



COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 25.3.2009  
SEC(2009) 412

**AVIS DU COMITÉ DES ANALYSES D'IMPACT**

PROPOSITION DE RÈGLEMENT DU PARLEMENT EUROPÉEN ET DU CONSEIL  
RELATIF À LA COMPÉTENCE, LA LOI APPLICABLE, LA RECONNAISSANCE ET  
L'EXÉCUTION DES DÉCISIONS ET DES ACTES AUTHENTIQUES EN MATIÈRE DE  
SUCCESSIONS ET À LA CRÉATION D'UN CERTIFICAT SUCCESSORAL EUROPÉEN

{COM(2009) 154}  
{SEC(2009) 410}  
{SEC(2009) 411}





EUROPEAN COMMISSION  
IMPACT ASSESSMENT BOARD

Brussels, 30 JAN. 2009  
D(2009) 776

## Opinion

**Title**                    **Impact Assessment on: Regulation on successions upon death  
(draft version of 8 January 2009)**

**Lead DG**                **DG JLS**

### **1) Impact Assessment Board Opinion**

#### **(A) Context**

The adoption of a European instrument relating to successions was among the priorities of the Vienna Action Plan adopted by the Council and the Commission in 1998. The Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, adopted by the Council and the Commission at the end of 2000, provided for an instrument to be drafted on succession. Finally, the Hague Programme adopted by the European Council in 2004 called on the Commission to present a Green Paper on succession covering a range of issues – applicable law, jurisdiction and recognition and administrative measures (certificates of inheritance, registration of wills). The Green Paper on Succession and wills was presented in 2005 and launched a public debate on successions with an international dimension.

#### **(B) Positive aspects**

Throughout the problem definition the report provides (stylised) examples of successions with transnational elements, which helps to illustrate the problems addressed.

The report makes a good attempt to quantify the costs to EU citizens resulting from the current legal uncertainty, and of the benefits that the proposed framework would bring.

#### **(C) Main recommendations for improvements**

*The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

**General recommendation: The report is generally of good quality but requires additional clarification in the following areas: the key modalities of the proposed**

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harmonisation should be justified, the interaction with the taxation of successions should be explained in more detail, and the limitation to successions with transnational elements should be highlighted in the subsidiarity section.

**(1) Justify the key modalities of the proposed harmonised regime.** The explanation and assessment of the various policies should not only focus on whether to harmonise certain legal aspects, but also on how to harmonise them. More specifically the report should justify the choice for the following elements: using last habitual residence rather than nationality as a connecting factor, abolishing the distinction between movable and immovable property, and allowing a limited choice of law (and what the limitations are). Specifically with regard to the choice of law, the justification should include an assessment which shows that the advantages for those citizens who change residence and will no longer have to change their will are sufficiently big to justify limiting Member States' autonomy in this area, and whether it is considered acceptable that in some Member States non-national residents will get a choice that national resident do not have.

**(2) Clarify the cross-linkages with the taxation of successions.** The report should explain the statement that the taxation of successions is not dependent on the law applicable to successions and that any impacts on tax revenues will be marginal. In particular, it should address the point that changes in applicable law for successions may not only affect the taxable base but also lead to cross-border impacts as regards the choice of residence and localisation of (immovable) property. More broadly, the report should also explain whether this initiative would subsequently contribute in any way to reducing the complexities of tax systems applicable to successions with transnational elements.

**(3) Expand the assessment of subsidiarity.** At various points the report states that options A1-A9 only refer to successions with transnational elements. This point should also be emphasized in the section on subsidiarity, for instance by stating explicitly that purely national successions are not affected by this initiative.

#### **(D) Procedure and presentation**

The results from the various stakeholder consultations and the information provided in the section on draw-backs/risks and sensitive elements should be more systematically integrated with the assessment of the various policy options.

The report should (if possible) set out in a non-conditional way when the proposed Regulation will be reviewed, and the indicators that will be used to measure its success.

While the Board recognises that this is a legally complicated issue, the report should more closely respect the recommended maximum length of 30 pages (excl. annexes).

The main findings of the IA report should be presented in a separate executive summary.

## 2) IAB scrutiny process

Reference number	2008/JLS/122 (CLWP 2008; Priority Initiative)
Author DG	JLS-E-2
External expertise used	No
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