

# 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) - 04/07/2012 - Final act

**PURPOSE:** to allow citizens the organisation in advance of their succession in a Union context and the protection of the rights of heirs and legatees and of persons close to the deceased, as well as of the creditors of the succession.

**LEGISLATIVE ACT:** Regulation (EU) No 650/2012 of the European Parliament and the Council 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.

**CONTENTS:** following an agreement with the European Parliament at first reading, the Council adopted a regulation which will **speed up succession procedures in cross-border situations** and will make it easier and less costly for heirs and legatees as well as for persons entitled to reserved shares to take possession of their respective parts of the estate.

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 shall not apply to revenue, customs or administrative matters.

The following, among others, **shall be excluded from the scope of this Regulation:** i) the status of natural persons, as well as family relationships and relationships; ii) questions relating to matrimonial property regimes and property regimes of relationships; iii) maintenance obligations other than those arising by reason of death; iv) questions governed by the law of companies and other bodies, corporate or unincorporated.

The new Regulation will **respect the existing systems of dealing with succession matters in the various EU member states** and will not impose a judicial system on those member states in which succession matters are currently settled out of court.

The main elements of the Regulation are the following:

**Jurisdiction and applicable law:** the basic rule will be that the law applicable to the succession will be the law of the State of the **deceased's habitual residence at the time of death**. If a person wants to plan his succession otherwise, he can choose the law of a State of which he is a national.

**Forum necessitatis:** where 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.

**Recognition:** succession decisions given by a court in any of the EU member states under the new Regulation will be recognised and enforceable throughout the EU. Likewise, authentic instruments issued by a notary in a succession matter in any of the EU member states will be accepted and enforceable throughout the EU.

**Certificate of Succession:** the new Regulation will create a European Certificate of Succession which will make it easier, for instance, for heirs to invoke their rights in another member state or for an executor of the will to exercise his powers in another member state.

The Certificate may be used, in particular, **to demonstrate one or more of the following specific points:**

- 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 covered by the Regulation. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in the Regulation. The Certificate **shall produce its effects in all member states**, without any special procedure being required.

**Review:** By 18 August 2025 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee 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 court in another member state. The report shall be accompanied, where appropriate, by proposals for amendments.

**ENTRY INTO FORCE:** 13/08/2012.

**APPLICATION:** This Regulation shall apply to the succession of persons who die on or after 17 August 2015.

The Regulation shall directly apply to all the Member States of the EU with the exception of Denmark, which has an option of non-participation in the field of justice and home affairs, and the United Kingdom and Ireland.