

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

2009/0157(COD) - 13/03/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 589 votes to 21 with 79 abstentions, a legislative resolution 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. Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

Scope: the regulation brings together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the European Certificate of Succession.

The scope of the Regulation includes all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, be it a voluntary transfer under a disposition of property upon death, or a transfer through intestate succession. The Regulation does not apply to revenue matters, or to administrative matters of a public-law nature.

The following are **excluded from the scope** of the Regulation, amongst others:

- questions relating to **matrimonial property regimes** and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;
- the formal validity of dispositions of property upon death made orally;
- **property rights, interests and assets** created or transferred otherwise than by succession,
- questions governed by the law applicable to **companies and other bodies**, corporate or unincorporated
- the creation, administration and **dissolution of trusts**;
- **any recording in a register of rights in immovable or movable property**, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information.

This Regulation **does not affect the competence of the authorities of the Member States** to deal with matters of succession.

Broad definition of ‘court’: the amended text gives the term ‘court’ a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court.

Jurisdiction and applicable law: the Regulation provides that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the **habitual residence of the deceased at the time of death**.

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 death.

Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable, the law applicable to the succession shall be the law of that other State.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice.

The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

Universal application: any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Choice-of-court agreement: where the law chosen by the deceased to govern his succession is the law of a Member State, the parties concerned may agree that a court or the courts of the Member State of the chosen law are to have exclusive jurisdiction to rule on any succession matter. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned.

Jurisdiction in the event of a choice of law: the courts of a Member State whose law had been chosen by the deceased shall have jurisdiction to rule on the succession if: (a) a court previously seised has declined jurisdiction in the same case; (b) the parties to the proceedings have agreed to confer jurisdiction on a court or the courts of that Member State, or (c) the parties to the proceedings have expressly acknowledged the jurisdiction of the court seised.

Closing of own motion proceedings in the event of a choice of law: a court seised of its own motion of a succession case shall close the proceedings if the parties to the proceedings have agreed to settle the succession amicably out of court in the Member State whose law had been chosen by the deceased.

Subsidiary jurisdiction: where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which succession assets are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as: the deceased had the nationality of that Member State at the time of death; or failing that, the deceased previously had his habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

Forum necessitatis: <here no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected. The case must have a sufficient connection with the Member State of the court seised.

Limitation of proceedings: where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

Of inheritance: an inheritance is a type of disposition of property upon death whose admissibility and acceptance vary from one Member State to another. To facilitate the acceptance in the Member States of estate acquired through an inheritance, settlement determines which law should govern the admissibility of such pacts, their validity on the merits and effects binding between the parties, including with regard to the conditions of their dissolution.

Special rules on the appointment and powers of an administrator of the estate in certain situations: where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Regulation.

Estate without a claimant: to the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the succession as a whole.

Renvoi: the text stipulates that the application of the law of any third State specified by this Regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a renvoi: (a) to the law of a Member State, or (b) to the law of another third State which would apply its own law.

Non-unified systems - internal conflicts of laws: in relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of succession, any reference to the law of that State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the deceased had the closest connection shall apply.

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession shall not be required to apply this Regulation to conflicts of laws arising between such units only.

Recognition: a decision given in a Member State shall be recognised in the other Member States without any special procedure being required. Any interested party who raises the recognition of a decision as the principal issue in a dispute may apply for that decision to be recognised. A decision shall not be recognised if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought. Under no circumstances may a decision given in a Member State be reviewed as to its substance.

Territorial jurisdiction: to determine whether a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Acceptance of authentic instruments: an authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form to be established in accordance with the advisory procedure referred to in the Regulation describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

European Certificate of Succession: this Regulation **creates** a European Certificate of Succession which shall be issued for use in another Member State. The Certificate shall produce its effects in all Member States, without any special procedure being required. The Certificate is for use by heirs and legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate. The Certificate may be used, in particular, to demonstrate one or more of the following specific elements:

- the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;
- the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;
- the powers of the person mentioned in the Certificate to execute the will or administer the estate.

The Certificate shall be **issued upon application** by any person referred to in this Regulation. For the purposes of submitting an application, the applicant may use the form to be established in accordance with the advisory procedure.

The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements.

The Certificate shall contain the **following information**, to the extent required for the purpose for which it is issued:

- the name and address of the issuing authority; the reference number of the file; the elements on the basis of which the issuing authority considers itself competent to issue the Certificate; the date of issue;
- details concerning the applicant: surname (if applicable, maiden name), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- details concerning the deceased: surname (if applicable, maiden name), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
- details concerning the beneficiaries: surname (if applicable, maiden name), given name(s) and identification number (if applicable);
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information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;

- the law applicable to the succession and the elements on the basis of which that law has been determined;
- information as to whether the succession is a succession upon intestacy or under a disposition of property upon death, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;
- if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;
- the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
- the list of rights and/or assets for any given legatee;
- the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;
- the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death.

Effects of the Certificate: the Certificate shall produce its effects in all Member States, without any special procedure being required. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and /or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate. Decisions taken by the issuing authority pursuant to Article 40a may be challenged by any person entitled to apply for a Certificate. The effects of the Certificate may be suspended.

Information made available to the public: the Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to succession, including information on the type of authority which has competence in matters of succession and information on the type of authority competent to receive declarations of acceptance or waiver of the succession, of a legacy or of a reserved share.

The Member States shall also provide fact sheets listing all the documents and/or information usually required for the purposes of registration of immovable property located on their territory.

Relations with existing international conventions: this Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

This Regulation shall not preclude the application of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on succession, wills and estate administration.

Review: by ten years after the date of application of this Regulation, the Commission shall submit a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different Member States or an out-of-court settlement in one Member State effected in parallel with a settlement before a judicial authority in another Member State. The report shall be accompanied, where appropriate, by proposals for amendments.