The European Union Succession Regulation

EUROPEAN COMMISSION
DG Justice and Consumers
Unit A1 – Civil Justice

Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

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Background

- 1997 Amsterdam Treaty (in force on 1 May 1999): justice and home affairs brought into EC Treaty
- Objective: to establish an area of freedom, security and justice
- Judicial cooperation in civil matters: Art 81 TFEU
- Tampere (1999), Hague (2004) and Stockholm (2010) programmes: jurisdiction, applicable law, recognition and enforcement, European certificate of succession

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Chronology

- 2002: "Study on Conflict of Law of Succession in the European Union" by the German Notary Institute
- 2005: Green Paper on succession and wills
- 2006: Public consultation and public hearing
- 2006-2008: Expert group
- 2008: Consultation of national experts on drafts of Commission proposal
- 14 October 2009: adoption of Commission proposal
- 4 July 2012: adoption of Succession Regulation (No 650/2012)
- 9 December 2014: adoption of Implementing Regulation (No 1329/2014)
- 17 August 2015: application of Succession Regulation

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Legal basis

- Judicial cooperation in civil matters: Article 81 TFEU
- Considered a civil and commercial matter: patrimonial aspect prevails
- Therefore, ordinary legislative procedure (Council acts by qualified majority, EP is co-legislator)
- Not considered as family law, which is subject to a special legislative procedure (Article 81(3): Council acts unanimously, EP is consulted)

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Before the Succession Regulation

- Difficult to predict which MS would have jurisdiction: authorities of different MS could be simultaneously competent (nationality of deceased, assets' location)
- Various national laws could simultaneously apply to one cross-border succession (depending on nature of assets)
- Limited freedom for testator to choose the applicable law so difficult to plan the succession
- Insufficient recognition and enforcement of decisions and documents from other MS
- Unsatisfactory recognition of the status of heir and administrator in other MS

→ Lengthy proceedings, uncertain outcomes, high legal costs

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Main features of the Regulation

- Essential: increasing number of citizens moving throughout the Union to work or start a family in another Member State
- 450,000 international successions take place each year, valued at more than €120 billion
- Aim: to facilitate the lives of citizens that live in a MS which is not their country of origin, or have assets or intended heirs in another MS
- How: helping citizens to handle the procedural legal aspects of their international succession

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Main features of the Regulation

- One single instrument: jurisdiction, applicable law, recognition and enforcement and a European Certificate of Succession
- One law, one authority: regardless of nature of assets (moveable or immoveable) and their location
- One connecting factor for jurisdiction and applicable law: last habitual residence of deceased => however, possibility to choose national law as applicable law
- Parallel proceedings and conflicting judicial decisions are avoided: harmonised jurisdiction rules, lis pendens
- Free movement of court decisions and authentic instruments: simplified rules for recognition and enforcement of court decisions and acceptance of authentic instruments in another MS
- European Certificate of Succession (ECS): heir, legatee, administrator of the estate and executor of the will can prove their status in another MS

When does the Regulation apply?

- Regulation does not apply in the UK, IE and DK: authorities of these non-participating MS are not bound to apply the Regulation to international successions
- Why does the Regulation not apply to UK, IE and DK?
  - Protocol 21 TFEU: position of UK and IE in area of freedom, security and justice: opt-in on a case-by-case basis –> did not opt in the Succession Regulation
  - Protocol 22 TFEU: position of DK in area of freedom, security and justice: opt-out
- Regulation applies in 25 participating MS regardless of the habitual residence of the testator, his nationality, the location of his assets or his place of death

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When does the Regulation apply?

- Application of Regulation depends on <u>which authorities handle the succession</u> (or part of it):

  - if authorities handling the succession (or part of it) belong to a participating MS, Regulation applies to succession

  - if authorities handling the succession (or part of it) belong to a non-participating MS, authorities will apply their national private international law rules

- Therefore:

  - nationals of non-participating MS (and of third countries) can benefit from the Regulation (in particular from the provisions on choice of law), provided their succession is handled by the authorities of a participating MS;

  - nationals of participating MS whose succession is handled in a non-participating MS will not benefit from the Regulation

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What authority will be competent?

- In some participating MS succession proceedings are opened ex-officio by courts of deceased's habitual residence
- But, generally, heirs decide what authorities should handle the succession:
  - they can agree to choose a notary in <u>any</u> MS
  - in case of disagreement, the interested party can bring the succession to a court competent under the Regulation
- If the court seised by a party is in a participating MS, the court will apply the Regulation to check whether it has jurisdiction
- If the court seised by a party is not in a participating MS, the court will apply its national private international law rules to determine whether it has jurisdiction
- Notaries are not bound by the jurisdiction rules of the Regulation unless they are regarded as courts under their national law

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What court will be competent?

- Courts of the participating MS where the deceased had his last habitual residence
- But a choice of court is possible: if the deceased chose the law of a participating MS, heirs can agree that the courts of this MS and not those of the MS of the deceased's habitual residence should deal with (one, several or all questions concerning) the succession
- If the deceased did not live in a participating MS but had assets in a participating MS, the courts of this MS will be competent over the succession as a whole if:
  - the deceased had the nationality of this MS, or
  - had his previous habitual residence there
- In any case, courts of this MS will be competent over assets located there

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What law will apply?

- Substantive law on succession remains national
- The applicable law under the Regulation will be:
  - the law of the last habitual residence of the deceased, unless
  - choice of law: the deceased had chosen the law of his nationality (in his will or a separate declaration). This can be the law of any State → universal application
- If deceased has multiple nationalities, he can choose any of his national laws
- The authorities applying the law of another State (whether a participating MS, a non-participating MS or a third country) may refuse to apply a provision contrary to their public policy

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What law will apply?

- One law applies to the whole estate. Applicable law covers:
  - all movable and immovable property, regardless of where assets are located (no scission)
  - from the opening of the succession to the final transfer of ownership
- Renvoi is not accepted between MS (no scission)
- Renvoi is accepted where the applicable law of a non-participating MS makes a renvoi to the law of a participating MS, e.g. UK law making a renvoi to French law for a house located in France (exception to non-scission)
- Renvoi to the law of a non-participating MS or a third country will not take place where there is a choice of law by the testator
- If Regulation does not apply, the applicable law will be determined in accordance with the national private international law rules of the authorities handling the succession (not all national laws allow a choice of law)

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Recognition and enforcement

- A participating MS will apply the simplified provisions on recognition and enforcement of the Regulation to a court decision given in another participating MS
- Under the Regulation, recognition is automatic and enforcement is subject to a declaration of enforceability. Recognition and enforceability can be opposed on public policy grounds
- A participating MS will recognise and enforce a court decision or a public document issued in a *non*-participating MS in accordance with its national private international law rules applicable to third countries
- Authentic instruments (for example, notarial acts containing a will or a national certificate of succession) will be accepted in another participating MS. Acceptance can be opposed on public policy grounds

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European Certificate of Succession

- Document issued on request to an heir, legatee, executor of a will and administrator of the estate who wants to exercise rights or powers over assets located in another MS
- Use not mandatory
- Does not replace national certificates, but once issued for cross-border purposes, its effects are also recognised in the MS of issue
- ECS issued in accordance with the applicable law by an authority which has jurisdiction under the Regulation:
  - a court, or
  - an authority competent on succession (notary)

European Certificate of Succession

- ECS is recognised as evidence of the information it contains. Not an enforceable title
- National certificates of succession are accepted in other MS but their effects are different depending on the MS of issue
- Advantages of ECS: it has the <u>same effects in all MS</u>:
  - must be recognised without any procedure being required and cannot be opposed on public policy grounds
  - valid for registration of succession property in land registers
  - rights of third parties acting in good faith on the basis of an ECS are protected

Registration of ECS and wills?

- Regulation does not require the registration of ECS or national wills
- 2011: Council invited Commission to consider the feasibility of an electronic register of ECS
- e-Justice Action Plan 2014-2018 proposes action on:
  - an electronic ECS (e-ECS)
  - the interconnection of national registers of wills and electronic ECS
- In application of 1972 Council of Europe Basel Convention on registration of wills, 13 MS have interconnected their national wills registers in the context of a notaries' association (ENRWA)

Registration of ECS and wills?

- 2016: Commission commissioned a study to:
  - map MS situation on the existence of electronic ECS, the registration of ECS and the interconnection of ECS registers
  - map MS situation on the registration of wills and the interconnection of wills registers
  - consult stakeholders views: notaries, judges, lawyers, land registers
- In view of findings and stakeholders' views, Commission will consider what measures are appropriate