



EUROPEAN PARLIAMENT

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*Plenary sitting*

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**A7-0045/2012**

6.3.2012

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**REPORT**

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  
(COM(2009)0154 – C7-0236/2009 – 2009/0157(COD))

Committee on Legal Affairs

Rapporteur: Kurt Lechner

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT 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**

**(COM(2009)0154 – C7-0236/2009 – 2009/0157(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0154),
  - having regard to Article 251(2) and Article 61(c) and the second indent of Article 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0236/2009),
  - having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
  - having regard to Article 294(3) and Article 81(2) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 14 July 2010<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A7-0045/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 44, 11.2.2011, p. 148.

## Amendment 1

### AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
on jurisdiction, applicable law, recognition and enforcement of decisions, *acceptance* and *enforcement of* authentic instruments in matters of succession and the creation of a European Certificate of Succession

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty *on the Functioning of the European Union*, and in particular *Article 81(2)* thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The *Union* has set itself the objective of maintaining and developing an area of freedom, security and justice *in which the free movement of persons is ensured*. For the *gradual* establishment of such an area, *the Union is* to adopt measures relating to judicial cooperation in civil matters *having* cross-border *implications, particularly when* necessary for the proper functioning of the internal market.
- (2) In accordance with *point (c) of Article 81(2)* of the Treaty, *such* measures *may* include *measures aimed at ensuring* the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

<sup>1</sup> OJ C 44, 11.2.2011, p. 148.

- (4) *A programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters<sup>1</sup>, **common to the Commission and to the Council, was adopted on 30 November 2000. That** programme identifies measures relating to the harmonisation of conflict of laws rules as **measures** facilitating the mutual recognition of decisions **and** provides for the drawing up of an instrument relating to wills and succession* .
- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme *called* "The Hague Programme: strengthening freedom, security and justice in the European Union"<sup>2</sup>. *That* programme underlines the need to adopt *an instrument in matters of succession dealing, in particular, with the question of conflict of laws, jurisdiction, mutual recognition and enforcement of decisions in this area and a European certificate of succession* .
- (5a) *At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called "The Stockholm Programme – an open and secure Europe serving and protecting citizens"<sup>3</sup>. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, while taking into consideration Member States' legal systems, including public policy, and national traditions in this area.*
- (6) The *proper* functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties asserting their rights in the context of a *succession having cross-border implications*. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons *close to* the deceased and of creditors of the succession must be effectively guaranteed.
- (7) In order to achieve those objectives, this Regulation should *bring* 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.
- (8) The scope of this Regulation should include 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*.
- (8a) *This Regulation should not apply to revenue matters, or to administrative matters of a public-law nature. It should therefore be for national law to determine, for instance, how taxes and other liabilities of a public-law nature are calculated and paid, whether these be taxes payable by the deceased at the time of death or any type of succession-related tax to be paid by the estate or the beneficiaries. It should also be for national law to determine whether the release of succession property to*

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<sup>1</sup> OJ C 12, 15.1.2001, p. 1.

<sup>2</sup> OJ C 53, 3.3.2005, p. 1.

<sup>3</sup> OJ C 115, 4.5.2010, p. 1.

*the beneficiaries under this Regulation or the recording of succession property in a register may be made subject to the payment of taxes.*

- (8b) *This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation.*
- (8c) *Thus, this Regulation should not apply to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters, and property regimes of relationships deemed to have comparable effects to marriage. The authorities dealing with a given succession under this Regulation should nevertheless, depending on the situation, take into account the winding-up of the matrimonial property regime or similar property regime of the deceased when determining the estate of the deceased and the respective shares of the beneficiaries.*
- (8d) *Questions relating to the creation, administration and dissolution of trusts should also be excluded from the scope of this Regulation. This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries.*
- (9) **█** *Property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, should also be excluded from the scope of this Regulation. However, it should be the law specified by this Regulation as the law applicable to the succession which should determine whether gifts or other forms of dispositions inter vivos giving rise to a right in rem prior to death should be restored or accounted for for the purposes of determining the shares of the beneficiaries in accordance with the law applicable to the succession.*
- (10) *This Regulation should allow for the creation or the transfer by succession of a right in immovable or movable property as provided for in the law applicable to the succession. It should, however, not affect the limited number █ (“numerus clausus”) of rights in rem known in █ the national law of some Member States. █ . A Member State should not be required to recognise a right in rem relating to property located in that Member State if the right in rem in question is not known in its property law.*
- (10a) *However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by succession, this Regulation should provide for the adaptation of an unknown right in rem to the closest equivalent right in rem under the law of that other Member State. When proceeding to such an adaptation account should be taken of the aims and the interests pursued by the specific right in rem and the effects attached to it. For the purposes of determining the closest equivalent national right in rem, the authorities or competent persons of the State whose law applied to the succession*



*may be contacted for further information on the nature and the effects of the right. In this context, the existing networks in the area of judicial cooperation in civil and commercial matters could be used as well as any other available means facilitating the understanding of foreign law.*

- (10b)** *The adaptation of unknown rights in rem as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.*
- (10c)** *The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. 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. In particular, the authorities may check that the right of the deceased to the succession property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided for by this Regulation. In particular, the European Certificate of Succession issued under this Regulation should constitute a valid document for the recording of succession property in a register of a Member State. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.*
- (10d)** *The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in an immovable property has to be recorded in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.*
- (11)** *This Regulation should respect the different systems for dealing with matters of succession applied in the Member States. For the purposes of this Regulation the term "court" should therefore be given 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. All courts as defined in this*

*Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term "court" should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is the usual case, they are not exercising judicial functions.*

- (11a) *This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term "court" for the purposes of this Regulation.*
- (11b) *Acts issued by notaries in matters of succession in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.*
- (12) *In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide 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. In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.*
- (12a) *In certain cases, determining the deceased's habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, the nationality or the location of the assets could be a special factor in the overall assessment of all the factual circumstances.*

- (12b) *With regard to the determination of the law applicable to the succession the authority dealing with the succession may in exceptional cases – where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that he was manifestly more closely connected with another State – arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected. That manifestly closest connection should, however, not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex.*
- (12c) *Nothing in this Regulation should prevent a court from applying mechanisms designed to tackle the evasion of the law, such as fraude à la loi in the context of private international law.*
- (12d) *The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.*
- (12e) *One such mechanism should be to allow the parties concerned by the succession to conclude a choice-of-court agreement in favour of the courts of the Member State of the chosen law. It would have to be determined on a case-by-case basis, depending in particular on the issue covered by the choice-of-court agreement, whether the agreement would have to be concluded between all parties concerned by the succession or whether some of them could agree to bring a specific issue before the chosen court in a situation where the decision by that court on that issue would not affect the rights of the other parties to the succession.*
- (12f) *A court seised of the succession of its own motion, as is the case in certain Member States, should close the proceedings if the parties agree to settle the succession amicably out of court in the Member State of the chosen law. Where a court is not seised of its own motion, this Regulation should not prevent the parties from settling the succession amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the succession is not the law of that Member State.*
- (13) *In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death, this Regulation should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised.*
- (13a) *In order to remedy, in particular, situations of denial of justice this Regulation should provide a forum necessitatis allowing a court of a Member State, on an exceptional basis, to rule on a succession which is closely connected with a third*

*State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on forum necessitatis should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.*

(14) In order to simplify the lives of heirs and legatees *habitually resident* in a Member State other than that in which the *succession is being or will be dealt with*, **this Regulation should allow any person entitled under the law applicable to the succession to make declarations concerning the acceptance or the waiver of the succession, a legacy or a reserved share, or concerning the limitation of his liability for the debts of the estate, to make such declarations in the form** provided for in the law of the **Member State of his habitual residence** before the courts of that Member State. **This should not preclude such declarations being made before other authorities in that Member State which are competent to receive declarations under national law. Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time-limit set by the law applicable to the succession.**

(14a) *It should not be possible for a person who wishes to limit his liability for the debts under the succession to do so by a mere declaration to that effect before the courts or other competent authorities of the Member State of his habitual residence where the law applicable to the succession requires him to initiate specific legal proceedings, for instance inventory proceedings, before the competent court. A declaration made in such circumstances by a person in the Member State of his habitual residence in the form provided for in the law of that Member State should therefore not be formally valid for the purposes of this Regulation, nor should the documents instituting the legal proceedings as such be considered declarations for the purposes of this Regulation.*

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(16) *In the interest of the harmonious functioning of justice, irreconcilable decisions should not be given in different Member States. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters.*

(16a) *One such procedural rule is a lis pendens rule which will come into play if the same succession case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the succession case.*

(16b) *Given that succession matters in some Member States may be dealt with by non-judicial authorities, such as notaries, who are not bound by the rules of jurisdiction under this Regulation, the possibility cannot be excluded that an amicable out-of-court settlement and court proceedings relating to the same*

*succession, or two amicable out-of-court settlements relating to the same succession, may be initiated in parallel in different Member States. In such a situation, it should be for the parties involved, once they become aware of the parallel proceedings, to agree among themselves how to proceed. If they cannot agree, the succession would have to be dealt with and decided upon by the courts having jurisdiction under this Regulation.*

- (17) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable them to know in advance which law will apply to their succession. Harmonised **conflict-of-laws rules** should be introduced in order to avoid contradictory results. The main rule should ensure that the succession is governed by a predictable law *with* which it is closely *connected*. *For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and irrespective of whether the assets are located in another Member State or in a third State.*
- (18) This Regulation should *enable* citizens to organise their succession in advance by *choosing* the law *applicable to their succession*. That choice should be *limited to the law of a State of their nationality in order to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating* the legitimate expectations of *persons entitled to a reserved share*.
- (18a) *A choice of law should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. A choice of law could be considered as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his disposition to specific provisions of the law of the State of his nationality or where he had otherwise mentioned that law.*
- (18b) *A choice of law under this Regulation should be valid even if the chosen law does not provide for a choice of law in matters of succession. It should however be for the chosen law to determine the substantive validity of the act of making the choice, that is to say, whether the person making the choice may be considered to have understood and consented to what he was doing. The same should apply to the act of modifying or revoking a choice of law.*
- (18c) *For the purposes of the application of this Regulation, the determination of the nationality or the multiple nationality of a person should be resolved as a preliminary question. The issue of considering a person as a national of a State falls outside the scope of this Regulation and is subject to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union.*
- (18d) *The law determined as the law applicable to the succession should govern the succession from the opening of the succession to the transfer of ownership of the assets forming part of the estate to the beneficiaries as determined by that law. It should include questions relating to the administration of the estate and to liability*

*for the debts of the estate under the succession. The payment of the debts under the succession may, depending, in particular, on the law applicable to the succession, include the taking into account of a specific ranking of the creditors.*

- (18e)** *The rules of jurisdiction laid down by this Regulation may, in certain cases, lead to a situation where the court having jurisdiction to rule on the succession will not be applying its own law. When that situation occurs in a Member State whose law provides for the mandatory appointment of an administrator of the estate, this Regulation should allow the courts of that Member State to appoint one or more such administrators under their own law when seised. This should be without prejudice to any choice made by the parties to settle the succession amicably out of court in another Member State where this is possible under the law of that Member State. In order to ensure a smooth coordination between the law applicable to the succession and the law of the Member State of the appointing court, the court should appoint the person(s) who would be entitled to administer the estate under the law applicable to the succession, such as for instance the executor of the will of the deceased or the heirs themselves or, if the law applicable to the succession so requires, a third-party administrator. The courts may, however, in specific cases where their law so requires, appoint a third party as administrator even if this is not provided for in the law applicable to the succession. If the deceased had appointed an executor of the will, that person may not be deprived of his powers unless the law applicable to the succession allows for the termination of his mandate.*
- (18f)** *The powers exercised by the administrators appointed in the Member State of the court seised should be the powers of administration which they may exercise under the law applicable to the succession. Thus, if, for instance, the heir is appointed as administrator he should have the powers to administer the estate which an heir would have under that law. Where the powers of administration which may be exercised under the law applicable to the succession are not sufficient to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the administrator(s) appointed in the Member State of the court seised may, on a residual basis, exercise powers of administration to that end provided for in the law of that Member State. Such residual powers could include, for instance, establishing a list of the assets and the debts of the estate, informing creditors of the opening of the succession and inviting them to make their claims known, and taking any provisional, including protective, measures intended to preserve the assets of the estate. The acts performed by an administrator under the residual powers should respect the law applicable to the succession with respect to the transfer of ownership to succession property, including any transaction entered into by the beneficiaries prior to the appointment of the administrator, the liability of debts under the succession and the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession. Such acts could for instance only entail the alienation of assets or the payment of debts where this would be allowed under the law applicable to the succession. Where under the law applicable to the succession the appointment of a third party administrator changes the liability of the heirs such a change of liability should be respected.*

- (18g)** *This Regulation should not preclude that creditors, for instance through a representative, may take such further steps as may be available under national law, where applicable, in accordance with the relevant Union instruments, in order to safeguard their rights.*
- (18h)** *This Regulation should allow for the provision of information of the opening of the succession to potential creditors in other Member States where assets are located. In the context of the application of this Regulation consideration should therefore be given to the possibility of establishing a mechanism, if appropriate by way of the e-Justice portal, to enable potential creditors in other Member States to access the relevant information so that they can make their claims known.*
- (18i)** *The law applicable to the succession should determine who the beneficiaries are in any given succession. Under most laws, the term "beneficiaries" would cover heirs and legatees and persons entitled to a reserved share although, for instance, the legal position of legatees is not the same under all laws. Under some laws, the legatee may receive a direct share in the estate whereas under other laws, the legatee may acquire only a claim against the heirs.*
- (18j)** *In order to ensure legal certainty for persons wanting to plan their succession in advance this Regulation should lay down a specific conflict of laws rule concerning the admissibility and substantive validity of dispositions of property upon death. To ensure a uniform application of that rule this Regulation should list which elements should be considered as elements pertaining to substantive validity. The examination of the substantive validity of a disposition of property upon death may lead to the conclusion that the disposition of property upon death is without legal existence.*
- (18k)** *An agreement as to succession is a type of disposition of property upon death whose admissibility and acceptance vary among the Member States. In order to make it easier for succession rights acquired as a result of an agreement as to succession to be accepted in the Member States this Regulation should determine which law is to govern the admissibility of such agreements, their substantive validity and their binding effects between the parties, including the conditions for their dissolution.*
- (18l)** *The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects between the parties, should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.*
- (18m)** *Where reference is made in this Regulation to the law which would have been applicable to the succession of the person making a disposition of property upon death if he had died on the day on which the disposition was, as the case may be, made, modified or revoked, such reference should be understood as a reference to either the law of the State of the habitual residence of the person concerned on*

*that day or, if he had made a choice of law under this Regulation, the law of the State of his nationality on that day.*

- (19) *This Regulation should regulate the validity as to form of all dispositions of property upon death made in writing by way of rules which are consistent with those of the Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions. When determining whether a given disposition of property upon death is formally valid under this Regulation the competent authority should disregard the fraudulent creation of an international element to circumvent the rules on formal validity.*
- (19a) *For the purposes of this Regulation any provision of law limiting the permitted forms of dispositions of property upon death by reference to certain personal qualifications of the person making the disposition such as, for instance, his age, should be deemed to pertain to matters of form. This should not be interpreted as meaning that the law applicable to the formal validity of a disposition of property upon death under this Regulation should determine whether or not a minor has the capacity to make a disposition of property upon death. That law should only determine whether a personal qualification like for instance that of minority should bar a person from making a disposition of property upon death in a certain form.*
- I**
- (22) *For economic, family or social considerations, certain immovable property, certain enterprises and other special categories of assets are subject to special rules in the Member State in which they are located setting restrictions concerning or affecting the succession in respect of those assets. This Regulation should ensure the application of such special rules. However, this exception to the application of the law applicable to the succession requires a strict interpretation in order to remain compatible with the general objective of this Regulation. Therefore, neither conflict of laws rules subjecting immovable property to a law different from that applicable to movable property nor provisions providing for a reserved share of the estate greater than that provided for in the law applicable to the succession under this Regulation may be considered as special rules setting restrictions concerning or affecting the succession in respect of certain assets.*
- (23) *To ensure a uniform handling of a situation in which it is uncertain in what order two or more persons whose succession would be governed by different laws died, this Regulation should provide for a rule laying down that none of the deceased persons should have any rights in the succession of the other or the others.*
- (23a) *In some situations an estate may be left without a claimant. Different laws provide differently for such situations. Under some laws, for instance, the State will be able to claim the vacant estate as an heir irrespective of where the assets are located. Under some other laws the State will be able to appropriate only the assets located on its territory. This Regulation should therefore provide for a rule laying down that the application of the law applicable to the succession should not preclude that a Member State may appropriate under its own law the assets located on its*



*territory. However, to ensure that this rule is not detrimental to the creditors of the estate, a proviso should be added under which the creditors of the estate should be able to seek satisfaction of their claims out of all the assets of the estate, irrespective of their location.*

- (23b) *The conflict of laws rules laid down in this Regulation may lead to the application of the law of a third State. In such cases regard should be had to the private international law rules of that State. If those rules provide for either the renvoi to the law of a Member State or to the law of a third State which would apply its own law to the succession such renvoi should be accepted in order to ensure international consistency. Renvoi should however be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.*
- (24) Considerations of public interest should allow courts *and other competent authorities dealing with matters of succession* in the Member States *to disregard*, in exceptional circumstances, *certain provisions* of a foreign law **■** where, *in a given case, applying such provisions* would be *manifestly incompatible with* the public policy of the *Member State concerned. However, the courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise, or, as the case may be, accept, or enforce a decision, an authentic instrument, or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination.*
- (25) In the light of its general objective, which is the mutual recognition of decisions given in the Member States *in matters of succession* **■**, *irrespective of whether such decisions were given in contentious or non-contentious proceedings*, this Regulation should lay down rules relating to the recognition, *enforceability* and enforcement of decisions *similar to those of other Union instruments in the area of judicial cooperation in civil matters.*
- (26) In order to take into account the different *systems for dealing with matters of succession* in the Member States, this Regulation should guarantee the *acceptance* and *enforceability in all Member States* of authentic instruments *in a matter of succession.*
- (26a) *Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. It will therefore depend on the law of the Member State of origin which evidentiary effects a given authentic instrument should have in another Member State.*
- (26b) *The "authenticity" of an authentic instrument should be an autonomous concept which should cover elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the*

*instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the indicated parties appeared before that authority on the indicated date and that they made the indicated declarations. A party who wishes to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.*

- (26c) *The terms "the legal acts or legal relationships recorded in an authentic instrument" should be interpreted as a reference to the contents as to substance recorded in the authentic instrument. The legal acts recorded in an authentic instrument could be for instance the agreement between the parties on the sharing-out or the distribution of the estate, or it could be a will or an agreement as to succession, or another declaration of intent. The legal relationships could be for instance the determination of the heirs and other beneficiaries as established under the law applicable to the succession, their respective shares and the existence of a reserved share, or any other element established under the law applicable to the succession. A party who wishes to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the succession.*
- (26d) *If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.*
- (26e) *An authentic instrument being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge only concerns a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the challenged authentic instrument should have no evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.*
- (26f) *An authority which, in the context of the application of this Regulation, would be presented with two incompatible authentic instruments should assess the question as to which authentic instrument, if any, should be given priority taking into account the circumstances of the particular case. Where, from those circumstances, it is not clear which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation, or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of an incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.*

- (27) A *speedy, easy* and efficient settlement of a succession *with cross-border implications* within the Union implies *that* the heirs, legatees, executors of the will or administrators *of the estate should be able to demonstrate* easily their *status and/or rights and powers* in *another* Member State, *for instance in a Member State* in which *succession property is located*. To *enable them to do so* this Regulation should *provide for the creation of* a uniform certificate, the European Certificate of Succession (*hereinafter referred to as "the Certificate"*) *to be issued for use in another Member State*. In order to respect the principle of subsidiarity, the *Certificate* should not *substitute internal documents which may exist for similar purposes in* the Member States **■** .
- (27a) *The authority which issues the Certificate should have regard to the formalities required for the registration of immovable property in the Member State in which the register is kept. For that purpose, this Regulation should provide for an exchange of information on such formalities between the Member States.*
- (27b) *The use of the Certificate should not be mandatory. This means that the persons entitled to apply for a Certificate should be under no obligation to do so but should be free to use the other instruments available under this Regulation (decisions, authentic instruments and court settlements). However, no authority or person presented with a Certificate issued in another Member State should be entitled to request that a decision, authentic instrument or court settlement be presented instead of the Certificate.*
- (27c) *The Certificate should be issued in the Member State whose courts have jurisdiction under this Regulation. It should be for each Member State to determine in its internal legislation which authorities should have competence to issue the Certificate, whether courts as defined for the purposes of this Regulation, or other authorities with competence in matters of succession, such as for instance notaries. It should also be for each Member State to determine in its internal legislation whether the issuing authority may involve other competent bodies in the issuing process, for instance bodies competent to receive statutory declarations in lieu of an oath. The Member States should communicate to the Commission the relevant information concerning their issuing authorities in order for that information to be made publicly available.*
- (27d) *The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death. The evidentiary effect of the Certificate should not extend to elements which are not governed by this Regulation, such as, for instance, the question of affiliation or the question whether or not a particular asset belonged to the deceased. Any person who makes payments or hands over succession property to a person indicated in the Certificate as being entitled to accept such payment or property as heir or legatee should be granted appropriate protection if he acted in good faith relying on the accuracy of the information certified in the Certificate.*

*The same protection should be granted to any person who, relying on the accuracy of the information certified in the Certificate, buys or receives succession property from a person indicated in the Certificate as being entitled to dispose of such property. The protection should be ensured if still valid certified copies are presented. Whether or not such an acquisition of property by a third person is effective should not be determined by this Regulation.*

- (27e) *The competent authority should issue the Certificate upon request. The original of the Certificate should remain with the issuing authority which should issue one or more certified copies of the Certificate to the applicant and to any other person demonstrating a legitimate interest. This should not preclude that a Member State, in accordance with its national rules on public access to documents, may allow copies of the Certificate to be disclosed to members of the public. This Regulation should provide for redress against decisions of the issuing authority, including decisions to refuse the issue of a Certificate. When the Certificate is rectified, modified or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid wrongful use of such copies.*
- (28) *Respect for international commitments entered into by the Member States means that this Regulation should not affect the **application of** international conventions to which one or more Member States are party **at the time** when **this Regulation is** adopted. **In particular, the Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws to the Form of Testamentary Dispositions should be able to continue to apply the provisions of that Convention instead of the provisions of this Regulation with regard to the formal validity of wills and joint wills.** Consistency with the general objectives of this Regulation requires, however, that this Regulation take precedence, as between Member States, over conventions **concluded exclusively between two or more of Member States in so far as such conventions concern matters governed by this Regulation.***
- (28a) *This Regulation should not preclude that the Member States which are parties to the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on succession, wills and estate administration should be able to continue to apply certain provisions of that Convention, as revised by the intergovernmental agreement between the States parties to the Convention.*
- (29) In order to facilitate the application of this Regulation, provision should be made for an obligation for the Member States to communicate certain information regarding their **legislation and procedures relating to** succession within the framework of the European **Judicial** Network in civil and commercial matters **established** by Council Decision 2001/470/EC of 28 May 2001<sup>1</sup>. **In order to allow for the timely publication in the Official Journal of the European Union of all information of relevance for the practical application of this Regulation the Member States should also**

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<sup>1</sup> OJ L 174, 27.6.2001, p. 25.

*communicate such information to the Commission before this Regulation starts applying.*

- (29a) *Equally to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be foreseen for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, an authentic instrument or a court settlement and for the application for a European Certificate of Succession as well as for the Certificate itself.*
- (29b) *In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>1</sup> should apply.*
- (30) *In order to ensure the uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>2</sup>.*
- (31) *The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.*

- (33) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by citizens of their succession in an EU 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, cannot be *sufficiently achieved* by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at *Union* level, the *Union* may *adopt* measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty *on European Union*. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (34) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation must be applied by the courts *and other competent authorities* of the Member States in observance of those rights and principles.
- (35) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland *in respect of the area of freedom, security and justice*,

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<sup>1</sup> *OJ L 124, 8.6.1971, p. 1.*

<sup>2</sup> *OJ L 55, 28.2.2011, p. 13.*

annexed to the Treaty on European Union and *to* the Treaty *on the Functioning of* the European *Union*, *those Member States are not taking part* in the adoption of this Regulation *and are not bound by it or subject to its application*. *This is, however, without prejudice to the possibility for the United Kingdom and Ireland of notifying their intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.*

- (36) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty *on the Functioning of* the European *Union*, Denmark is not taking part in the adoption of this Regulation and *is not* bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Chapter I  
Scope and definitions

Article 1  
Scope

1. This Regulation shall apply to the succession to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.

■

3. The following shall be excluded from the scope of this Regulation:
- (a) the status of natural persons, as well as family relationships and relationships *deemed by the law applicable to such relationships to have comparable effects*;
  - (b) the legal capacity of natural persons, *without prejudice to Article 19(2)(c) and to Article 19c*;
  - (c) *questions relating to the* disappearance, *the absence or the* presumed death of a natural person;
  - (d) 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;
  - (e) maintenance obligations *other than those arising by reason of death*;
  - (ea) *the formal validity of dispositions of property upon death made orally*;
  - (f) *property* rights, *interests* and assets created or transferred *otherwise* than by succession, *by way of for instance* gifts, ■ joint ownership with *a* right of *survivorship*, pension plans, insurance contracts and arrangements of a similar nature, *without prejudice to Article 19(2)(j)*;

- (g) questions **governed by the law of companies and other bodies, corporate or unincorporated**, such as clauses **■** in *the* memoranda of association and articles of association **of companies and other bodies, corporate or unincorporated which determine** what will happen to the shares upon the death of *the members*;
- (h) **the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated** ;
- (i) **the creation, administration and dissolution of trusts**;
- (j) the nature of rights *in rem*, **and**
- (ja) **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.**

#### **Article 1a**

#### **Competence in matters of succession within the Member States**

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

#### Article 2 Definitions

**1.** For the purposes of this Regulation **■** :

- (a) “**succession**” **means the succession** to the estate of *a* deceased person **and covers** 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
- 
- (c) “**agreement as to succession**” **means an agreement, including an agreement resulting from mutual wills, which** with or without consideration, **creates, modifies or terminates** rights to the future **estate or estates of** one or more persons **■** party to the agreement;
- (d) “**joint will**” **means a will** drawn up **in one instrument** by two or more persons **■** ;
- (da) “**disposition of property upon death**” **means a will, a joint will or an agreement as to succession**;
- (e) “**Member State of origin**” **means** the Member State in which, **as** the case **may be**, the decision has been given, the **court settlement** approved or concluded, the authentic instrument **established or the European Certificate of Succession issued**;

- (f) “Member State *of enforcement* ” *means* the Member State in which *the enforceability* or *the* enforcement of the *decision, the court settlement* or the authentic instrument is *sought*;
  - (g) “decision” *means* any decision **■** in a matter of succession *given* by a court of a Member State, whatever the decision may be called, including *a decision on the* determination of costs or expenses by an officer of the court;
  - (ga) *"court settlement" means a settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings;*
  - (h) “authentic instrument” *means a document in a matter of succession* which has been formally drawn up or registered as an authentic instrument *in a Member State* and the authenticity of which:
    - (i) relates to the *signature* and *the* content of the authentic instrument; and
    - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State *of origin*.
2. *For the purposes of this Regulation the term “court” means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act by delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:*
- (a) *may be made the subject of an appeal to or review by a judicial authority; and*
  - (b) *have a similar force and effect as a decision of a judicial authority on the same matter.*

*The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 47.*

## Chapter II Jurisdiction



### Article 4 General jurisdiction

**■** 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*.





**Article 5a**  
**Choice of court agreement**

1. *Where the law chosen by the deceased to govern his succession pursuant to Article 17 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 shall have exclusive jurisdiction to rule on any succession matter.*
2. *Such a choice of court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.*

**Article 5b**  
**Declining of jurisdiction in the event of a choice of law**

*Where the law chosen by the deceased to govern his succession pursuant to Article 17 is the law of a Member State, the court seised pursuant to Articles 4 or 6:*

- (a) *may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets, or*
- (b) *shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5a, to confer jurisdiction on a court or the courts of the Member State of the chosen law.*

**Article 5c**  
**Jurisdiction in the event of a choice of law**

*The courts of a Member State whose law had been chosen by the deceased pursuant to Article 17 shall have jurisdiction to rule on the succession if:*

- (a) *a court previously seised has declined jurisdiction in the same case pursuant to Article 5b, or*
- (b) *the parties to the proceedings have agreed, in accordance with Article 5a, 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.*

**Article 5d**  
**Closing of own motion proceedings in the event of a choice of law**

*A court seised of its own motion of a succession case under Articles 4 or 6 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 pursuant to Article 17.*

*Article 5e*  
*Jurisdiction based on appearance*

1. *Where, in the course of proceedings before a court of a Member State exercising jurisdiction pursuant to Article 5c, it appears that not all the parties to those proceedings were party to the choice of court agreement, the court shall continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court.*
2. *If the jurisdiction of the court referred to in paragraph 1 is contested by parties to the proceedings who were not party to the agreement, the court shall decline jurisdiction.*

*In that event, jurisdiction to rule on the succession shall lie with the courts having jurisdiction pursuant to Articles 4 or 6.*

*Article 6*  
*Subsidiary jurisdiction*

1. 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:*

■

- (b) the deceased had the nationality of that Member State at the time of ■ death; or failing that,

*(ba) the deceased had his previous 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.*

■

2. *Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which succession assets are located shall nevertheless have jurisdiction to rule on those assets.*

*Article 6a*  
*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.*

*Article 6b*  
*Limitation of proceedings*

1. *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.*
2. *Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.*

■

Article 8

*Acceptance or waiver of the succession, of a legacy or of a reserved share*

*In addition to the court having jurisdiction to rule on the succession pursuant to this Regulation, the courts in the Member State of the habitual residence of any person who, under the law applicable to the succession, may make a declaration before an authority concerning the acceptance or the waiver of the succession, of a legacy or of a reserved share of the estate or a declaration designed to limit the liability of the person concerned in respect of the liabilities of the estate shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.*

■

Article 10

Seising of a court

For the purposes of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps *he was* required to take to have service effected on the defendant, or
  - (b) if the document has to be served before being lodged with the court, at the time when it is *received* by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps *he was* required to take to have the document lodged with the court, *or*
- (ba) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.*

Article 11

Examination as to jurisdiction

Where a court of a Member State is seised of a *matter of succession* over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 12

Examination as to admissibility

1. Where a defendant habitually resident in a Member State other than the Member State where the action was brought does not enter an appearance, the court *having* jurisdiction shall *stay* the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to *arrange for his defence*, or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>1</sup> shall apply instead of paragraph 1 if the document instituting the proceedings or an equivalent document had to be *transmitted* from one Member State to another pursuant to that Regulation.
3. Where Regulation (EC) No 1393/2007 *is* not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document *had* to be *transmitted* abroad pursuant to that Convention.

Article 13  
Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 14  
Related actions

1. Where related actions are pending *in the* courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable *decisions* resulting from separate proceedings.

Article 15  
Provisional, including protective, measures

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<sup>1</sup> OJ L 324, 10.12.2007, p. 79.

Application may be made to the *courts* of a Member State for such provisional, *including* protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Chapter III  
Applicable law

*Article 15a*  
*Universal application*

*Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.*

Article 16  
General rule

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 had *his* habitual residence at the time of **█** death.
2. 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 under paragraph 1, the law applicable to the succession shall be the law of that other State.

Article 17  
*Choice of law*

1. 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*.

*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.*

2. *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*.
3. *The substantive validity of the act whereby the choice of law was made* shall be governed by *the chosen law*.
4. *The modification or the revocation* **█** of *the choice* of **█** law *shall* meet the *requirements as to form* for the modification or *the* revocation of a disposition of property upon death.

**█**  
Article 19

### *The scope of the applicable law*

1. The law determined *pursuant to Article 16 or Article 17* shall govern the succession as a whole ■.
2. This law shall govern in particular:
  - (a) the causes, time and place of the opening of *the* succession;
  - (b) the ■ determination of the *beneficiaries*, of *their* respective shares *and of the obligations which may be* imposed on them by the deceased, and the *determination of* other ■ succession *rights, including the succession rights of the surviving spouse or partner*;
  - (c) the capacity to inherit;
  - 
  - (e) disinheritance and *disqualification by conduct*;
  - (f) the transfer ■ to the heirs and, *as the case may be, to the legatees of the assets, rights and obligations making up the estate*, including the conditions and effects of *the acceptance or the waiver of* the succession or *a* legacy;
  - (g) the powers of the heirs, the executors of the wills and other administrators of the *estate, in particular as regards* the sale of property and the payment of creditors, *without prejudice to the powers referred to in Article 21*;
  - (h) *the liability* for the debts under the succession;
  - (i) the ■ disposable *part of the estate*, the reserved *shares* and ■ other restrictions on the *disposing* of property upon death *as well as claims which persons close to* the deceased *may have against the estate or the heirs*;
  - (j) any obligation to restore or account for gifts, *advancements or legacies* when determining the shares of *the different beneficiaries*;
  - 
  - (l) *the sharing-out of the estate*.

### *Article 19a*

#### *Dispositions of property upon death other than agreements as to succession*

1. *A disposition of property upon death other than an agreement as to succession shall be governed with regard to its admissibility and substantive validity by the law which, under this Regulation, would have been applicable to the succession of the person having made the disposition if he had died on the day on which the*

- disposition was made.*
2. *Notwithstanding paragraph 1, a person may choose as the law to govern his disposition of property upon death with regard to its admissibility and substantive validity, the law which the person having made the disposition could have chosen in accordance with Article 17 on the conditions set out therein.*
  3. *Paragraph 1 shall apply, as appropriate, to the modification or revocation of a disposition of property upon death other than an agreement as to succession. In the event of a choice of law in accordance with paragraph 2 the modification or revocation shall be governed by the chosen law.*

*Article 19b  
Agreements as to succession*

1. *An agreement as to succession regarding the succession of one person shall be governed, with regard to 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.*
2. *An agreement as to succession regarding the succession of several persons shall be admissible only if it is admissible under all the laws which, under this Regulation, would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded.*

*An agreement as to succession which is admissible pursuant to the first subparagraph shall be governed, with regard to its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law, from among those referred to in the first subparagraph, with which it has the closest connection.*

3. *Notwithstanding paragraphs 1 and 2, the parties may choose as the law governing their agreement as to succession, with regard to its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 17 on the conditions set out therein.*

*Article 19c  
Substantive validity of dispositions of property upon death*

1. *For the purposes of Articles 19a and 19b the following elements shall pertain to substantive validity:*
  - (a) *the capacity of the person making the disposition of property upon death to make such a disposition;*
  - (b) *the particular causes which bar the person making the disposition from disposing in favour of certain persons or which bar a person from receiving*

- succession property from the person making the disposition;*
- (c) the admissibility of representation for the purposes of making a disposition of property upon death;*
  - (d) the interpretation of the disposition;*
  - (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.*
2. *Where a person has the capacity to make a disposition of property upon death under the law applicable pursuant to Articles 19a or 19b, a subsequent change of the law applicable shall not affect his capacity to modify or revoke such a disposition.*

*Article 19d*

*Formal validity of dispositions of property upon death made in writing*

1. *A disposition of property upon death made in writing shall be valid as regards form if its form complies with the law:*
- (a) of the State where the disposition was made or the agreement as to succession concluded, or*
  - (b) of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to succession possessed, either at the time when the disposition was made or the agreement concluded, or at the time of death, or*
  - (c) of a State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had their domicile, either at the time when the disposition was made or the agreement concluded, or at the time of death, or*
  - (d) of the State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had their habitual residence, either at the time when the disposition was made or the agreement concluded, or at the time of death, or*
  - (e) as far as immovable property is concerned, of the State in which the immovable property is located.*

*The determination of whether or not the testator or the persons whose succession is concerned by the agreement as to succession had their domicile in a particular State shall be governed by the law of that State.*

2. *Paragraph 1 shall also apply to dispositions of property upon death modifying or revoking an earlier disposition. The modification or revocation shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under paragraph 1, the disposition of property upon death which has been modified or revoked was valid.*



3. *For the purposes of this Article, any provision of law which limits the permitted forms of dispositions of property upon death by reference to the age, the nationality or other personal conditions of the testator or of the persons whose succession is concerned by an agreement as to succession shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications to be possessed by any witnesses required for the validity of a disposition of property upon death.*

#### Article 20

Validity *as to form* of *a declaration concerning* acceptance or waiver

*A declaration concerning the acceptance or the waiver of the succession, of a legacy or of a reserved share or a declaration designed to limit the liability of the person making the declaration shall be valid as to form where it meets the requirements of:*

- (a) the law *applicable to the succession pursuant to Articles 16 or 17, or*
- (b) *the law* of the State in which the *person making the declaration* has *his* habitual residence.

#### Article 21

*Special rules on the appointment and powers of an administrator of the estate in certain situations*

1. *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 Article.*

*The administrator(s) appointed pursuant to this paragraph shall be the person(s) entitled to execute the will of the deceased and/or to administer the estate under the law applicable to the succession. Where that law does not provide for the administration of the estate by a person who is not a beneficiary, the courts of the Member State in which the administrator is to be appointed may appoint a third party administrator under their own law if that law so requires and there is a serious conflict of interests between the beneficiaries or between the beneficiaries and the creditors or other persons having guaranteed the debts of the deceased, a disagreement amongst the beneficiaries on the administration of the estate or a complex estate to administer due to the nature of the assets.*

*The administrator(s) appointed pursuant to this paragraph shall be the only person(s) to exercise the powers referred to in paragraphs 2 or 3.*

2. *The person(s) appointed as administrator(s) pursuant to paragraph 1 shall exercise the powers to administer the estate which they may exercise under the law applicable to the succession. The appointing court may define in its decision specific conditions for the exercise of such powers in accordance with the law applicable to*

*the succession.*

*Where the law applicable to the succession does not provide for sufficient powers to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the appointing court may decide to allow the administrator(s) to exercise, on a residual basis, the powers provided for to that end in its own law and may define in its decision specific conditions for the exercise of such powers in accordance with that law.*

*When exercising such residual powers, however, the administrator(s) shall respect the law applicable to the succession with respect to the transfer of ownership to succession property, the liability for debts under the succession, the rights of the beneficiaries, including where applicable, the right to accept or to waive the succession, and where applicable the powers of the executor of the will of the deceased.*

3. *Notwithstanding paragraph 2, the court appointing one or more administrators pursuant to paragraph 1 may, by way of exception, where the law applicable to the succession is the law of a third State, decide to vest in those administrators all the powers of administration provided for in the law of the Member State in which they are appointed.*

*When exercising such powers, however, the administrators shall respect, in particular, the determination of the beneficiaries and their succession rights, including their rights to a reserved share or claim against the estate or the heirs under the law applicable to the succession.*

#### Article 22

*Special rules setting restrictions concerning or affecting the succession  
in respect of certain assets*

*Where the law of the State in which certain immovable property, certain enterprises or other special categories of assets are located contains special rules which, for economic, family or social considerations, set restrictions concerning or affecting the succession in respect of those assets, those special rules shall apply to the succession in so far as, under the law of that State, those rules are applicable irrespective of the law applicable to the succession.*

#### Article 22a

*Adaptation of rights in rem*

*Where a person invokes a right in rem to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.*

Article 23  
Simultaneous death

Where two or more persons whose successions are governed by different laws die in circumstances *in* which *it is uncertain in what* order *their deaths occurred*, and where *those* laws *provide differently for this* situation ■ or *make no provision* at all, none of the *deceased* persons shall have any *succession* rights to the other ■ or *others*.

Article 24  
*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 *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*.

■  
Article 26  
*Renvoi*

1. *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.*
2. *No renvoi shall apply with respect to the laws referred to in Article 16(2), Article 17, Article 19d, Article 20(b) and Article 22.*

Article 27  
Public policy (*ordre public*)

■ The application of a *provision* of the law *of any State specified* by this Regulation may be refused only if such application is *manifestly* incompatible with the public policy (*ordre public*) of the forum. ■

Article 28  
States with more than one legal system - *territorial conflicts of laws*

1. Where *the law specified by this Regulation is that of* a State *which* comprises several territorial units each of which has its own rules of law in respect of succession, *the internal conflict of laws rules of that State shall determine the relevant* territorial unit *whose rules of law shall apply*.
2. *In the absence of such internal conflict of laws rules:*
  - (a) *any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the deceased, be construed as referring to the law of the territorial unit in which the deceased had his habitual residence at the time of death;*
  - (b) *any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the deceased, be construed as referring to the law of the territorial unit with which the deceased had the closest connection;*
  - (c) *any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.*
- 2a. *Notwithstanding paragraph 2, any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the relevant law pursuant to Article 19d, in the absence of internal conflict of laws rules in that State, be construed as referring to the law of the territorial unit with which the testator or the persons whose succession is concerned by the agreement as to succession had the closest connection.*

#### *Article 28a*

##### *States with more than one legal system - inter-personal 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 such a 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.*

#### *Article 28b*

##### *Non-application of this Regulation to internal conflicts of laws*

*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.*

#### Chapter IV

##### Recognition, *enforceability* and enforcement *of decisions*

## Article 29

### Recognition ■

1. A decision given *in a Member State* shall be recognised in the other Member States without any special procedure being required.
2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedure provided for *in Articles 33b to 33o*, apply for that decision to be recognised.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

## Article 30

### Grounds of non-recognition

A decision shall not be recognised ■ :

- (a) *if* such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought ■ ;
- (b) *where it was given in default of appearance*, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in *proceedings* between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State *in proceedings* involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State *in which recognition is sought*.

## Article 31

### No review as to the substance ■

Under no circumstances may a ■ decision *given in a Member State* be reviewed as to its substance.

## Article 32

### *Staying of recognition* proceedings

A court of a Member State in which *the* recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged *in the Member State of origin*.

## Article 33

### Enforceability ■

Decisions given in a Member State and enforceable *in that State shall be enforceable* in the other Member States *when, on the application of any interested party, they have been declared enforceable there* in accordance with *the procedure provided for in* Articles 33b to 33o.

**Article 33a**  
**Determination of domicile**

*To determine whether, for the purposes of the procedure provided for in Articles 33b to 33o, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.*

**Article 33b**  
**Jurisdiction of local courts**

1. *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 in accordance with Article 46a.*
2. *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.*

**Article 33c**  
**Procedure**

1. *The application procedure shall be governed by the law of the Member State of enforcement.*
2. *The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.*
3. *The application shall be accompanied by the following documents:*
  - (a) *a copy of the decision which satisfies the conditions necessary to establish its authenticity*
  - (b) *the attestation issued by the court or competent authority of the Member State of origin using the form to be established in accordance with the advisory procedure referred to in Article 48(2), without prejudice to Article 33d.*

**Article 33d**  
**Non-production of the attestation**

1. *If the attestation referred to in Article 33c (3)(b) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.*

2. *If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.*

*Article 33e  
Declaration of enforceability*

*The decision shall be declared enforceable immediately on completion of the formalities in Article 33c without any review under Article 30. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.*

*Article 33f  
Notice of the decision on the application for a declaration of enforceability*

1. *The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.*
2. *The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.*

*Article 33g  
Appeal against the decision on the application for a declaration of enforceability*

1. *The decision on the application for a declaration of enforceability may be appealed against by either party.*
2. *The appeal shall be lodged with the court notified by the Member State concerned to the Commission in accordance with Article 46a.*
3. *The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.*
4. *If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 12 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.*
5. *An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.*

**Article 33h**  
**Procedure to contest the decision given on appeal**

*The decision given on the appeal may be contested only by the procedure notified by the Member State concerned to the Commission in accordance with Article 46a.*

**Article 33i**  
**Refusal or revocation of a declaration of enforceability**

*The court with which an appeal is lodged under Article 33g or Article 33h shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 30. It shall give its decision without delay.*

**Article 33j**  
**Staying of proceedings**

*The court with which an appeal is lodged under Article 33g or Article 33h shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.*

**Article 33k**  
**Provisional, including protective measures**

- 1. When a decision must be recognised in accordance with this Section, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 33e being required.*
- 2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.*
- 3. During the time specified for an appeal pursuant to Article 33g(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.*

**Article 33l**  
**Partial enforceability**

- 1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.*
- 2. An applicant may request a declaration of enforceability limited to parts of a decision.*



*Article 33m*  
*Legal aid*

*An applicant who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.*

*Article 33n*  
*No security, bond or deposit*

*No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.*

*Article 33o*  
*No charge, duty or fee*

*In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.*

Chapter V  
Authentic instruments and court settlements

Article 34  
*Acceptance* of authentic instruments

1. *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.*

*The 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 Article 48(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.*

2. *Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.*

3. *Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.*
4. *If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of succession that court shall have jurisdiction over that question.*

#### Article 35

##### Enforceability of authentic instruments

1. *An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 33b to 33o.*
  - 1a. *For the purposes of Article 33c(3)(b) the authority having established the authentic instrument shall, on the application of any interested party, issue an attestation using the form to be established in accordance with the advisory procedure referred to in Article 48(2).*
2. *The court with which an appeal is lodged under Article 33g or Article 33h shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (ordre public) in the Member State of enforcement.*

#### Article 35a

##### Enforceability of court settlements

1. *Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 33b to 33o.*
  - 1a. *For the purposes of Article 33c(3)(b) the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form to be established in accordance with the advisory procedure referred to in Article 48(2).*
2. *The court with which an appeal is lodged under Article 33g or Article 33h shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (ordre public) in the Member State of enforcement.*

#### Chapter VI

##### European Certificate of Succession

Article 36  
Creation of a European Certificate of Succession

1. This Regulation *creates* a European Certificate of Succession (*hereinafter referred to as "the Certificate"*) which shall be issued for use in another Member State and shall produce the effects listed in Article 42.
2. The use of the *Certificate* shall not be *mandatory*.
- 2a. The *Certificate* shall not **■** *substitute internal documents used for similar purposes in the Member States*. However, *once issued for use in another Member State* the *Certificate* shall also *produce the effects listed in Article 42* in the Member State whose authorities issued it in accordance with this Chapter.

*Article 36a*  
*Purpose of the Certificate*

1. *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.*
2. *The Certificate may be used, in particular, to demonstrate one or more of the following specific elements:*
  - (a) *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;*
  - (b) *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;*
  - (c) *the powers of the person mentioned in the Certificate to execute the will or administer the estate.*

Article 37  
Competence to issue the *Certificate*

**■**  
The *Certificate* shall be *issued* in the Member State whose courts *have jurisdiction under Articles 4, 5c, 6 or 6a*. *The issuing authority shall be:*

- (a) *a court as defined in Article 2(2), or*
- (b) *another authority which, under national law, has competence to deal with matters of succession.*

■ **Application for a Certificate**

- 1. *The Certificate shall be issued upon application by any person referred to in Article 36a(1) (hereinafter referred to as "the applicant").*
- 1a. *For the purposes of submitting an application, the applicant may use the form to be established in accordance with the advisory procedure referred to in Article 48(2).*
- 1. *The application shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary to enable the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 40(1a):*
  - (a) *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;*
  - (b) *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;*
  - (ba) *details concerning the representative of the applicant, if any: surname (if applicable, maiden name), given name(s), address and representative capacity;*
  - (bb) *the details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, maiden name), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;*
  - (bc) *the details of other possible beneficiaries under a disposition of property upon death and by operation of law: surname and given name(s) or organisation name, identification number (if applicable) and address;*
  - (bd) *the intended purpose of the Certificate in accordance with Article 36a;*
  - (be) *the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;*
  - (c) *the elements on which the applicant founds, as appropriate, his claimed right to succession property as beneficiary and/or right to execute the will of the deceased and/or right to administer the estate of the deceased;*
  - (ca) *an indication of whether the deceased had made a disposition of property upon death ; if neither the original nor a copy is appended, indication regarding the location of the original;*

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- (e) *an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage; if neither the original nor a copy of the contract is appended, indication regarding the location of the original;*
  - (ea) *an indication of whether any of the beneficiaries have made a declaration concerning the acceptance or, as appropriate, the waiver of the succession;*
  - (f) *a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;*
  - (fa) *any other information which the applicant deems useful for the purposes of the issue of the Certificate.*

■

Article 40  
*Examination of the application*

1. *Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other means of evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised in its own law or invite the applicant to provide any further evidence which it deems necessary.*
  - 1a. *Where the applicant has been unable to produce copies of the relevant documents which satisfy the conditions necessary to establish their authenticity, the issuing authority may decide to accept other forms of evidence.*
  - 1b. *Where this is provided for in its own law and subject to the conditions laid down therein, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath.*

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- 2a. *The issuing authority shall take all necessary steps to inform the beneficiaries of the application for a Certificate. It shall, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.*
  3. *For the purposes of this Article, the competent authority of a Member State shall, upon request, provide the issuing authority of another Member State with information held, in particular, in the land registers, the civil status registers and registers recording documents and facts of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased, where that*

*competent authority would be authorised, under national law, to provide another national authority with such information.*■

*Article 40a  
Issue of the Certificate*

1. *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. It shall use the form to be established in accordance with the advisory procedure referred to in Article 48(2). The issuing authority shall not issue the Certificate in particular:*
  - (a) *if the elements to be certified are being challenged, or*
  - (b) *if the Certificate would not be in conformity with a decision covering the same elements.*
2. *The issuing authority shall take all necessary steps to inform the beneficiaries of the issue of the Certificate.*

Article 41  
*Contents of the Certificate*

- 
2. The *Certificate* shall contain the following information *to the extent required for the purpose for which the Certificate is issued*:
    - (a) *the name and address of the issuing authority;*
    - (aa) *the reference number of the file;*
    - (ab) the elements *on the basis of which the issuing authority* considers itself competent to issue the Certificate ■ ;
    - (ac) *the date of issue;*
    - (ad) *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;*
    - (b) *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;*
    - (ba) *details concerning the beneficiaries: surname (if applicable, maiden name), given name(s) and identification number (if applicable);*

- (c) **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*;
  - (d) the law applicable to the succession and the *elements on the basis of which* that law *has been determined*;
  - (e) **information as to whether the succession is intestate or testate 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*;
- 
- (g) *if* applicable, information in respect of each **beneficiary** concerning the nature of the acceptance *or the waiver* of the succession;
  - (h) ■ the share for each heir and, if applicable, the list of rights *and/or assets* for any given heir;
  - (i) the list of rights *and/or assets* for *any given* legatee;
  - (j) 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*;
  - (k) 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*.

#### Article 42

#### ■ Effects of the *Certificate*

1. The *Certificate* shall *produce its effects* in *all Member State without any special procedure being required*.
2. *It shall be presumed that the Certificate demonstrates accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements.* 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 other conditions and/or restrictions attached to those rights or powers than those stated in the Certificate.*
3. Any person who, *acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as*

authorised to *accept payment or property* shall be *considered to have transacted with a person with the authority to accept payment or property*, unless *he knows* that the contents of the *Certificate* are not accurate *or is unaware of such inaccuracy due to gross negligence*.

4. *Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with the authority to dispose of the property concerned, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.*
5. The *Certificate* shall constitute a valid document ■ for the *recording of succession property* in the *relevant register* of a Member State, *without prejudice to Article 1(3)(j) and (ja)*.

#### *Article 42a* *Certified copies of the Certificate*

1. *The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.*
- 1a. *The issuing authority shall, for the purposes of Articles 43(3) and 44a(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.*
2. *The certified copies issued shall be valid for a limited period of six months to be indicated in the certified copy by way of an expiry date. In exceptional cases duly justified, the issuing authority may, by derogation, decide that the period of validity shall be longer. Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the purposes indicated in Article 36a, apply for a prolongation of the validity period of the certified copy or request a new certified copy from the issuing authority.*

#### *Article 43* *Rectification, modification or withdrawal of the ■ Certificate ■*

1. *The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.*
2. *The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.*
3. *The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 42a(1) of any rectification, modification or withdrawal thereof.*



Article 44  
*Redress procedures*

1. *Decisions taken by the issuing authority pursuant to Article 40a may be challenged by any person entitled to apply for a Certificate.*

*Decisions taken by the issuing authority pursuant to Article 43 and Article 44a(1)(a) may be challenged by any person demonstrating a legitimate interest.*

*The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State.*

2. *If, as a result of the challenge referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that the issuing authority rectifies, modifies or withdraws the Certificate.*

*If, as a result of the challenge referred to in paragraph 1, it is established that the refusal to issue the Certificate was unjustified, the competent judicial authority shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a new decision.*

Article 44a  
*Suspension of the effects of the Certificate*

1. *The effects of the Certificate may be suspended by:*
  - (a) *the issuing authority, at the request of any person demonstrating a legitimate interest, pending a modification or withdrawal of the Certificate pursuant to Article 43, or*
  - (b) *the judicial authority, at the request of any person entitled to challenge a decision taken by the issuing authority pursuant to Article 44, pending such a challenge.*
2. *The issuing authority or, as the case may be, the judicial authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 42a(1) of any suspension of the effects of the Certificate.*

*During the suspension of the effects of the Certificate no further certified copies of the Certificate may be issued.*

Chapter VII

General and final provisions

## Article 44b

### *Legalisation and other similar formality*

***No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.***

## Article 45

### Relations with existing international conventions

1. 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 **■**.

***In particular, the Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws to the Form of Testamentary Dispositions shall continue to apply the provisions of that Convention instead of Article 19d of this Regulation with regard to the formal validity of wills and joint wills.***

2. Notwithstanding paragraph 1, this Regulation shall, ***as between Member States***, take precedence **■** over conventions ***concluded exclusively between two or more of them in so far as such conventions concern matters*** governed by this Regulation **■**.
- 2a. ***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, as revised by the intergovernmental agreement between those States of [date] 2012, by the Member States which are parties thereto, in so far as it provides for:***
  - (a) ***rules on the procedural aspects of estate administration as defined by the Convention and assistance in this regard by the authorities of the States Contracting Parties to the Convention, and***
  - (b) ***simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of succession.***

## Article 45a

### *Relations with Council Regulation (EC) No 1346/2000*

***This Regulation shall not affect the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings<sup>1</sup>.***

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<sup>1</sup> ***OJ L 160, 30.6.2000, p. 1.***

Article 46  
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, a legacy or a reserved share under Article 8.*

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

*The Member States shall keep the information updated permanently.*

*Article 46a*

*Information on contact details and procedures*

1. *By [...] <sup>1</sup>, the Member States shall communicate to the Commission:*
  - (a) *the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 33b(1) and with appeals against decisions on such applications in accordance with Article 33g(2);*
  - (b) *the redress procedures referred to in Article 33h;*
  - (c) *the relevant information regarding the authorities competent to issue the Certificate pursuant to Article 37; and*
  - (d) *the redress procedures referred to in Article 44.*

*The Member States shall apprise the Commission of any subsequent changes to this information.*

2. *The Commission shall publish the information communicated in accordance with paragraph 1 in the Official Journal of the European Union, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a).*
3. *The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.*

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<sup>1</sup> *OJ: 9 months before the date of application of the Regulation.*

#### Article 47

##### *Establishment and subsequent amendment of the list referred to in Article 2(2)*

1. *The Commission shall, on the basis of the notifications by the Member States, establish the list of other authorities and legal professionals referred to in Article 2(2).*
2. *The Member States shall notify the Commission of any subsequent amendments to that list. The Commission shall amend the list accordingly.*
3. *The Commission shall publish the list and any subsequent amendments in the Official Journal of the European Union.*
4. *The Commission shall make all information communicated in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.*

#### Article 47a

##### *Establishment and subsequent amendment of the attestations and the forms referred to in Articles 33c, 34, 35, 35a, 38 and 40a*

*The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 33c, 34, 35, 35a, 38 and 40a. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48(2).*

#### Article 48

##### Committee procedure

1. *The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
2. *Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.*

#### Article 49

##### Review

By [...] <sup>1</sup> 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 carried out in parallel with a settlement before a judicial authority in another Member State.* The report shall be accompanied, where appropriate, by *proposals for* amendments.

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<sup>1</sup> *OJ: 10 years after the date of application of the Regulation.*

Article 50  
Transitional provisions

1. This Regulation shall apply to the succession of persons deceased *on or* after its date of application
2. Where the deceased had *chosen* the law applicable to *his* succession prior to the date of application of this Regulation, *that choice* shall be **■** valid *if* it meets the conditions *laid down in Chapter III or if it is valid in application of the rules of private international law in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.*
- 2a. *A disposition of property upon death made prior to the date of application of this Regulation shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.*
- 2b. *If a disposition of property upon death was made prior to the date of application of this Regulation in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.***■**

Article 51  
Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

*It shall apply from [...]¹, except for Articles 46 and 46a which shall apply from [...]² and Articles 47, 47a and 48 which shall apply from [...]³*

This Regulation shall be binding in its entirety and directly applicable in all the Member States in accordance with the *Treaties*.

Done at

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>1</sup> *OJ: 36 months after the date of entry into force of the Regulation.*  
<sup>2</sup> *OJ: 9 months before the date of application of the Regulation.*  
<sup>3</sup> *OJ: The day following the date of adoption of the Regulation.*



## EXPLANATORY STATEMENT

### I. Introduction

Uniform connecting factors for determining court competence and applicable law are the nub of a European solution. In the Commission proposal, habitual residence is the determining factor for both. One essential feature of this, however, is the right of testators to be able to choose their home country's law as the law governing their succession, in conjunction with the possibility of referral to a court in their home country.

The proposal has to be assessed in the light of that linkage.

Every solution has its strong points and weak points. There will always be sequences of events whose outcome is not totally satisfactory. This is quintessentially so: it is a difficult field; personal circumstances differ; and differing judgments result in conflicting objectives. An assessment must take in all factors.

The basic policy line in the Commission proposal should therefore be endorsed. Essentially, furthermore, it is in line with Parliament's opinion on the Green Paper<sup>1</sup>. The proposal creates legal certainty, is comparatively clear and straightforward, and, with regard to the key issues it addresses, can also be understood by the man and woman in the street. Fragmentation of successions is avoided. Because habitual residence would be the connecting factor, the competent court would be able, as a rule, to apply its own law, including vis-à-vis third-country nationals. In most cases, the place of habitual residence of a testator will also be his or her centre of interests.

Where a particular country's law is chosen, parallelism can be ensured through referral to a court in the home country.

The new choice-of-law right would make citizens more autonomous. At the same time, restricting it to the law governing nationality would maintain the public policy function of law on succession and safeguards for relatives and, to as great an extent as possible, prevent evasion or abuse. Nationality is a reliable connecting factor.

On this basis, provision can be made for decisions to be recognised and enforced.

The Commission proposal is rounded off by the establishment of a European Certificate of Succession. It would not constitute a final, unappealable ruling on a particular succession; rather, it would be a certificate relating to that succession. It would be used, on a cross-border basis, as proof of entries in registers and, as a safeguard for persons acquiring succession property, would enjoy a presumption of accuracy. This would be a critical improvement in cross-border legal and commercial transactions in matters of succession.

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<sup>1</sup> European Parliament resolution with recommendations to the Commission on succession and wills (OJ C 314 E, 21.12.2006, p. 342)..

To sum up:

For citizens habitually resident in their home country, if all their assets are there, nothing would change. Any assets they owned outside their home country, especially land and property, would also be subject in their entirety to the law of their home country without any particular testamentary dispositions.

Citizens habitually resident outside their home country, or intending to be so, would be able to choose the law of their home country. That is a critical improvement.

Advisers on succession would also be given a secure basis on which to operate.

As a rule, courts or other competent entities would be able to apply their own law.

Handling cross-border successions would be made considerably easier.

Deceased persons who had been habitually resident outside their home country and who had not made a choice of law would be subject to the law on succession of the country of residence. That would be new for all Member States. As far as misgivings are concerned, it should be pointed out that in many instances, without the public being aware of it, this is already the position in law.

Misgivings can be dispelled through information campaigns. There are benefits and drawbacks to any approach, and not all objectives can be taken account of at the same time. The rapporteur takes the view that the current legal position - and any other approach - is significantly more problematic, and therefore regards what is being proposed as preferable.

The regulation cannot resolve all problems and should not regulate every detail, but it would considerably improve the present legal position. Individuals would be given a clear and secure basis for arranging their succession. They would be able to exercise their rights on the internal market more effectively. Legal clarity and legal certainty are central qualities within law on succession in particular. The regulation would strengthen them, benefit the public and create considerable European added value.

To clarify matters, it should be pointed out that:

- (1) the applicable law has no influence on the applicable inheritance tax law;
- (2) the regulation would cover international private law (IPL) only; substantive inheritance law would remain unchanged;
- (3) the United Kingdom and Ireland have made use of their right to opt out.

The legal basis for this proposal for a regulation is Article 81 of the Treaty on the Functioning of the European Union.

## **II. Specific issues**

Despite the fact that the proposal's basic policy line is endorsed, difficult problems remain and corrections and additions need to be made. A number of them will be examined.



### Habitual residence

Habitual residence is a key concept in the regulation. Special attention is rightly paid to it, and as clear a definition as possible is called for. A definition imposing conditions and/or time limits does not do justice to the diversity of personal circumstances. It will not be any more reliable as a result, but the process may be more protracted. After a death, the competent court should be determined as quickly as possible. Case by case, it will then be able to determine habitual residence and whether it is competent - and indeed must do so - on the basis of general criteria, as set out in a recital. It should furthermore be pointed out that very few national legal systems have a statutory definition of the concept, and no definition is provided either in the European regulation concerning law on maintenance or in a whole host of international conventions.

### Right to choose the law applicable

The right to choose the law applicable - an innovation for many individuals and states - is a key plank of the proposal. In the interests of 'favor testamenti', various points should be clarified and added to.

### Distinction made with Member States' substantive and procedural law

The regulation is intended to cover only the IPL rules of Member States and not their substantive law on succession or other substantive or procedural law. However, there is encroachment and overlapping on a minor scale. The reason for this is that Member States' law on succession, substantive law and succession proceedings differ.

Under the rapporteur's proposal, Member States' substantive and procedural law would remain unaffected as far as possible. For heirs, that may involve additional red tape (cf. Article 21). To be on the safe side, accordingly, the rapporteur has made a second proposal, which, to his mind, contains the minimum which should be laid down so as not to interfere with national substantive and procedural law.

### Agreements as to succession

In IPL, agreements as to succession are a particular problem in that, in some countries, they are unknown or even not allowed. It should be clear that the law on succession and hence, for example, on indefeasible interests would be separately determined by the regulation, for each party to an agreement as to succession.

The changes ought also to be in the interests of Member States in which agreements as to succession are unknown.

### Public policy

The public policy caveat is a recognised legal principle in IPL. In relations between the Member States, given their shared legal beliefs and values, it should no longer have significance.

Misgivings that there would be new ways and means of evading law on indefeasible interests are baseless. Law on indefeasible interests exists in virtually all Member States, albeit in differing forms. If a testator opts for his or her home country's law, there is no reason even to consider the possibility of evasion. If the choice-of-law right had been linked to habitual residence, that would have been a justifiable fear. Under this proposal, it would not be enough

for individuals to take up habitual residence in another Member State; rather, they would have to have been habitually resident there at time of death (but would not have to have actually died there). It would appear somewhat far-fetched to assume that many people will transfer their residence on that basis with the intention of keeping it there until they die. Individuals intent on evading the law at all costs will find ways and means of doing so under the legislation in force.

#### Recognition of authentic instruments

The rapporteur is in favour of the recognition of authentic instruments in that they should freely circulate and there should be 'recognition' of their authenticity and formal evidentiary effect. The term 'recognition' may lead to misunderstandings, however, since it is not self-evident, but, rather, would have to be interpreted on a case-by-case basis.

#### European Certificate of Succession

The European Certificate of Succession should be restricted to cross-border matters. Any entity dealing with an estate - courts, authorities, notaries, etc. - should be competent to issue it. Such entities should be determined by the Member State whose competence is established in accordance with Chapter II.

## PROCEDURE

<b>Title</b>	Jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession			
<b>References</b>	COM(2009)0154 – C7-0236/2009 – 2009/0157(COD)			
<b>Date submitted to Parliament</b>	14.10.2009			
<b>Committee responsible</b> Date announced in plenary	JURI 22.10.2009			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	LIBE 22.10.2009			
<b>Not delivering opinions</b> Date of decision	LIBE 10.5.2010			
<b>Rapporteur(s)</b> Date appointed	Kurt Lechner 9.11.2009			
<b>Discussed in committee</b>	2.12.2009	28.1.2010	22.3.2010	29.4.2010
	1.12.2010	21.3.2011	20.6.2011	11.7.2011
<b>Date adopted</b>	1.3.2012			
<b>Result of final vote</b>	+: 21	–: 0	0: 2	
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka			
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Cristian Silviu Buşoi, Kurt Lechner, Eva Lichtenberger, Angelika Niebler, Dagmar Roth-Behrendt			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Oreste Rossi, Jacek Włosowicz			
<b>Date tabled</b>	6.3.2012			