



**COUNCIL OF
THE EUROPEAN UNION**

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ADDENDUM TO NOTE

from : the Presidency

to : Coreper / Council

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No. Cion prop. : 14722/09 JUSTCIV 210 CODEC 1209

Subject : 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
- General agreement on the text of the Articles

Delegations will find attached the text of the Articles of the proposed Regulation 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.

This text presented by the Presidency is to be read in conjunction with the explanations given in document 18320/11 JUSTCIV 350 CODEC 2362.

2009/0157 (COD)

Proposal for a

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 Committee¹,

Acting in accordance with the procedure laid down in Article **294** of the Treaty,

Whereas:

(...)²

HAVE ADOPTED THIS REGULATION:

¹ **OJ C 44, 11.2.2011, p. 148.**

² **The recitals will be finalised at a later stage.**

Chapter I

Scope and definitions

Article 1

Scope

1. This Regulation shall apply to the succession to the estates of deceased persons¹. It shall not apply to revenue, customs or administrative² matters.
2. (...)
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**;

¹ It will be indicated in a recital that the future Regulation will apply only to succession cases with cross-border implications. The provisions of each Chapter will make it clear in which situations the future Regulation will apply.

² It will be indicated in a recital that "*administrative matters*" here refers to administrative public law issues and not to matters relating to the administration of the estates of deceased persons.

- (d) questions **relating to matrimonial property regimes¹ 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;**
- (e-1) 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;²**

¹ It will be indicated in a recital that this exclusion also covers marriage settlements to the extent that such settlements do not deal with succession matters. That recital will also indicate that although questions relating to matrimonial property regimes and similar property regimes are excluded from the scope of the Regulation, the authorities dealing with a given succession under the future Regulation should, depending on the situation, take into account the liquidation of a possible matrimonial property regime or similar property regime when determining the estate of the deceased.

² It will be indicated in a recital that this exclusion is not to be seen as a general exclusion of trusts. The creation of a trust under a will or the creation of a statutory trust in connection with intestate succession will fall within the scope of the future Regulation and will be governed by the law applicable to the succession under the Regulation with respect to the devolution of the assets and the determination of the beneficiaries.

- (j) the nature of rights *in rem*,¹ and
- (k) 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.²

¹ It will be indicated in a recital that this exclusion entails that a Member State will not be required to recognise a right *in rem* relating to property in that Member State if the right *in rem* in question is not known in its property law. However, in such a case the Member State concerned will, to the extent possible, have to adapt the unknown right *in rem* to the closest equivalent national right.

² It will be indicated in recitals what this exclusion means. Such recitals will be worded along the following lines):

'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 which determines under what legal conditions and how the recording must be carried out and which authorities are in charge of checking that all requirements are met and that the documentation presented 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 foreseen 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 that the registration authorities may ask the person applying for registration to provide such additional information or documents which are required under the law of the Member State in which the register is kept. The competent authority may indicate to the person applying for registration how the lacking information can be provided.

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, in particular, whether the recording is declaratory or constitutive in effect. Thus, if, for instance, the acquisition of a right in an immovable property requires the recording in a register under the law of the State in which the register is kept, the moment of such acquisition should be governed by the law of that State."

The Member States should provide fact sheets listing all the documents or information usually required for the purposes of registration of immovable property located on their territory under Article 46.

Article 1a¹

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;**
 - (b) **(moved to the new paragraph 2)**
 - (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;**

¹ **It will be indicated in a recital that under the future Regulation all notaries who currently have competence in matters of succession in the Member States will be able to continue to exercise such competence. Whether or not the notaries in a given Member State will be bound by the rules of jurisdiction set out in the future Regulation will depend on whether or not they fall within the definition of "court" for the purposes of the Regulation. All acts issued by notaries in all Member States will circulate under the future Regulation either, for acts issued by notaries bound by the rules of jurisdiction, in accordance with the provisions on recognition and enforcement of decisions or, for acts issued by notaries not bound by the rules of jurisdiction, in accordance with the provisions on authentic instruments.**

- (d) “joint will” **means** a will drawn up in **one** instrument by two or more persons;
- (d1) **"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;
- (g1) **"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.
- (i) (...)

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.¹

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.

¹ A recital will be inserted explaining which authorities will be covered by the term "*court*" under the future Regulation, that is, courts in the true sense of the word, the notaries or registry offices in certain Member States who or which, in 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. That recital will also explain that the term "*court*" does not include 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 who do not exercise judicial functions.

Chapter II

Jurisdiction

Article 3

Courts

(deleted)

Article 4

General jurisdiction

(...) The courts of the Member State **in which** the deceased had **his** habitual residence¹ at the time of death shall **have jurisdiction** to rule **on the succession as a whole**².

¹ Two recitals will be inserted providing guidance on the determination of the habitual residence of the deceased at the time of death, one spelling out certain factual elements to be taken into account and one listing certain complex cases. These recitals will be worded along the following lines:

"This Regulation provides that the general connecting factor for the purposes of determining both jurisdiction and the applicable law is 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."

"In certain cases, determining the deceased's habitual residence may prove complex. Such a case might 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 might, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin. Other complex cases might 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 might be a special factor in the overall assessment of all the factual circumstances."

² It will be indicated in a recital that the terms "*the succession as a whole*" covers all property forming part of the succession, wherever the assets are located.

Article 5

Transfer to a court better placed to rule on the succession
(deleted)

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 concerned¹ 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.**

¹ **It will be indicated in a recital what is to be understood by the "*parties concerned*" for the purposes of this provision.**

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.

1

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 or to the agreement on amicable settlement, the court shall continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement in question 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 in question, 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.

¹ **A recital will be inserted to explain the coordination between competent authorities in different Member States.**

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:
 - (a) **the deceased had the nationality of that Member State at the time of death; or** failing that,
 - (b) **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.**
 - (c) (...)
 - (d) **(moved to new paragraph 2)**

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 7
Counterclaim
(deleted)

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 a court (...) 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.^{1 2}

Article 9

(...) Measures under property law
(deleted)

¹ **It will be indicated in a recital that the courts of the Member State of the habitual residence of the person making the declaration will not have jurisdiction to receive declarations designed to limit the liability of the person concerned in respect of the liabilities of the estate when the law applicable to the succession requires a specific procedure to that end before the court or authority dealing with the succession.**

² **It will be indicated in a recital that it will be for the persons making the declarations themselves to inform the court or authority dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession.**

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**
- (c) **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 (...) 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 (...) 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

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 law¹

Article 16-0

(formerly Article 25)

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 whole² shall be **the law** of the State in which the deceased had his habitual residence³ at the time of death.

¹ A recital will be inserted which will indicate that the factual or legal situations created as a means to modify fraudulently the connecting factor for the purposes of determining the jurisdiction of the courts and/or the law applicable under the future Regulation are to be disregarded when the jurisdiction and/or the applicable law is determined. In addition, the fraudulent creation of an international element to circumvent the rules on the formal validity of dispositions of property upon death may equally be disregarded.

² On the terms "*the succession as a whole*", see the footnote to Article 4.

³ On the determination of habitual residence, see the recitals suggested in the footnote to Article 4.

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.¹**

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.**

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

¹ **Two recitals will be inserted to explain the exceptional nature of this escape clause and provide guidance on its application. Those recitals will be worded along the following lines:**

"In exceptional cases when, 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, the authority dealing with the succession may 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."

"The manifestly closest connection should 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."

² **It will be indicated in a recital that the determination of the nationality of a person is a preliminary question to be resolved before the application of this provision. The issue of the determination of nationality falls outside the scope of the Regulation.**

2. (...) **The choice of the law applicable to the succession shall be made expressly in a declaration in the form of a disposition of property upon death or be clearly demonstrated by the terms of such a disposition¹.**
3. The (...) **substantive** validity of the (...) **act whereby the choice of law was made** shall be governed by the **chosen** law.²
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 18

Agreements as to succession

(moved to Article 19b)

¹ A recital will be inserted to explain by way of examples how an implicit choice may be "*clearly demonstrated*" by the terms of a disposition of property upon death so as to obviate, as far as possible, disputes as to whether the deceased had or had not chosen a law in his disposition of property upon death. One example might be the situation in which the deceased referred expressly in his disposition to articles of the law of the State of his nationality or otherwise explicitly mentioned that law.

² It will be explained in a recital that the right of a person to choose the law to govern his succession is established by the Regulation and that a choice of law will be valid even if the chosen law does not provide for a choice of law in matters of succession. In this context, the chosen law only determines whether the person making the choice may be considered to have understood and consented to what he was doing when making the choice.

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 whole¹ (...)².
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**³ (...), 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;
 - (d) **(deleted in the light of Article 19c)**
 - (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;

¹ On the terms "*the succession as a whole*", see the footnote to Article 4.

² It will be indicated in a recital that the law determined as the law applicable to the succession governs the succession from the opening of the succession to the transfer of ownership to the assets forming part of the estate to the beneficiaries.

³ It will be indicated in a recital (for the purposes of the entire Regulation) that no general definition can be given of the term "*beneficiaries*" given that it will be for the law applicable to the succession to determine in each case who the beneficiaries are. The term will under most laws cover heirs and legatees and persons entitled to a reserved share although the legal position of legatees is not the same under all laws. Under some laws, a specific asset out of the succession is transferred to the legatee directly by operation of law or the legatee receives a direct share in the succession. Under other laws, the legatee acquires only a claim against the heirs.

- (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(3)**;
- (h) **the liability** for the debts under the succession;¹
- (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 (...)**;
- (k) **(deleted in the light of Article 19c)**
- (l) the sharing-**out** of the estate.

¹ **It will be indicated in a recital that the liability for the debts under the succession includes the specific ranking of the creditors where provided for in the law applicable to the succession.**

Article 19a

Dispositions of property upon death other than agreements as to succession¹

1. A disposition of property upon death other than an agreement as to succession shall be governed with regard to its admissibility and substantive validity² 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 made³.
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.

¹ It will be indicated in a recital that the law governing the admissibility and substantive validity of a disposition of property upon death, and where applicable the binding effects between the parties, under the future Regulation will not prejudice 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.

² It will be indicated in a recital that the examination of the substantive validity of a disposition of property upon death on the basis of the elements listed in the Regulation as pertaining to substantive validity may lead to the conclusion that the disposition of property upon death is without legal existence.

³ It will be indicated in a recital that the law which would have been applicable to the succession of the person making the disposition if he had died on the day on which the disposition was respectively made or modified or revoked would be either the law of the State of his habitual residence on that day or, if he had made a choice of law under Article 17, the law of the State of his nationality on that day.

Article 19b
(former Article 18)
Agreements as to succession¹

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**.
4. (...)

¹ See the recital suggested in footnote 1 to Article 19a.

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 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.¹

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 residence².

¹ It will be indicated in a recital that this provision does not subject the capacity of a minor to make a certain disposition of property upon death to the law governing the form. It only concerns the rules as regards form which are linked to a personal qualification which may be that of minority.

² See the recital suggested in footnote 1 to Article 8.

Article 21

(...) Special rules for the appointment and powers of administrators and executors

- 1. Where the law applicable to the succession does not provide for the appointment of an administrator of the estate or an executor of the will in a situation where such an appointment would be mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation, the authorities of that Member State may appoint such an administrator or executor under their own law.**

That administrator or executor shall have the powers set out in the first subparagraph of paragraph 4.

- 2. Where neither the law applicable to the succession nor the law of the Member State whose courts have jurisdiction to rule on the succession provides for the appointment of an administrator of the estate or an executor of the will in a situation where such an appointment would be mandatory under the law of a Member State in which succession property is located, the authorities of that Member State may appoint such an administrator or executor under their own law.**

That administrator or executor shall have the powers set out in the second subparagraph of paragraph 4.

- 3. The authorities appointing the administrator or the executor pursuant to paragraphs 1 or 2 shall respect the entitlement, under the law applicable to the succession, of persons, such as the heirs, legatees administrators of the estat or executors of the will, to administer the succession.**

4. **The administrator or the executor appointed pursuant to paragraph 1 shall have the power to take or to apply to an authority of the Member State in which he was appointed for such protective measures¹ as may be available under the law of that Member State.**

The administrator or the executor appointed pursuant to paragraph 2 shall have the power to take or to apply to an authority of the Member State in which he was appointed for such protective measures¹ as may be available under the law of that Member State only in relation to the property located on the territory of that Member State.

When taking or applying for protective measures the administrator or executor concerned shall respect the succession rights of the beneficiaries under the law applicable to the succession.

5. **For the purposes of this Article, the administrator or executor appointed pursuant to paragraphs 1 or 2 shall, where appropriate, cooperate with any competent authority or administrator or executor appointed in another Member State.**

¹ **It will be indicated in a recital that the protective measures in question are measures which are intended either to preserve the assets of the estate or to ensure adequate security so as to safeguard the interests of the creditors or of other persons having guaranteed the debts of the deceased until their claims are satisfied by those who are liable for the debts of the deceased or of the estate under the law applicable to the succession. The protective measures may not interfere with the rights of the beneficiaries to ownership of the assets and may not entail the disposal of assets nor the payment of debts.**

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 succession¹.

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.²

¹ It will be explained in a recital that this exception to the application of the law applicable to the succession is to be given a strict interpretation. Neither conflict of laws rules subjecting immovable property to a law different from that applicable to movable property nor the provisions providing for a reserved share of the estate greater than that provided for in the law applicable to the succession under Articles 16 or 17 may be considered as special rules setting restrictions concerning or affecting the succession in respect of certain assets.

² A recital will be inserted to provide guidance on how to proceed in the case of adaptation (elaborating on the guidance which, to a certain extent, is already provided in the last part of the suggested new provision). If necessary 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 to obtain 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 should be used as well as any other available means facilitating the understanding of foreign law.

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 State or an entity appointed for that purpose by that 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 25
(moved to Article 16-0)

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.

2. (...)

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.**

- 3. 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 decisions¹

Article 29

(mutatis mutandis Brussels I Article 33 / 4/2009 Article 23)

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 33-1 to 33-14**, 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.

¹ **It will be indicated in a recital that this Chapter covers all decisions given by a court as defined in Article 2(2) in proceedings, be they contentious or non-contentious. Not all provisions are relevant in all situations, some will by definition only apply in situations where the succession was disputed in the Member State of origin.**

Article 30
(mutatis mutandis Brussels I Article 34 / 4/2009 Article 24)
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
(mutatis mutandis Brussels I Article 36 / 4/2009 Article 42)
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
(mutatis mutandis 4/2009 Article 25)
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 33-1 to 33-14**.

Article 33a
(mutatis mutandis Brussels I Article 59)
Determination of domicile

To determine whether, for the purposes of the procedure provided for in Articles 33-1 to 33-14, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

Article 33-1

(mutatis mutandis Brussels I Article 39 / 4/2009 Article 27)

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 33-2

(mutatis mutandis Brussels I Articles 40, 53 and 54)

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 33-3.**

Article 33-3

(mutatis mutandis 4/2009 Article 29 / Brussels I Article 55)

Non-production of the attestation

- 1. If the attestation referred to in Article 33-2(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 33-4

(mutatis mutandis Brussels I Article 41 / 4/2009 Article 30)

Declaration of enforceability

The decision shall be declared enforceable immediately on completion of the formalities in Article 33-2 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 33-5

(mutatis mutandis 4/2009 Article 31 / Brussels I Article 42)

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 33-6

(mutatis mutandis 4/2009 Article 32 / Brussels I Article 43)

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 33-7

(mutatis mutandis 4/2009 Article 33 / Brussels I Article 44)

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 33-8

(mutatis mutandis Brussels I Article 45)

Refusal or revocation of a declaration of enforceability

The court with which an appeal is lodged under Article 33-6 or Article 33-7 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 33-9

(mutatis mutandis 4/2009 Article 35 / Brussels I Article 46)

Staying of proceedings

The court with which an appeal is lodged under Article 33-6 or Article 33-7 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 33-10

(mutatis mutandis 4/2009 Article 36 / Brussels I Article 47)

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 33-4 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 33-6(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 33-11

(mutatis mutandis 4/2009 Article 37 / Brussels I Article 48)

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 33-12

(mutatis mutandis 4/2009 Article 47 / Brussels I Article 50)

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 33-13

(mutatis mutandis 4/2009 Article 44(5) / Brussels I Article 51)

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 33-14

(mutatis mutandis 4/2009 Article 38 / Brussels I Article 52)

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 instruments¹

- 1. An authentic instrument (...) established in a Member State shall have the same evidentiary effects² 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.

¹ A recital will be inserted providing guidance to the authorities if they were to be presented with irreconcilable acts.

² A recital will be inserted to explain the concept of "*evidentiary effects*". It will indicate that the determination of the evidentiary effects of a given authentic instrument in another Member State or of the most comparable effects should be made by reference 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 will have in another Member State.

2. Any challenge relating to the authenticity of an authentic instrument¹ 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 instrument² 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.³
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.

¹ A recital will be inserted to explain that the "*authenticity*" of an authentic instrument is an autonomous concept which covers elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the notary and the procedure under which the notary draws up the instrument. It also covers the factual elements recorded in the authentic instrument by the authority, such as the fact that parties X and Y have appeared before the authority on date Z and that they have made the declarations indicated.

² A recital will be inserted to explain that 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 distribution of the estate, a will or an agreement as to succession, or another declaration of intent. The legal relationships could be for instance the determination of 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.

³ It will be explained in a recital that an authentic instrument which, as a result of a challenge, is declared invalid will cease to produce any evidentiary effect.

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 33-1 to 33-14**.
- 1a. **For the purposes of Article 33-2(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 33-6 or Article 33-7** 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 33-1 to 33-14.**
2. **For the purposes of Article 33-2(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).**
3. **The court with which an appeal is lodged under Article 33-6 or Article 33-7 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**.¹
3. 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.

¹ **A recital will be inserted to clarify the meaning of this provision. Such a recital would spell out that the persons entitled to apply for a Certificate under Article 36a(1) are under no obligation to do so, but are free to use the other instruments available under this Regulation (decisions, authentic instruments and court settlements). It will also specify that no authority or person before which or whom a Certificate issued in another Member State was produced could request that a decision, authentic instrument or court settlement be produced instead of the Certificate.**

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

1. (...)
2. 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.

1

Article 38

Application for a Certificate

0. **The Certificate shall be issued upon application by any person referred to in Article 36a(1) (hereinafter referred to as "the applicant").**
1. **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 **It will be indicated in a recital that it will be for the Member States to determine in their internal legislation which authorities will 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. The Member States will have to provide the relevant information concerning their issuing authorities in accordance with Article 46a.**

1a. 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;**
- (b1) details concerning the representative of the applicant, if any: surname (if applicable, maiden name), given name(s), address and representative capacity;**
- (b2) 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;**
- (b3) 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;**
- (b4) the intended purpose of the Certificate in accordance with Article 36a;**
- (b5) 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;**
- (c1) **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;**
- (d) (...)
- (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;**
- (e1) **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;**
- (g) **any other information which the applicant deems useful for the purposes of the issue of the Certificate.**

2. (...)

3. (...)

Article 39

Partial Certificate

(deleted)

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.**
2. **(moved to paragraph 1)**
 - 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 beneficiarries 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.**
4. (...)

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

1. (...)
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;**
 - (a0) **the reference number of the file;**
 - (a1) the elements (...) **on the basis of which the issuing authority** considers itself competent to issue the Certificate (...);
 - (a2) **the date of issue;**
 - (a3) **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;**
 - (b1) **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**;
- (f) (...)
- (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.**¹
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.**²

¹ **A recital will be inserted spelling out that the Certificate will not be an enforceable title in its own right but will have evidentiary value.**

² **A recital will be inserted to explain paragraphs 3 and 4. That recital will be worded along the lines of paragraph 36 of document 11067/11 JUSTCIV 152 CODEC 968 which reads as follows:**

"Any person who, in good faith, acts on the basis of the information certified in the Certificate will be deemed to be released from his obligations. Similar third party protection will be granted to a person who, in good faith, acquires property from a person designated in the Certificate as being authorised to dispose of such property, without prejudice to the effects of the recording which will be excluded from the scope of the future Regulation (see part A, point (iii))."

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 (k).**
- (...)

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 1.¹**
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**. 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 (...).**

¹ **It will be indicated in a recital that the provisions on the issue of certified copies of the Certificate 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.**

Article 43

Rectification, (...) modification or withdrawal of the Certificate

- 0. 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.**
- 1. 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.**
 - (a) (...)
 - (b) (...);
 - (c) (...)
- 2. (...)**
- 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 modify or withdraw the Certificate or ensure that the issuing authority rectifies, modifies or withdraws the Certificate.

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

(4/2009 Article 65 / Brussels I Article 56)

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 (...).

- 3. 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] 2012¹, 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.**

¹ **It will be a precondition for the insertion of this provision giving precedence to the Nordic Convention that the Intergovernmental agreement revising the Convention is signed before the date of adoption of the Regulation.**

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 proceedings¹.

Article 46
(mutatis mutandis 4/2009 Article 70)
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 (...).

¹ OJ L 160, 30.6.2000, p. 1.

Article 46a
(mutatis mutandis 4/2009 Article 71)
Information on contact details and procedures

1. By [...] ¹, 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 33-1(1) and with appeals against decisions on such applications in accordance with Article 33-6(2);
 - (b) the redress procedures referred to in Article 33-7;
 - (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.

¹ 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 33-2, 34, 35, 35a, 38 and 40a

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 33-2, 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 [...] ¹ 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, **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.**

¹ **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 was 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.**
3. (...)
4. **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 was 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.**

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

¹ **36 months after the date of entry into force of the Regulation.**
² **9 months before the date of application of the Regulation.**
³ **The day following the date of adoption of the Regulation.**