the Member State of habitual 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 its recent ruling in 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 intends to present a communication on the interconnection of national registries of wills in the coming years.

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

I look forward to continuing this fruitful exchange of information,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mariast G. G. G.", written in a cursive style.