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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
COM(2009) 154/4

2009/xxxx (COD)

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**

{SEC(2009) 410}

{SEC (2009)411}

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND TO THE PROPOSAL

#### 1.1. General background

Article 61 of the Treaty establishing the European Community (hereinafter the “Treaty”) sets out the objective of progressively establishing a common area of freedom, security and justice, in particular by adopting measures in the field of judicial cooperation in civil matters. Article 65 explicitly mentions measures “improving and simplifying the recognition and enforcement of decisions in civil and commercial matters, including decisions in extrajudicial cases” and “promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction”. The numerous instruments which have already been adopted on this basis, in particular Regulation (EC) No 44/2001<sup>1</sup>, exclude succession from their scope.

The adoption of a European instrument in the area of successions was already one of the priorities of the 1998 Vienna Action Plan<sup>2</sup>. The Hague Programme<sup>3</sup> calls for the presentation of an instrument covering all the issues involved: applicable law, jurisdiction and recognition, administrative measures (certificates of inheritance, registration of wills). In accordance with the conclusions of the impact assessment, the question of the registration of wills will be dealt with as part of a future Community initiative.

#### 1.2. Grounds for and objectives of the proposal

The significance of cross-border successions within the European Union has been highlighted in the impact assessment attached to the proposal. The diversity of both the rules under substantive law and the rules of international jurisdiction or of applicable law, the multitude of authorities to which international succession matters can be referred and the fragmentation of successions which can result from these divergent rules are obstacles to the free movement of persons in the Union. Today, such persons are therefore faced with considerable difficulties in asserting their rights with regard to an international succession. These divergent rules also prevent the full exercise of private property law, which, in accordance with the settled case law of the Court of Justice, forms an integral part of the fundamental rights which the Court ensures are respected<sup>4</sup>. The objective of this proposal is to enable people living in the European Union to organise their succession in advance and effectively to guarantee the rights of heirs and/or legatees and of other persons linked to the deceased, as well as creditors of the succession.

### 2. RESULT OF THE CONSULTATIONS – IMPACT ASSESSMENT

Before this proposal was drawn up, a wide-ranging consultation exercise took place within the Member States, the other institutions and the public. The Commission was sent a “Study on international successions in the European Union”, which had been drawn up by the German

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1.

<sup>2</sup> OJ C 19, 23.1.1999.

<sup>3</sup> See the Presidency conclusions, Brussels European Council, 4 and 5 November 2004.

<sup>4</sup> Case C-200/96 *Metronome Musik* [1998] ECR I-01953; Joined Cases C-154 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-06451.

Institute of Notaries in November 2002<sup>5</sup>. Its Green Paper on successions and wills<sup>6</sup>, which was published on 1 March 2005, elicited 60 or so replies and was followed by a public hearing on 30 November 2006<sup>7</sup>. A group of experts known as “PRM III/IV”, set up by the Commission on 1 March 2006<sup>8</sup> met on seven occasions between 2006 and 2008, and the Commission organised a meeting of national experts on 30 June 2008. The contributions received confirm the need for a Community instrument in this area and support the adoption of a proposal covering, among other things, questions concerning applicable law, jurisdiction, recognition and enforcement of decisions and the creation of a European Certificate of Succession<sup>9</sup>. The adoption of such an instrument has received the support of the European Parliament<sup>10</sup> and the European Economic and Social Committee<sup>11</sup>. The Commission has carried out an impact assessment which is attached to the proposal.

### **3. LEGAL ASPECTS OF THE PROPOSAL**

#### **3.1. Legal basis**

Article 67(5) of the Treaty stipulates that the Council may take the measures provided for in Article 65 using the co-decision procedure laid down in Article 251 of the Treaty, except with regard to “aspects relating to family law”.

It should first be emphasized that the vast majority of Member States, with the exception of the Nordic countries, classify the law of succession as a matter distinct from family law on account of the fact that it mainly covers property. Even at the level of substantive law, there are significant differences between the two matters. The main aim of the law of succession is to define the rules for passing on the inheritance and for regulating the transfer of the inheritance itself. Unlike inheritance law, the objective of family law is to govern above all the legal relationships linked to marriage and partnerships, filiation and the civil status of persons. Its basic social function is to protect family ties. Moreover, in contrast to family law, where the wishes of individuals play a very minor role and the vast majority of ties are governed by public policy, the law of succession remains a matter where the wishes of the entitled party play an important role.

There is therefore sufficient autonomy within these two branches of civil law for these matters to be treated separately from each other. Furthermore, as this is an exception, Article 67(5), second indent, of the Treaty must continue to be interpreted and applied strictly by the institutions. The exception is therefore not applicable to this Regulation as far as succession is concerned.

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<sup>5</sup> <http://www.successions.org>.

<sup>6</sup> COM(2005) 65, <http://europa.eu/scadplus/leg/en/lvb/l16017.htm>.

<sup>7</sup> [http://ec.europa.eu/justice\\_home/news/consulting\\_public/successions/contributions/summary\\_contributions\\_successions\\_fr.pdf](http://ec.europa.eu/justice_home/news/consulting_public/successions/contributions/summary_contributions_successions_fr.pdf)

<sup>8</sup> OJ C 51, 1.3.2006, p. 3.

<sup>9</sup>

[http://ec.europa.eu/justice\\_home/news/consulting\\_public/successions/contributions/summary\\_contributions\\_successions\\_fr.pdf](http://ec.europa.eu/justice_home/news/consulting_public/successions/contributions/summary_contributions_successions_fr.pdf)

<sup>10</sup> Resolution of 16.11.2006, P6\_TA(2006)0496.

<sup>11</sup> Opinion of 26.10.2005, OJ C 28, 3.2.2006, pp. 1-5.

The Community institutions have a certain margin of discretion in determining whether a measure is necessary for the proper functioning of the internal market. The objective of this proposal is to eliminate all the obstacles to the free movement of persons arising out of the differences between the rules of the Member States governing international successions.

### **3.2. Subsidiarity principle**

The objectives of the proposal can be met only by way of common rules governing international successions which must be identical in order to guarantee legal certainty and predictability for citizens. Unilateral action by Member States would therefore run counter to this objective. There is a Hague Convention concerning the law relating to successions (“the Convention”) which has never entered into force<sup>12</sup>. The Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions has been ratified by 16 Member States. It would be desirable for the other Member States to ratify the Convention in the interests of the Community.

All the consultations and studies have illustrated the amplitude of the problems with which this proposal deals.

### **3.3. Proportionality principle and choice of instrument**

The proposal does not go beyond what is strictly necessary to achieve its objectives. It does not harmonize either the law of succession or the property law of Member States. Nor does it affect the way in which inheritances are taxed by Member States. Consequently, international successions could continue to give rise to inconsistencies between national tax systems and they may lead to double taxation or discrimination. The Commission intends to present a communication addressing these issues in the course of 2010.

The need for legal certainty and predictability calls for clear and uniform rules and imposes the form of a regulation. The objectives would be compromised if the Member States had some discretion with regard to implementing the rules.

## **4. COMMENTS ON THE ARTICLES**

### **4.1. Chapter I: Scope of application and definitions**

#### *Article 1*

The concept of “succession” must be interpreted in an autonomous manner and encompasses all the elements of a succession, in particular its handover, administration and liquidation.

The exclusion of rights and properties created or transferred other than by means of succession to the estates of deceased persons covers not only the forms of joint property [joint tenancy] known under *common law*, but also all forms of gifts under civil law.

The exception envisaged for *trusts* is not an obstacle to the application to succession of the law governing it on the basis of this Regulation.

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<sup>12</sup> The Hague Convention of 1 August 1989 on the law applicable to succession to the estates of deceased persons.

Paragraph (j) stipulates that the Regulation applies to the acquisition of a right in rem relating to inherited property, but not to the content of such a right. The Regulation does not affect the "*numerus clausus*" of property law in the Member States, the classification of property and rights, and the determination of the prerogatives of the holder of such rights. As a consequence, it is not, in principle, valid to establish a right in rem without knowing the law of the place in which the property is located. The law on succession cannot lead to the introduction in the State in which the property is located of a property law clause, or the stripping of such clause, without the knowledge of the State. For example, usufruct cannot be introduced in a State which does not recognise it. However, this exception does not apply to the transfer of a right in rem recognised by the Member State in which the inherited property is located.

The publication of property rights, in particular the functioning of the land register and the effects of an entry or failure to make an entry in this register, is also excluded.

#### *Article 2*

**Courts:** More often than not, successions are settled out of court. The concept of courts used in this Regulation is used in its broadest sense and includes other authorities where they exercise a function falling within the jurisdiction of the courts, in particular by means of delegation, including notaries and court clerks.

### **4.2. Chapter II: Jurisdiction**

#### *Article 4*

The rules of legal jurisdiction relating to succession vary considerably between the Member States. This leads to positive conflicts, where the courts in several States declare themselves to be competent, or negative conflicts, where no court declares itself to be competent. In order to avoid these difficulties for citizens, a uniform rule is required. The competence of the Member State where the deceased had their last habitual residence is the most widespread method used in the Member States and frequently coincides with the location of the deceased's property. These courts will be competent to rule on all elements of the succession, irrespective of whether adversarial or non-adversarial proceedings are involved.

#### *Article 5*

Referral to a more appropriate court should not be automatic where the deceased has chosen the law of another Member State. The competent court should take into account, among other things, the interests of the deceased, the heirs, legatees and creditors, and their habitual residence. This rule would in particular allow a balanced solution to be found where the deceased had lived for a short while in a Member State other than that of their nationality and where their family has remained in their Member State of origin.

#### *Article 6*

Where the deceased had their residence in a third State, this rule guarantees access to justice for Community heirs and creditors where the location has close links with a Member State on account of the presence of property.

#### *Article 9*

The close links between the succession rules and the substantive rules require exceptional jurisdiction on the part of the courts in the Member State in which the property is located where the law of that Member State requires the intervention of its courts. However, this jurisdiction is strictly limited to the aspects of substantive law relating to the transmission of the property.

### **4.3. Chapter III: Applicable law**

#### *Article 16*

##### *A single scheme*

The disadvantages of the so-called system of scission, in which succession to movable assets is subject to the law of residence of the deceased and succession to the estate is subject to the law of the State in which the property is located, were highlighted in the consultations. The system creates several bodies of assets, each one subject to a different law which determines differently heirs and their respective shares, and the division and liquidation of the succession. The choice to create a single scheme by means of a regulation allows the succession to be subjected to a single law, thereby avoiding these disadvantages. A single scheme also enables a testator to plan the division of their property between their heirs in a fair manner, irrespective of the location of this property.

##### *The connecting factor: the law of the last habitual residence of the deceased*

The Regulation retains this law, instead of the law of nationality, as it coincides with the centre of interest of the deceased and often with the place where most of their property is located. Such a connection is more favourable to integration into the Member State of habitual residence and avoids any discrimination regarding persons who are resident there without possessing the relevant nationality. Habitual residence has also been retained in the conflict-of-law rules of several Member States and in all modern legal instruments, in particular in the Convention.

#### *Article 17*

All the legal systems of the Member States have mechanisms intended to guarantee support for the relatives of the deceased, including primarily the mechanisms concerning the reserved portion of an estate. However, testators who are nationals of Member States in which *inter vivos* gifts are considered irrevocable may confirm the validity of such acts by opting for their national law as that applying to their successions. A key objective of the Regulation is to ensure that these mechanisms are respected. By allowing the testator a choice of law, a compromise needed to be found between the benefits of such a choice, e.g. legal certainty and a greater ability to plan their succession, and the protection of the legitimate interests of the relatives of the deceased, in particular the surviving spouse and children. For this reason, the Regulation allows the testator only to choose the law governing their nationality, and this must be assessed in conjunction with the general rule leading to the application of the law of residence. This choice enables the testator who has benefited from the freedom of movement offered within the Union but who is keen to preserve close links with their country of origin to maintain these cultural links by means of their succession. This solution has also been advocated by the European Parliament.

*Exclusion of other choices:* The Regulation has removed the possibility of choosing as the law applicable to succession the law applicable to matrimonial property scheme of the testator. Such a provision would have allowed multiple choices where, for the matrimonial property schemes, the spouses benefit from greater flexibility in their choice of applicable law. This would have run counter to the above objectives.

#### *Article 18*

It is vital to provide for rules governing the law applicable to the agreements as to succession and joint wills used in certain States, e.g. in order to organise the transfer of a company and for couples to allow the surviving spouse to benefit from joint property.

#### *Article 21*

The aim of this Article is to take into account the specific features of *common law* legal systems, such as the English legal system, where the heirs do not directly acquire the rights of the deceased upon the latter's death but where the succession is managed by an administrator appointed and supervised by the judge.

#### *Article 22*

On account of their economic, family or social purpose, some buildings, enterprises or other categories of property are subject to a special succession regime in the Member State in which they are located, and this should be respected. Such a special scheme exists, for example, for family farms. This exception requires strict interpretation in order to remain compatible with the general objective of this Regulation. In particular, it does not apply to the system of scission or to the reserved portion of an estate.

#### *Article 27*

Recourse to public policy must occur in exceptional circumstances only. Differences between the laws relating to the protection of the legitimate interests of the relatives of the deceased must not be used to justify its use, as this would be incompatible with the objective of ensuring the application of a single law to all of the succession property.

### **4.4. Chapter IV: Recognition and enforcement**

The provisions contained in this Chapter are based on the corresponding rules contained in Regulation (EC) No 44/2001. Provision is made for the recognition of all the decisions and legal transactions in order to give substance in succession matters to the principle of mutual recognition, which is based on the principle of mutual trust. The grounds for non-recognition have therefore been kept to the necessary minimum.

### **4.5. Chapter V: Authentic instruments**

In view of the practical importance of authentic instruments in succession matters, this Regulation should ensure their recognition in order to allow their free movement. This recognition means that they will enjoy the same full and complete evidentiary effect in respect of the contents of the recorded instruments and the facts contained therein as that of national authentic instruments or on the same basis as in their country of origin, a presumption of authenticity, and an enforceable nature within the limits set by this Regulation.

#### **4.6. Chapter VI: European Certificate of Succession**

In order to enable international successions to be settled rapidly, this Regulation introduces a European Certificate of Succession. To facilitate its circulation in the Union, a uniform model certificate should be adopted and an authority appointed which would have the international competence to issue it. Consistency with the rules of substantive jurisdiction requires that the authority should be the same court as has jurisdiction to settle the succession.

This certificate does not replace existing certificates in certain Member States. In the Member State of the competent authority, the capacity of heir and the powers of an administrator or executor of the succession must therefore be proven according to the domestic procedure.

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission<sup>13</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, it has to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.
- (2) In accordance with Article 65(b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the 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.
- (4) On 30 November 2000 the Council adopted a draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters<sup>15</sup>. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of decisions. It provides for the drawing up of an instrument relating to successions and wills, which were not included in Council Regulation (EC) No 44/2001 of 22

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<sup>13</sup> OJ C , , p. .

<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ C 12, 15.1.2001, p. 1.

December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>16</sup>.

- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme entitled “The Hague Programme: strengthening freedom, security and justice in the European Union”<sup>17</sup>. The programme underlines the need to adopt by 2011 an instrument on the law of succession which deals among other things with the issue of conflict of laws, legal jurisdiction, mutual recognition and the enforcement of decisions in this area, a European Certificate of Succession and a mechanism enabling it to be known with certainty if a resident of the European Union has left a last will or testament.
- (6) The smooth 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 an international succession. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and/or legatees, other persons linked to the deceased and creditors of the succession must be effectively guaranteed.
- (7) In order to achieve these objectives, this Regulation should group together the provisions on legal jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in this area and on the European Certificate of Succession.
- (8) The scope of this Regulation should include all questions arising in civil law in connection with succession to the estates of deceased persons, namely all forms of transfer of property as a result of death, be it by voluntary transfer, transfer in accordance with a will or an agreement as to succession, or a legal transfer of property as a result of death.
- (9) The validity and effects of gifts are covered by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)<sup>18</sup>. They should therefore be excluded from the scope of this Regulation in the same way as other rights and assets created or transferred other than by succession. However, it is the law on succession determined pursuant to this Regulation which should specify if this gift or other form of provisions *inter vivos* giving rise to an immediate right in rem can lead to any obligation to restore or account for gifts when determining the shares of heirs or legatees in accordance with the law on succession.
- (10) While this Regulation should cover the method of acquiring a right in rem in respect of tangible or intangible property as provided for in the law governing the succession, the exhaustive list (“*numerus clausus*”) of rights in rem which may exist under the national law of the Member States, which is, in principle, governed by the *lex rei sitae*, should be included in the national rules governing conflict of laws. The publication of these rights, in particular the functioning of the land registry and the effects of entry or

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<sup>16</sup> OJ L 12, 16.1.2001, p. 1.

<sup>17</sup> OJ C 53, 3.3.2005, p. 1.

<sup>18</sup> OJ L 177, 4.7.2008, p. 6.

failure to make an entry into the register, which is also governed by local law, should also be excluded.

- (11) In order to take into account the different methods of settling a succession in the Member States, this Regulation should define the jurisdiction of the courts in the broad sense, including the jurisdiction of non-judicial authorities where they exercise a jurisdictional role, in particular by delegation.
- (12) In view of the increasing mobility of European citizens and in order to encourage good administration of justice within the European Union and to ensure that a genuine connecting factor exists between the succession and the Member State exercising jurisdiction, this Regulation should provide for the competence of the courts of the Member State of the last habitual residence of the deceased for the whole of the succession. For the same reasons, it should allow the competent court, by way of exception and under certain conditions, to transfer the case to the jurisdiction where the deceased had nationality if the latter is better placed to hear the case.
- (13) In order to facilitate mutual recognition, no referral to the rules of jurisdiction under national law should be envisaged from now on. There are therefore grounds for determining in this Regulation the cases in which a court in a Member State can exercise subsidiary jurisdiction.
- (14) In order to simplify the lives of heirs and legatees living in a Member State other than that in which the courts are competent to settle the succession, the settlement should authorise them to make declarations regarding the acceptance or waiver of succession in the manner provided for under the law of their last habitual residence, if necessary before the courts of that State.
- (15) The close links between the succession rules and the substantive rules mean that the Regulation should provide for the exceptional competence of the courts of the Member State where the property is located if the law of this Member State requires the intervention of its courts in order to take measures covered by substantive law relating to the transmission of this property and its recording in the land registers.
- (16) The harmonious functioning of justice requires that irreconcilable decisions should not be pronounced in two Member States. To this end, this Regulation should provide for general rules of procedure based on Regulation (EC) No 44/2001.
- (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 rules governing conflict of laws should be introduced in order to avoid contradictory decisions being delivered in the Member States. The main rule should ensure that the succession is governed by a predictable law to which it is closely linked. Concern for legal certainty requires that this law should cover all of the property involved in the succession, irrespective of its nature or location, in order to avoid difficulties arising from the fragmentation of the succession.
- (18) This Regulation should make it easier for citizens to organise their succession in advance by enabling them to choose the applicable law. This choice should be subject to strict rules in order to respect the legitimate expectations of the heirs and legatees.

- (19) The validity of the form of dispositions of property upon death is not covered by the Regulation. For the Member States which have ratified it, its scope is governed by the provisions of the Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions.
- (20) In order to facilitate recognition of succession rights acquired in a Member State, the conflict-of-laws rule should favour the validity of the agreements as to succession by accepting alternative connecting factors. The legitimate expectations of third parties should be preserved.
- (21) To the extent compatible with the general objective of this Regulation and in order to facilitate the transmission of a right in rem acquired under the law on succession, this Regulation should not present an obstacle to the application of certain mandatory rules of law of the place in which property is located that are exhaustively listed.
- (22) On account of their economic, family or social purpose, some buildings, enterprises or other categories of property are subject to a particular succession regime in the Member State in which they are located. This Regulation should respect the particular regime. However, this exception to the application of the law on succession requires strict interpretation in order to remain compatible with the general objective of this Regulation. The exception does not apply in particular to the conflict-of-laws rule subjecting immovable property to a different law from that applicable to movable property or to the reserved portion of an estate.
- (23) The differences between, on the one hand, national solutions as to the right of the State to seize a vacant succession and, on the other hand, the handling of a situation in which the order of death of one or more persons is not known can lead to contradictory results or, conversely, the absence of a solution. This Regulation should provide for a result consistent with the substantive law of the Member States.
- (24) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of foreign law in a given case where this would be contrary to the public policy of the forum. However, the courts should not be able to apply the public-policy exception in order to disregard the law of another Member State or to refuse to recognise or enforce a decision, an authentic instrument, a legal transaction or a European Certificate of Succession drawn up in another Member State when this 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 concerning succession to the estates of deceased persons, this Regulation should lay down rules relating to the recognition and enforcement of decisions on the basis of Regulation (EC) No 44/2001 and which should be adapted where necessary to meet the specific requirements of matters covered by this Regulation.
- (26) In order to take into account the different methods of settling the issues regarding successions in the Member States, this Regulation should guarantee the recognition and enforcement of authentic instruments. Nevertheless, the authentic instruments cannot be treated as court decisions with regard to their recognition. The recognition

of authentic instruments means that they enjoy the same evidentiary effect with regard to their contents and the same effects as in their country of origin, as well as a presumption of validity which can be eliminated if they are contested. This validity will therefore always be contestable before a court in the Member State of origin of the authentic instrument, in accordance with the procedural conditions defined by the Member State.

- (27) An accelerated, manageable and efficient settlement of international successions within the European Union implies the possibility for the heir, legatee, executor of the will or administrator to prove easily on an out-of-court basis their capacity in the Member States in which the property involved in the succession is located. In order to facilitate free movement of this proof within the European Union, this Regulation should introduce a uniform model for the European Certificate of Succession and appoint the authority competent to issue it. In order to respect the principle of subsidiarity, this certificate should not replace the internal procedures of the Member States. The Regulation should specify the linkage with these procedures.
- (28) The international commitments entered into by the Member States mean that this Regulation should not affect the international conventions to which one or more Member States are party when they are adopted. Consistency with the general objectives of this Regulation requires, however, that the Regulation take precedence as between Member States over the conventions.
- (29) In order to facilitate the application of this Regulation, provision should be made for an obligation for Member States to communicate certain information regarding their law on succession within the framework of the European legal network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001<sup>19</sup>.
- (30) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>20</sup>.
- (31) It would be particularly appropriate to enable the Commission to adopt any amendment to the forms provided for in this Regulation in accordance with the procedure laid down in Article 3 of Decision 1999/468/EC.
- (32) Where the concept of “nationality” serves to determine the law applicable, account should be taken of the fact that certain States whose legal system is based on *common law* use the concept of “*domicile*” and not “nationality” as an equivalent connecting factor in matters of succession.
- (33) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by European citizens of their succession in an international context, the rights of heirs and legatees, and persons linked to the deceased and the creditors of the succession, cannot be satisfactorily met by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may take measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of

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<sup>19</sup> OJ L 174, 27.6.2001, p. 25.

<sup>20</sup> OJ L 184, 17.7.1999, p. 23.

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 fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Article 21 thereof which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. This Regulation must be applied by the courts of the Member States in observance of these rights and principles.
- (35) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, [the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].
- (36) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is therefore 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 successions to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.
2. In this Regulation, “Member State” means all the Member States with the exception of Denmark, [the United Kingdom and Ireland].
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 which are similar in effect;
  - (b) the legal capacity of natural persons, notwithstanding Article 19(2)(c) and (d);
  - (c) the disappearance, absence and presumed death of a natural person;

- (d) questions regarding the matrimonial property regime and the property regime applicable to relationships which are deemed to have comparable effects to marriage;
- (e) maintenance obligations;
- (f) rights and assets created or transferred other than by succession to the estate of deceased persons, including gifts, such as in joint ownership with right of survival, pension plans, insurance contracts and or arrangements of a similar nature, notwithstanding Article 19(2)(j);
- (g) questions covered by company law, such as clauses contained in company memoranda of association and articles of association, associations and legal persons and determining what will happen to the shares upon the death of their partners;
- (h) the dissolving, closure and merging of enterprises, associations and legal persons;
- (i) the constitution, functioning and dissolving of trusts;
- (j) the nature of rights in rem relating to property and publicising these rights.

*Article 2*  
*Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (a) “succession to the estates of deceased persons”: all forms of transfer of property as a result of death, be it by voluntary transfer, in accordance with a will or an agreement as to succession, or a legal transfer of property as a result of death;
- (b) “court”: any judicial authority or any competent authority in the Member States which carries out a judicial function in matters of succession. Other authorities which carry out by delegation of public power the functions falling within the jurisdiction of the courts as provided for in this Regulation shall be deemed to be courts.
- (c) “agreement as to succession”: an agreement which confers, modifies or withdraws, with or without consideration, rights to the future succession of one or more persons who are party to the agreement;
- (d) “joint wills”: wills drawn up by two or more persons in the same instrument for the benefit of a third party and/or on the basis of a reciprocal and mutual disposition;
- (e) “home Member State”: the Member State in which, depending on the case, the decision has been given, the legal transaction approved or concluded and the authentic instrument drawn up;

- (f) “Member State addressed”: the Member State in which recognition and/or enforcement of the decision, the legal transaction or the authentic instrument is requested;
- (g) “decision”: any decision given in a matter of succession to the estate of a deceased person by a court of a Member State, whatever the decision may be called, including a decree, order, ordinance or writ of execution, as well as the determination of costs or expenses by an officer of the court;
- (h) “authentic instrument”: an instrument which has been formally drawn up or registered as an authentic instrument and the authenticity of which:
  - relates to the signing and content of the authentic instrument; and
  - has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;
- (i) “European Certificate of Succession”: the certificate issued by the competent court pursuant to Chapter VI of this Regulation.

## **Chapter II**

### **Jurisdiction**

#### *Article 3 Courts*

The provisions of this Chapter shall apply to all courts in the Member States but shall apply to non-judicial authorities only where necessary.

#### *Article 4 General jurisdiction*

Notwithstanding the provisions of this Regulation the courts of the Member State on whose territory the deceased had habitual residence at the time of their death shall be competent to rule in matters of successions.

#### *Article 5 Referral to a court better placed to hear the case*

1. Where the law of a Member State was chosen by the deceased to govern their succession in accordance with Article 17, the court seised in accordance with Article 4 may, at the request of one of the parties and if it considers that the courts of the Member State whose law has been chosen are better placed to rule on the succession, stay proceedings and invite the parties to seise the courts in that Member State with the application.

2. The competent court in accordance with Article 4 shall set a deadline by which the courts of the Member State whose law has been chosen must be seised in accordance with paragraph 1. If the courts are not seised by that deadline, the court seised shall continue to exercise its jurisdiction.
3. The courts of the Member State whose law has been chosen shall declare themselves competent within a maximum period of eight weeks from the date on which they were seised in accordance with paragraph 2. In this case, the court seised first shall decline jurisdiction. Otherwise, the court seised first shall continue to exercise its jurisdiction.

*Article 6*  
*Residual jurisdiction*

Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State shall nevertheless be competent on the basis of the fact that succession property is located in that Member State and that:

- (a) the deceased had their previous habitual residence in that Member State, provided that such residence did not come to an end more than five years before the court was deemed to be seised; or, failing that,
- (b) the deceased had the nationality of that Member State at the time of their death; or, failing that,
- (c) an heir or legatee has their habitual residence in the Member State; or, failing that,
- (d) the application relates solely to this property.

*Article 7*  
*Counterclaim*

The court before which proceedings are pending under Article 4, 5 or 6 shall also be competent to examine the counterclaim where this falls within the scope of this Regulation.

*Article 8*  
*Jurisdiction to accept or waive succession*

The courts in the Member State of the habitual residence of the heir or legatee shall also be competent to receive declarations concerning the acceptance or waiver of succession or legacy or designed to limit the liability of the heir or legatee where such declarations must be made before a court.

*Article 9*  
*Competence of courts in the place in which the property is located*

Where the law of the Member State of the place in which property is located requires the involvement of its courts in order to take measures under substantive law relating to the transmission of the property, its recording or transfer in the public register, the courts of the Member State shall be competent to take such measures.

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 they were 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 formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps that they were required to take to have the document lodged with the court.

*Article 11*

*Examination as to jurisdiction*

Where a court of a Member State is seised of a case 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 with jurisdiction shall be responsible for staying 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 defend themselves 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>21</sup> shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document has had to be sent from one Member State to another pursuant to that Regulation.
3. Where the provisions of Council Regulation (EC) No 1393/2007 are 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 has to be sent 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.

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<sup>21</sup> OJ L 324, 10.12.2007, p. 79.

*Article 14*  
*Related actions*

1. Where related actions are pending before 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 in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

*Article 15*  
*Provisional, including protective, measures*

Application may be made to the judicial authorities of a Member State for such provisional or 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 16*  
*General rule*

Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be that of the State in which the deceased had their habitual residence at the time of their death.

*Article 17*  
*Freedom of choice*

1. A person may choose as the law to govern the succession as a whole the law of the State whose nationality they possess.
2. The law applicable to the succession must be expressly determined and included in a declaration in the form of a disposition of property upon death.
3. The existence and the validity in substantive terms of the consent to this determination shall be governed by the determined law.
4. Modification or revocation by its author of such a determination of applicable law must meet the conditions for the modification or revocation of a disposition of property upon death.

*Article 18*  
*Agreements as to succession*

1. An agreement regarding a person's succession shall be governed by the law which, under this Regulation, would have been applicable to the succession of that person in the event of their death on the day on which the agreement was concluded. If, in accordance with this law, the agreement is not valid, its validity shall nevertheless be accepted if it is in accordance with the law which, at the time of death, is applicable to the succession under this Regulation. The agreement shall therefore be governed by this law.
2. An agreement concerning the succession of several persons shall be valid in substantive terms only if this validity is accepted by the law which, pursuant to Article 16, would have applied to the succession of one of the persons whose succession is involved in the event of death on the day on which the agreement was concluded. If the contract is valid pursuant to the law applicable to the succession of only one of those persons, that law shall apply. Where the contract is valid pursuant to the law applicable to the succession of several of these persons, the agreement shall be governed by the law with which it has the closest links.
3. The parties may determine as the law governing their agreement the law which the person or one of the persons whose succession is involved could have chosen in accordance with Article 17.
4. The application of the law provided for in this Article shall not prejudice the rights of any person who is not party to the agreement and who, in accordance with the law determined in Article 16 or 17, has an indefeasible interest or another right of which it cannot be deprived by the person whose succession is involved.

*Article 19*  
*Scope of applicable law*

1. The law determined in Chapter III shall govern the succession as a whole, from its opening to the final transfer of the inheritance to the beneficiaries.
2. This law shall govern in particular:
  - (a) the causes, time and place of the opening of succession;
  - (b) the eligibility of the heirs and legatees, including the inheritance rights of the surviving spouse, determination of the respective shares of such persons, the responsibilities imposed on them by the deceased, and the other rights governing succession which have their source in the death;
  - (c) the capacity to inherit;
  - (d) the particular causes of the incapacity to dispose or receive;
  - (e) disinheritance and debarment from succession;
  - (f) the transfer of assets and rights making up the succession to the heirs and legatees, including the conditions and effects of accepting or waiving the succession or legacy;

- (g) the powers of the heirs, the executors of the wills and other administrators of the succession, in particular the sale of property and the payment of creditors;
- (h) responsibility for the debts under the succession;
- (i) the freely disposable portion, the reserved portions and the other restrictions on the freedom to dispose of property upon death, including the allocations deducted from the succession by a judicial authority or another authority for the benefit of the relatives of the deceased;
- (j) any obligation to restore or account for gifts and the taking of them into account when determining the shares of heirs;
- (k) the validity, interpretation, amendment and revocation of a disposition of property upon death, with the exception of its formal validity;
- (l) sharing the inheritance.

#### *Article 20*

##### *Validity of the form of the acceptance or waiver*

Without prejudice to Article 19, acceptance or waiver of the succession or a legacy or a declaration made to limit the liability of the heir or legatee shall also be valid where it meets the conditions of the law of the State in which the heir or legatee has their place of habitual residence.

#### *Article 21*

##### *Application of the law of the State in the place in which the property is located*

1. The law applicable to the succession shall be no obstacle to the application of the law of the State in which the property is located where, for the purposes of acceptance or waiver of the succession or a legacy, it stipulates formalities subsequent to those laid down in the law applicable to the succession.
2. The law applicable to the succession shall be no obstacle to the application of the law of the Member State in which the property is located where it:
  - (a) subjects the administration and liquidation of the succession to the appointment of an administrator or executor of the will via an authority located in this Member State. The law applicable to the succession shall govern the determination of the persons, such as the heirs, legatees, executors or administrators of the will, who are likely to be appointed to administer and liquidate the succession;
  - (b) subjects the final transfer of the inheritance to the beneficiaries to the prior payment of taxes relating to the succession.

#### *Article 22*

##### *Special succession regimes*

The law applicable in accordance with this Regulation shall not prejudice the special succession regimes to which certain immovable property enterprises, enterprises or other special categories of property are subjected by the law of the Member State in which they are located on account of their economic, family or social purpose where, according to that law, this regime is applicable irrespective of the law governing the succession.

*Article 23*  
*Simultaneous death*

Where two or more persons whose successions are governed by different laws die in circumstances which do not allow the order of death to be determined and where the laws deal with the situation through provisions which are incompatible or which do not settle it at all, none of the persons shall have any rights regarding the succession of the other party or parties.

*Article 24*  
*Estate without a claimant*

Where, in accordance with the law applicable in accordance with this Regulation, there is neither an heir nor a legatee as determined by a disposition of property upon death and where no natural person is an heir by operation of law, the application of the law thereby determined shall not be an obstacle to the right of a Member State or a body appointed in accordance with the law of the Member State in question to seize the succession property located on its territory.

*Article 25*  
*Universal nature*

Any law specified by this Regulation shall apply even if it is not the law of a Member State.

*Article 26*  
*Referral*

Where this Regulation provides for the application of the law of a State, it means the rules of law in force in that State other than its rules of private international law.

*Article 27*  
*Public policy*

1. The application of a rule of the law determined by this Regulation may be refused only if such application is incompatible with the public policy of the forum.
2. In particular, the application of a rule of the law determined by this Regulation may not be considered to be contrary to the public policy of the forum on the sole ground that its clauses regarding the reserved portion of an estate differ from those in force in the forum.

*Article 28*  
*States with more than one legal system*

1. Where a State comprises several territorial units each of which has its own rules of law in respect of succession to the estates of deceased persons, each territorial unit shall be considered as a State for the purpose of identifying the law applicable under this Regulation.
2. A Member State within which different territorial units have their own rules of law in respect of successions shall not be required to apply this Regulation to conflicts of law arising between such units only.

## Chapter IV

### Recognition and enforcement

#### *Article 29*

##### *Recognition of a decision*

A decision given pursuant to this Regulation shall be recognised in the other Member States without any special procedure being required.

Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for under Articles 38 to 56 of Regulation (EC) No 44/2001, apply for that decision to be recognised. 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 in the following cases:

- (a) where it was given in default of appearance, such recognition is manifestly contrary to public policy in the Member State in which recognition is sought, it being understood that the public policy criterion may not be applied to the rules of jurisdiction;
- (b) 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 a dispute 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 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 addressed.

#### *Article 31*

##### *No review as to the substance of a decision*

Under no circumstances may a foreign decision be reviewed as to its substance.

#### *Article 32*

##### *Stay of proceedings*

A court of a Member State in which 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.

*Article 33*  
*Enforceability of decisions*

Decisions given in a Member State and enforceable there and legal transactions shall be carried out in the other Member States in accordance with Articles 38 to 56 and 58 of Regulation (EC) No 44/2001.

## **Chapter V**

### **Authentic instruments**

*Article 34*  
*Recognition of authentic instruments*

Authentic instruments formally drawn up or registered in a Member State shall be recognised in the other Member States, except where the validity of these instruments is contested in accordance with the procedures provided for in the home Member State and provided that such recognition is not contrary to public policy in the Member State addressed.

*Article 35*  
*Enforceability of authentic instruments*

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall be declared enforceable in another Member State, on application made in accordance with the procedures provided for in Articles 38 to 57 of Regulation (EC) No 44/2001. The court with which an appeal is lodged in accordance with Articles 43 and 44 of this Regulation shall refuse or revoke a declaration of the enforceability if enforceability only of the authentic instrument is manifestly contrary to public policy in the Member State addressed or if contestation of the validity of the instrument is pending before a court of the home Member State of the authentic instrument.

## **Chapter VI**

### **European Certificate of Succession**

*Article 36*  
*Creation of a European Certificate of Succession*

1. This Regulation introduces a European Certificate of Succession, which shall constitute proof of the capacity of heir or legatee and of the powers of the executors of wills or third-party administrators. This certificate shall be issued by the competent authority pursuant to this Chapter, in accordance with the law applicable to succession pursuant to Chapter III of this Regulation,
2. The use of the European Certificate of Succession shall not be obligatory. The certificate shall not be a substitute for internal procedures. However, the effects of the certificate shall also be recognised in the Member State whose authorities have issued it in accordance with this Chapter.

*Article 37*  
*Competence to issue the certificate*

1. The certificate shall be issued upon application by any person obliged to provide proof of the capacity of heir or legatee and of the powers of the executors of wills or third-party administrators.
2. The certificate shall be drawn up by the competent court in the Member State whose courts are competent pursuant to Articles 4, 5 and 6.

*Article 38*  
*Content of the application*

1. Any person applying for the issue of a certificate of succession shall provide, via the form a model of which is provided in Annex I, where such information is in their possession:
  - (a) information concerning the deceased: surname, forename(s), sex, civil status, nationality, their identification code (where possible), address of last habitual residence, date and place of their death;
  - (b) the claimant's details: surname, forename(s), sex, nationality, their identification code (where possible), address of last place of habitual residence and relationship to the deceased;
  - (c) the elements of fact or law which justify their right to succession and/or right to administer and/or execute the succession. Where they are aware of a disposition of property upon death, a copy of the disposition shall be attached to the application;
  - (d) if they are replacing other heirs or legatees and, if so, the proof of their death or any other event which has prevented them from making a claim to the succession;
  - (e) whether the deceased has stipulated a marriage contract; if so, they must attach a copy of the marriage contract;
  - (f) if they are aware that the succession rights are being contested.
2. The applicant must prove the accuracy of the information provided by means of authentic instruments. If the documents cannot be produced or can be produced only with disproportionate difficulties, other forms of evidence shall be admissible.
3. The competent court shall take the appropriate measures to guarantee the veracity of the declarations made. Where its domestic law allows, the court shall request that such declarations are made on oath.

*Article 39*  
*Partial certificate*

1. A partial certificate may be applied for and issued to attest to:
  - (a) the rights of each heir or legatee, and their share;

- (b) the devolution of a specific item of property, where this is allowed under the law applicable to the succession;
- (c) administration of the succession.

*Article 40*  
*Issue of the certificate*

1. The certificate shall be issued only if the competent court considers that the facts which are presented as the grounds for the application are established. The competent court shall issue the certificate promptly.
2. The competent court shall carry out, of its own accord and on the basis of the applicant's declarations and the instruments and other means of proof provided by them, the enquiries necessary to verify the facts and to search for any further proof that seems necessary.
3. For the purposes of this Chapter, the Member States shall grant access to the competent courts in other Member States, in particular to the civil status registers, to registers recording acts and facts relating to the succession or to the matrimonial regime of the family of the deceased and to the land registers.
4. The issuing court may summon before it any persons involved and any administrators or executors and make public statements inviting any other beneficiaries to the succession to assert their rights.

*Article 41*  
*Content of the certificate*

1. The European Certificate of Succession shall be issued using the standard form in Annex II.
2. The European Certificate of Succession shall contain the following information:
  - (a) the issuing court, the elements of fact and law for which the court considers itself to be competent to issue the certificate and the date of issue;
  - (b) information concerning the deceased: surname, forenames, sex, civil status, nationality, their identification code (where possible), address of last habitual residence, date and place of death;
  - (c) any marriage contracts stipulated by the deceased;
  - (d) the law applicable to the succession in accordance with this Regulation and the circumstances in fact and in law used to determine that law;
  - (e) the elements in fact and law giving rise to the rights and/or powers of heirs, legatees, executors of wills or third-party administrators: legal succession and/or succession according to the will and/or arising out of agreements as to succession;
  - (f) the applicant's details: surname, forename(s), sex, nationality, their identification code (where possible), address and relationship to the deceased;

- (g) where applicable, information in respect of each heir concerning the nature of the acceptance of the succession;
- (h) where there are several heirs, the share for each of them and, if applicable, the list of rights and assets for any given heir;
- (i) the list of assets or rights for legatees in accordance with the law applicable to the succession;
- (j) the restrictions on the rights of the heir in accordance with the law applicable to the succession in accordance with Chapter III and/or in accordance with the provisions contained in the will or agreement as to succession;
- (k) the list of acts that the heir, legatee, executor of the will and/or administrator may perform on the property to the succession pursuant to the law applicable to the succession.

#### *Article 42*

##### *The effects of the European Certificate of Succession*

1. The European Certificate of Succession shall be recognised automatically in all the Member States with regard to the capacity of the heirs, legatees, and powers of the executors of wills or third-party administrators.
2. The content of the certificate shall be presumed to be accurate in all the Member States throughout the period of its validity. It shall be presumed that the person designated by the certificate as the heir, legatee, executor of the will or administrator shall hold the right to the succession or the powers of administration stated in the certificate and that there shall be no conditions or restrictions other than those stated therein.
3. Any person who pays or passes on property to the bearer of a certificate who is authorised to carry out such acts on the basis of the certificate shall be released from their obligations, unless they know that the contents of the certificate are not accurate.
4. Any person who has acquired succession property from the bearer of a certificate who is authorised to possess the property in accordance with the list attached to the certificate shall be considered to have acquired it from a person with the authority to possess the property, unless they know that the contents of the certificate are not accurate.
5. The certificate shall constitute a valid document allowing for the transcription or entry of the inherited acquisition in the public registers of the Member State in which the property is located. Transcription shall take place in accordance with the conditions laid down in the law of the Member State in which the register is held and shall produce the effects specified therein.

#### *Article 43*

##### *Rectification, suspension or cancellation of the European Certificate of Succession*

1. The original of the certificate shall be retained by the issuing court, which shall issue one or more authentic copies to the applicant or to any person having a legitimate interest.

2. The copies issued shall have the effects provided for in Article 42 for a limited period of three months. Once this period has elapsed, the bearers of the certificate or any other interested persons must request a new authentic copy from the issuing court in order to assert their rights to succession.
3. The certificate shall, at the request of an interested party addressed to the issuing court, or spontaneously by the authority in question:
  - (a) be rectified in the case of material error;
  - (b) have a comment entered into its margin suspending its effects where it is contested that the certificate is accurate;
  - (c) be cancelled where it is established that it is not accurate.
4. The issuing court shall note in the margin of the original of the certificate its rectification, the suspension of its effects or its cancellation and shall notify the applicant(s) thereof.

*Article 44*  
*Methods of appeal*

Each Member State shall organise the methods of appeal against the decision to issue or not to issue, to rectify, to suspend or to cancel a certificate.

## **Chapter VII**

### **General and final provisions**

*Article 45*  
*Relations with existing international conventions*

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation and which relate to the subjects covered by this Regulation, without prejudice to the obligations of the Member States pursuant to Article 307 of the Treaty.
2. Notwithstanding paragraph 1, this Regulation shall take precedence as between Member States over conventions which relate to subjects governed by this Regulation and to which the Member States are party.

*Article 46*  
*Information made available to the public*

The Member States shall provide within the framework of the European Judicial Network in civil and commercial matters a description of the national legislation and procedures relating to the law on succession and the relevant texts, with a view to their being made available to the public. They shall notify any subsequent amendments to these provisions.

*Article 47*  
*Amendments to the forms*

Any amendment to the forms referred to in Articles 38 and 41 shall be adopted in accordance with the consultative procedure set out in Article 48(2).

*Article 48*  
*Committee procedure*

1. The Commission shall be assisted by the committee established by Article 75 of Regulation (EC) No 44/2001.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 49*  
*Review clause*

By [...] at the latest, 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. The report shall be accompanied, where appropriate, by proposed amendments.

*Article 50*  
*Transitional provisions*

1. This Regulation shall apply to the successions of persons deceased after its date of application.
2. Where the deceased had determined the law applicable to their succession prior to the date of application of this Regulation, this determination shall be considered to be valid provided that it meets the conditions listed in Article 17.
3. Where the parties to an agreement as to succession had determined the law applicable to that agreement prior to the date of application of this Regulation, this determination shall be considered to be valid provided that it meets the conditions listed in Article 18.

*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*.

This Regulation shall apply from [one year after the date of its entry into force].

This Regulation shall be binding in its entirety and directly applicable in all the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## **ANNEX I: APPLICATION REFERRED TO IN ARTICLE 38 OF THE REGULATION**

### **APPLICATION FOR A EUROPEAN CERTIFICATE OF SUCCESSION**

(Articles 36 *et seq.* of Regulation...of the Council and of the European Parliament on successions<sup>22</sup>)

#### **1. Member State**

BE  BG  CZ  DE  EE  [IE ] EL  ES  FR  IT  CY  LV  LT  LU  HU  MT   
NL  AT  PL  PT  RO  SI  SK  FI  SE  [UK ]

#### **2. Details of the deceased**

2.1. Surname:

2.2. Forename(s):

2.3. Sex:

2.4. Civil status:

2.5. Nationality:

2.6. Identification code\*:

2.7. Date of death:

2.8. Place of death:

Address of last habitual residence:

2.9. Street and number/PO box:

2.10. Place and post code:

<sup>22</sup> OJ L ...

2.11. Country:

**3. Details of the applicant**

3.1. Surname:

3.2. Forename(s):

3.3. Sex:

3.4. Nationality:

3.5. Identification code\*:

3.6. Street and number/PO box:

3.7. Place and post code:

3.8. Tel.:

3.9. E-mail address:

3.10. Relationship to the deceased\*:

\* where applicable

**4. Additional information:**

4.1. Elements of fact or law justifying a right to the succession:

4.2. Elements of fact or law justifying a right to execute and/or administer the succession:

4.3. Has the deceased made dispositions of property upon death? yes  no

If you have replied “yes”, please attach the dispositions of property upon death.\*

4.4. Has the deceased stipulated a marriage contract? yes  no

If you have replied “yes”, please attach the marriage contract.\*

4.5. Are you replacing another heir or legatee? yes  no

If you have replied “yes”, please attach proof of their death or the event preventing them from making a claim to the succession.\*

4.6. Are you aware that the rights to succession are being contested? yes  no

If you have replied “yes”, please provide information about the claim.\*

4.7. Please provide, as an attachment, a list of all the relations of the deceased, specifying their surnames, forename(s), nature of their relationship with the deceased, date of birth, nationality and address.

\* Please provide authentic documents or certified copies, where possible.

I solemnly declare that this information has been provided to the best of my knowledge.\*

**Date:**

**Signature:**

\*Article 38(3), where these declarations are made under oath

**ANNEX II: EUROPEAN CERTIFICATE OF SUCCESSION REFERRED TO IN  
ARTICLE 41**

**EUROPEAN CERTIFICATE OF SUCCESSION**

(Article 41 of Regulation...of the Council and of the European Parliament on successions<sup>23</sup>)

**1. Member State of the issuing court**

BE  BG  CZ  DE  EE  [IE]  EL  ES  FR  IT  CY  LV  LT  LU  HU  MT  
 NL  AT  PL  PT  RO  SI  SK  FI  SE  [UK

**2. Information on the court**

2.1. Court with jurisdiction under the following article of the Regulation:

Article 4  Article 5  Article 6

2.2. Contact person:

2.3. Address:

**3. Details of the deceased**

3.1. Surname:

3.2. Forename(s):

3.3. Sex:

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<sup>23</sup> OJ L ...

3.4. Civil status:

3.5. Nationality:

3.6. Identification code\*:

3.7. Date of death:

3.8. Place of death:

Address of last habitual residence:

3.9. Street and number/PO box:

3.10. Place and post code:

3.11. Country:

3.12 Marriage contracts:

3.13 Law applicable to the succession:

#### **4. Details of the applicant**

4.1. Surname:

4.2. Forename(s):

4.3. Sex:

4.4. Nationality:

4.5. Identification code\*:

4.6. Street and number/PO box:

4.7. Place and post code:

4.8. Tel.:

4.9. E-mail address:

4.10. Relationship to the deceased\*:

\* where applicable

### 5. Proof of the capacity of heir

5.1. This document provides proof of the capacity as heir yes  no

5.2. List of heirs:\*

Surname	Forename(s)	Date of birth	Share in the succession	Restrictions

\* If necessary, attach an additional sheet.

5.3. Is acceptance of the succession, where applicable, subject to a condition (for example, under benefit of inventory)? yes  no

If yes, please specify on a separate sheet the nature of the condition and its effects.

5.4. List of assets and rights for any given heir:\*

Surname	Forename(s)	Specification of property or right

\* If necessary, attach an additional sheet.

## 6. Proof of the capacity as legatee

6.1. This document provides proof of the capacity of legatee yes  no

6.2. List of legatees:\*

Surname	Forename(s)	Date of birth	Right(s) or asset(s) for any given legatee in accordance with the disposition of property upon death

\* If necessary, attach an additional sheet.

**7. Proof of the capacity of administrator and/or executor**

7.1. This document provides proof of the capacity of administrator      yes  no

7.2. This document provides proof of the capacity of executor      yes  no

7.3. Please specify the nature of the rights as administrator and/or executor, the legal basis for these rights and an indicative list of the acts that the person may perform pursuant to these rights: