



AN INTRODUCTION TO THE E.U. REGULATION ON SUCCESSION AND WILLS

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Regulation (E.U.) N° 650/2012 of the European Parliament and of the Council of 4 July 2012

on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession



*“Life is pleasant.
Death is peaceful.
It is the transition that is troublesome.”*

- Isaac Asimov



Main objective

- Harmonisation of International Private Laws of the Member States related to successions:
 - Jurisdiction
 - Applicable law
 - Recognition and enforcement of foreign documents and courts decisions

- Unified approach: one succession, one jurisdiction, one law, irrespective of the type of assets and their location



Scope

- Concerns all Member States, except Denmark, the United-Kingdom and Ireland.
- Applies to the succession of persons who die on or after 17 August 2015
- Article 1: *“This Regulation shall apply to succession to the estate of deceased persons. It shall not apply to revenue, customs or administrative matters.”*
 - All civil law aspects of international successions having a connection with one or more of the Member States (nationality, residence, location of the assets).
 - Jurisdiction (chapter II)
 - Applicable law (chapter III)
 - Recognition and enforceability of decisions (chapter IV)
 - Acceptance and enforceability of authentic instruments and courts settlements (chapter V)
 - European Certificate of Succession (chapter VI)
- Does not concern:
 - Substantive laws on succession of the Member States
 - Civil law matters not directly related to successions (legal capacity, matrimonial property regimes, trusts...) (Article 1 § 2)
 - Does not concern tax, custom and administrative matters

Jurisdiction

- Articles 4 – 19
- Article 4: “*The courts of the Member State in which the deceased had his **habitual residence** at the time of death shall have jurisdiction to rule on the succession as a whole*”
 - One jurisdiction competent to deal with the entire succession
 - Key notion: “*habitual residence*”. No precise definition, but guidance in recitals 23 and 24
- If the deceased is not residing in a Member State at the time of his death: Article 10 (subsidiary jurisdiction)
- Choice-of-court agreement (Article 5)

Applicable law

- Articles 20 – 38
- General rule: Article 21 § 1: *“Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be **the law of the State** in which the deceased has his **habitual residence** at the time of death.”*
 - Same criterion as for jurisdiction: habitual residence
 - Difference: the law of any State (including non-Member State). Article 20: universal application
- Exceptions: Article 22: Choice of law *“A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of his death”.*
 - Law of nationality of the deceased (Member State or not)
 - Nationality at the time the choice was made or at the time of his death
 - Forced heirship rules and public order ?



European Certificate of Succession

- Purpose (Article 63): facilitate the recognition of the status of the persons concerned by the succession (heirs, legatees, executors) and the exercise of their rights
- Competence to issue (Article 64)
- Content (Article 68)
- Standard form, but optional


Agreements as to succession

- Prohibited by France, Belgium, Italy, Spain, Portugal...
- Article 25 § 1: *“An agreement as to succession regarding the succession of one person shall be governed, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded.”*
- Clear foreseeability of the law governing it
- Important estate planning tool



Practical issues and impact on Switzerland

- Impact on the estate planning and the administration of the succession of anyone having a connection with a Member State (nationality, residence, location of assets)
- Influence on the estate planning “check-list”
- Choice of law is crucial (reduce the uncertainty re last habitual residence, allows for choice-of-court)
- Impact on Switzerland ?



*“I promised you my presentation would last 20
minutes.
It lasted 35.
Never trust a lawyer.”*

- Unknown author

THANK YOU FOR YOUR ATTENTION!

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