



IAFL European Chapter Meeting, Paris, France 4-8 December 2024

Session resources pack

Session 2: Introduction to case study – Matrimonial Property and Succession

Thursday 5 December 2024

09:30 – 10:45

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Languages Spoken: French, English, Spanish

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Eelco Anink handles complex divorce and inheritance law cases and litigates regularly. As a lawyer and mediator, he is a member of the Association of Family and Inheritance Lawyers and Divorce Mediators (vFAS). Eelco graduated summa cum laude from the postgraduate specialisation course in family law. He is also a member of the specialists Association of Inheritance Lawyers (VEAN), of which he is also a board member. Eelco publishes on relationship property law and inheritance law. Eelco also teaches relationship property law and inheritance law at the University of Amsterdam (UvA) and provides postgraduate education to judges, lawyers, civil-law notaries and tax specialists in the field of relationship property law and inheritance law.

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Laura Dale is the Principal of Laura Dale & Associates, P.C. specializing in family law in Harris County, Texas and surrounding counties. She is Board Certified in Family Law, by the Texas Board of Legal Specialisation, and is Legal Counsel to the Consulate General of France, Houston Texas. Practices in the area of family law involving high conflict divorce and custody cases, and international abduction brought under the Hague Convention. Fluent in French, is a certified mediator, parenting co-ordinator, and collaborative lawyer. Received her JD from South Texas College of Law and is licensed by the Texas Supreme Court, and admitted to practice in the United States Court of Appeals for the Fifth Circuit, the United States District Court Southern District, Northern District, Western District and Eastern District. Received a BA from the University of Texas where she majored in psychology. Obtained a master's in psychophysiology and a doctoral degree in neuroscience from Université Louis Pasteur, Strasbourg, France.

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Fredric Renström is one of Sweden's leading lawyers in Swedish and international family law and is an attorney and partner at Lindskog Malmström Lawfirm in Stockholm. Fredric represents his clients in complex divorce conflicts, inheritance matters, and when negotiating prenuptial agreements with high net values. Fredric has been a fellow of the IAFL since 1997.

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Dervla Browne started work as a barrister in 1986 and has practiced as a Senior Counsel since 2005. She specializes in family, child and international law. Represented the applicant in *Keegan v. Ireland* before the European Court of Human Rights in 1994. Has appeared in a number cases before the European Court of Justice, including *McB v. E.* in 2010, which concerned the meaning of “custody rights” in Regulation 2001/2003. She has lectured in Ireland and abroad in matters concerning international family law. Dervla has given expert evidence in US and European cases. In 2020 Dervla was conferred with Post-graduate Diploma in Conflict Analysis and Dispute Resolution (Distinction) in Trinity College Dublin. She is a Mediator (CEDR accredited and certified MII) with a specific interest in mediation of international family and child law disputes. Member of Experts’ Group on Family Agreements involving Children in the Hague Conference.

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Beatriz Martinez is a partner at Humberto Sanches e Associados, a boutique law firm based in São Paulo, Brazil, focused on private clients. She dedicates her career to family and succession law since law school.

She is focused on wealth and succession planning when there are several jurisdictions involved. With great understanding of private international law and other fields of law, such as corporate and tax, Beatriz helps clients execute their wills, donations, marriages and civil union agreements, declarations of curatorship and advanced health directives, family and corporate governance, as well as create wealth structures, such as trusts.

She also has vast experience in voluntary jurisdiction and litigation, working with probate proceedings, changes of marital property regime, divorces, and other family and succession-related matters, always with an appreciation for friendly solutions and for preserving family bonds.

Beatriz graduated in Law from PUC-SP in Brazil, where she also studied mediation. Additionally, she studied LL.M. in corporate law at Insper, Brazil, and business at Babson College in Boston, USA.

CASE STUDY

Richard has just died in a tragic helicopter accident. He was 54 years old. He was a well-known and beloved figure in your country, where he had enjoyed a career as a top sportsman, film star and successful businessman.

He leaves Sabrina, his wife, and three children

Marie 20,

Luke 18,

Michael 15 years old.

Richard and Sabrina were married in Mauritius in 2002.

Sabrina is Brazilian.

At the time of their marriage in Mauritius, the spouses declared that they wished to be governed by the matrimonial regime of separation of property, as is possible in Mauritius.

The spouses have never lived in Mauritius before or after the marriage.

After their marriage, they lived in Barcelona, where Richard was pursuing his soccer career with FC Barcelona. The family stayed in Spain for three years, before Richard signed up with a Saudi club, the family lived in Riyadh for 2 years.

Richard finished his career in Los Angeles in 2009.

The family continued to live in California, where Richard embarked on a successful career as a series actor and producer.

Richard became an American citizen.

In 2020, the family decided to move back, first to Switzerland, then to your country, of which Richard was a national and where he entered politics in 2022. It was under these conditions that he died in a helicopter accident.

His death was reported in all the national and international press.

Richard possessed a considerable fortune:

A residence in your country,

A villa in Los Angeles

A Villa in Barcelona

A chalet in Switzerland

A production company registered in Delaware

Multiple shareholdings in companies

Bank accounts in Spain, Switzerland, California, your country

Richard's fortune is estimated at several hundred million.

Following Richard's death, his will was revealed, in which he designated California law as applicable to his estate which he decided to :

- Allocate a sum of 2 million euros to each of his three children,
- Exclude Sabrina from all rights to her estate
- Allocate all assets to Allison

Everyone is stunned by the discovery of this will. Allison was not known to anyone close to Richard, who appears to have led a double life.

Questions

1. What rights does Sabrina have following the death of her husband?
2. Can the children contest the result of their father's will? Which judge will have jurisdiction and which law will apply to this action?
Will the judge's jurisdiction and the applicable law apply to the entire estate?

Would your answers have been different if Richard had designated California law as applicable to his estate in his will?

Vote :

Is there a forced heirship in your country?

Allison reveals that she has been in a relationship with Richard since she was young, and that they are still linked. In fact, she says they were married in Las Vegas on January 1^{er} 2000, and have never divorced. But he always made her promise to keep the marriage secret, in exchange for which he would make her a universal legatee. The copy of her

marriage certificate and photos of the ceremony made the front page of every tabloid in the country.

Questions

1. What does this revelation mean for Richard and Sabrina's marriage?
2. What rights do Allison and Sabrina have following the dissolution of their marriages by the death of their husband?
3. Does this marriage affect Sabrina's rights in Richard's estate? Assuming he has not designated the applicable law? Assuming he has designated California law?

Question:

Does the concept of putative marriage exist in your country?

In a new twist to Richard's estate, a tabloid article reveals the existence of Richard's hidden son Paolo, born in Rome in 2015 from a one-night stand with Swedish sports journalist Sophia. Paolo currently resides in Rome with his mother, who intends to assert her rights in Richard's estate.

1. Could action be taken in your country? On what grounds? What would be the applicable law? Against whom should the action be brought?
2. What evidence will your courts take into account to establish parentage?
3. If Paolo's parentage is established, will he have any rights in Richard's estate?
4. Could Paolo get alimony from his father's estate?

Vote

Is it possible to carry out a DNA test on a corpse to establish parentage in your country?

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2016/1103

of 24 June 2016

implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to Council Decision (EU) 2016/954 of 9 June 2016 authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships ⁽¹⁾,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with point (c) of Article 81(2) of the Treaty on the Functioning of the European Union (TFEU), such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (4) A programme of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾, common to the Commission and to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-law rules as measures facilitating the mutual recognition of decisions and provides for the drawing-up of an instrument in matters of matrimonial property regimes.

⁽¹⁾ OJ L 159, 16.6.2016, p. 16.

⁽²⁾ Opinion of 23 June 2016 (not yet published in the Official Journal).

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague programme: strengthening freedom, security and justice in the European Union' ⁽¹⁾. In this programme the Council asked the Commission to present a Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area.
- (6) On 17 July 2006 the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available.
- (7) At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'The Stockholm programme — An open and secure Europe serving and protecting citizens' ⁽²⁾. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example matrimonial property rights, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.
- (8) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010, the Commission announced that it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.
- (9) On 16 March 2011, the Commission adopted a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.
- (10) At its meeting of 3 December 2015, the Council concluded that no unanimity could be reached for the adoption of the proposals for the regulations on matrimonial property regimes and the property consequences of registered partnerships and that therefore the objectives of cooperation in this area could not be attained within a reasonable period by the Union as a whole.
- (11) From December 2015 to February 2016, Belgium, Bulgaria, the Czech Republic, Germany, Greece, Spain, France, Croatia Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden addressed requests to the Commission indicating that they wished to establish enhanced cooperation between themselves in the area of the property regimes of international couples and, specifically, of the jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, and asking the Commission to submit a proposal to the Council to that effect. By letter to the Commission in March 2016, Cyprus indicated its wish to participate in the establishment of the enhanced cooperation; Cyprus reiterated this wish during the work of the Council.
- (12) On 9 June 2016, the Council adopted Decision (EU) 2016/954 authorising such enhanced cooperation.
- (13) According to Article 328(1) TFEU, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation should ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the Member States which participate in enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships, by virtue of Decision (EU) 2016/954, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU.

⁽¹⁾ OJ C 53, 3.3.2005, p. 1.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

- (14) In accordance with Article 81 TFEU, this Regulation should apply in the context of matrimonial property regimes having cross-border implications.
- (15) To provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.
- (16) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, applicable law, recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements.
- (17) This Regulation does not define 'marriage', which is defined by the national laws of the Member States.
- (18) The scope of this Regulation should include all civil-law aspects of matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses. For the purposes of this Regulation, the term 'matrimonial property regime' should be interpreted autonomously and should encompass not only rules from which the spouses may not derogate but also any optional rules to which the spouses may agree in accordance with the applicable law, as well as any default rules of the applicable law. It includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any property relationships, between the spouses and in their relations with third parties, resulting directly from the matrimonial relationship, or the dissolution thereof.
- (19) For reasons of clarity, a number of questions which could be seen as having a link with matters of matrimonial property regime should be explicitly excluded from the scope of this Regulation.
- (20) Accordingly, this Regulation should not apply to questions of general legal capacity of the spouses; however, this exclusion should not cover the specific powers and rights of either or both spouses with regard to property, either as between themselves or as regards third parties, as these powers and rights should fall under the scope of this Regulation.
- (21) This Regulation should not apply to other preliminary questions such as the existence, validity or recognition of a marriage, which continue to be covered by the national law of the Member States, including their rules of private international law.
- (22) As maintenance obligations between spouses are governed by Council Regulation (EC) No 4/2009 ⁽¹⁾, they should be excluded from the scope of this Regulation, as should issues relating to the succession to the estate of a deceased spouse, since they are covered by Regulation (EU) No 650/2012 of the European Parliament and of the Council ⁽²⁾.
- (23) Issues of entitlements to transfer or adjustment between spouses of rights to retirement or disability pension, whatever their nature, accrued during marriage and which have not generated pension income during the marriage are matters that should be excluded from the scope of this Regulation, taking into account the specific systems existing in the Member States. However, this exclusion should be strictly interpreted. Hence, this Regulation should govern in particular the issue of classification of pension assets, the amounts that have already been paid to one spouse during the marriage, and the possible compensation that would be granted in case of a pension subscribed with common assets.
- (24) This Regulation should allow for the creation or the transfer resulting from the matrimonial property regime of a right in immoveable or moveable property as provided for in the law applicable to the matrimonial property regime. It should, however, not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.

⁽¹⁾ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

⁽²⁾ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107).

- (25) However, in order to allow the spouses to enjoy in another Member State the rights which have been created or transferred to them as a result of the matrimonial property regime, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right, the authorities or competent persons of the State whose law is applied to the matrimonial property regime may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.
- (26) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.
- (27) The requirements for the recording in a register of a right in immovable or moveable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions, and how, the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of a spouse to a 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 the circulation of which is provided for by this Regulation. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.
- (28) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.
- (29) This Regulation should respect the different systems for dealing with matters of the matrimonial property regime applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the strict sense of the word, exercising judicial functions, but also for example notaries in some Member States who, in certain matters of matrimonial property regime, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given matrimonial property regime by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of matrimonial property regime, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.
- (30) This Regulation should allow all notaries who are competent in matters of matrimonial property regime in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.
- (31) Acts issued by notaries in matters of matrimonial property regime in the Member States should circulate in accordance with this Regulation. When notaries exercise judicial functions they should be bound by the rules of jurisdiction set out in this Regulation, and the decisions they give should circulate in accordance with the provisions of this Regulation on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they should not be bound by those rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions of this Regulation on authentic instruments.

- (32) To reflect the increasing mobility of couples during their married life and facilitate the proper administration of justice, the rules on jurisdiction set out in this Regulation should enable citizens to have their various related procedures handled by the courts of the same Member State. To that end, this Regulation should seek to concentrate the jurisdiction on matrimonial property regime in the Member State whose courts are called upon to handle the succession of a spouse in accordance with Regulation (EU) No 650/2012, or the divorce, legal separation or marriage annulment in accordance with Council Regulation (EC) No 2201/2003 ⁽¹⁾.
- (33) This Regulation should provide that, where proceedings on the succession of a spouse are pending before the court of a Member State seised under Regulation (EU) No 650/2012, the courts of that State should have jurisdiction to rule on matters of matrimonial property regimes arising in connection with that succession case.
- (34) Similarly, matters of matrimonial property regimes arising in connection with proceedings pending before the court of a Member State seised for divorce, legal separation or marriage annulment under Regulation (EC) No 2201/2003, should be dealt with by the courts of that Member State unless the jurisdiction to rule on the divorce, legal separation or marriage annulment may only be based on specific grounds of jurisdiction. In such cases, the concentration of jurisdiction should not be allowed without the spouses' agreement.
- (35) Where matters of matrimonial property regime are not linked to proceedings pending before the court of a Member State on the succession of a spouse or on divorce, legal separation or marriage annulment, this Regulation should provide for a scale of connecting factors for the purposes of determining jurisdiction, starting with the habitual residence of the spouses at the time the court is seised. These connecting factors are set in view of the increasing mobility of citizens and in order to ensure that a genuine connecting factor exists between the spouses and the Member State in which jurisdiction is exercised.
- (36) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should, under certain circumstances, enable the parties to conclude a choice of court agreement in favour of the courts of the Member State of the applicable law or of the courts of the Member State of the conclusion of the marriage.
- (37) For the purposes of this Regulation and in order to cover all possible situations, the Member State of the conclusion of the marriage should be the Member State before whose authorities the marriage is concluded.
- (38) The courts of a Member State may hold that, under their private international law, the marriage in question cannot be recognised for the purposes of matrimonial property regime proceedings. In such a case, it may exceptionally be necessary to decline jurisdiction under this Regulation. The courts shall act swiftly and the party concerned should have the possibility to submit the case in any other Member State that has a connecting factor granting jurisdiction, irrespective of the order of the jurisdiction grounds, while at the same time respecting the parties' autonomy. Any court seised after a declining of jurisdiction other than the courts of the Member State of the conclusion of the marriage, may also exceptionally need to decline jurisdiction under the same conditions. The combination of the various jurisdiction rules should, however, ensure that parties have all possibilities to seise the courts of a Member State which will accept jurisdiction for the purposes of giving effect to their matrimonial property regime.
- (39) This Regulation should not prevent the parties from settling the matrimonial property regime case amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the matrimonial property regime is not the law of that Member State.
- (40) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the matrimonial property regimes of spouses, this Regulation should set out in an exhaustive way the grounds on which such subsidiary jurisdiction may be exercised.

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

- (41) In order to remedy, in particular, situations of denial of justice, this Regulation should provide for a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a matrimonial property regime which is closely connected with a third state. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third state in question, for example because of civil war, or when a spouse cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.
- (42) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters. One such procedural rule is a *lis pendens* rule, which will come into play if the same matrimonial property regime case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the matrimonial property regime case.
- (43) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable spouses to know in advance which law will apply to their matrimonial property regime. Harmonised conflict-of-law rules should therefore be introduced in order to avoid contradictory results. The main rule should ensure that the matrimonial property regime is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the matrimonial property regime, the law applicable to a matrimonial property regime should govern that regime as a whole, that is to say, all the property covered by that regime, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third state.
- (44) The law determined by this Regulation should apply even if it is not the law of a Member State.
- (45) To facilitate to spouses the management of their property, this Regulation should authorise them to choose the law applicable to their matrimonial property regime, regardless of the nature or location of the property, among the laws with which they have close links because of habitual residence or their nationality. This choice may be made at any moment, before the marriage, at the time of conclusion of the marriage or during the course of the marriage.
- (46) To ensure the legal certainty of transactions and to prevent any change of the law applicable to the matrimonial property regime being made without the spouses being notified, no change of law applicable to the matrimonial property regime should be made except at the express request of the parties. Such a change by the spouses should not have retrospective effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties.
- (47) Rules on the material and formal validity of an agreement on the choice of applicable law should be set up so that the informed choice of the spouses is facilitated and their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. If, at the time the agreement is concluded, the spouses are habitually resident in different Member States which lay down different formal rules, compliance with the formal rules of one of these States should suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a Member State which lays down additional formal rules, those rules should be complied with.
- (48) A matrimonial property agreement is a type of disposition on matrimonial property the admissibility and acceptance of which vary among the Member States. In order to make it easier for matrimonial property rights acquired as a result of a matrimonial property agreement to be accepted in the Member States, rules on the formal validity of a matrimonial property agreement should be defined. At least the agreement should be expressed in writing, dated and signed by both parties. However, the agreement should also fulfil additional formal validity requirements set out in the law applicable to the matrimonial property regime as determined by this Regulation and in the law of the Member State in which the spouses have their habitual residence. This Regulation should also determine which law is to govern the material validity of such an agreement.

- (49) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation should introduce harmonised conflict-of-law rules to determine the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses shortly after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at the time of the conclusion of the marriage, the third criterion should be the law of the State with which the spouses have the closest links. In applying the latter criterion all the circumstances should be taken into account and it should be made clear that these links are to be considered as they were at the time the marriage was entered into.
- (50) Where this Regulation refers to nationality as a connecting factor, the question of how to consider a person having multiple nationalities is a preliminary question which falls outside the scope of this Regulation and should be left to national law, including, where applicable, international Conventions, in full observance of the general principles of the Union. This consideration should have no effect on the validity of a choice of law made in accordance with this Regulation.
- (51) With regard to the determination of the law applicable to the matrimonial property regime in the absence of a choice of law and a matrimonial property agreement, the judicial authority of a Member State, at the request of either of the spouses, should, in exceptional cases — where the spouses have moved to the State of their habitual residence for a long duration — be able to arrive at the conclusion that the law of that State may apply if the spouses have relied on it. Whatever the case, it may not infringe the rights of third parties.
- (52) The law determined as the law applicable to the matrimonial property regime should govern the matrimonial property regime from the classification of property of one or both spouses into different categories during the marriage and after its dissolution, to the liquidation of the property. It should include the effects of the matrimonial property regime on a legal relationship between a spouse and third parties. However, the law applicable to matrimonial property regime may be invoked by a spouse against a third party to govern such effects only when the legal relations between the spouse and the third party arose at a time where the third party knew or should have known of that law.
- (53) Considerations of public interest, such as the protection of a Member State's political, social or economic organisation, should justify giving the courts and other competent authorities of the Member States the possibility, in exceptional cases, of applying exceptions based on overriding mandatory provisions. Accordingly, the concept of 'overriding mandatory provisions' should cover rules of an imperative nature such as rules for the protection of the family home. However, this exception to the application of the law applicable to the matrimonial property regime requires a strict interpretation in order to remain compatible with the general objective of this Regulation.
- (54) Considerations of public interest should also allow courts and other competent authorities dealing with matters of matrimonial property regime in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union ('Charter'), and in particular Article 21 thereof on the principle of non-discrimination.
- (55) Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.
- (56) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of matrimonial property regime, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.

- (57) In order to take into account the different systems for dealing with matters of matrimonial property regimes in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of matrimonial property regime.
- (58) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.
- (59) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (60) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. A party wishing to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the matrimonial property regime.
- (61) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (62) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (63) Should an authority, in application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.
- (64) The recognition and enforcement of a decision on matrimonial property regime under this Regulation should not in any way imply the recognition of the marriage underlying the matrimonial property regime which gave rise to the decision.
- (65) The relationship between this Regulation and the bilateral or multilateral conventions on matrimonial property regime to which the Member States are party should be specified.
- (66) This Regulation should not preclude Member States which are parties to the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden containing international law provisions on marriage, adoption and guardianship, as revised in 2006; to the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised in June 2012; and to the Convention of 11 October 1977 between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgments in civil matters, from

continuing to apply certain provisions of these Conventions in so far as they provide for simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of matrimonial property regime.

- (67) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring Member States to communicate certain information regarding their legislation and procedures relating to matrimonial property regimes within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC ⁽¹⁾. In order to allow for the timely publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.
- (68) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement.
- (69) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council ⁽²⁾ should apply.
- (70) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽³⁾.
- (71) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation.
- (72) The objectives of this Regulation, namely the free movement of persons in the Union, the opportunity for spouses to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, where appropriate by means of enhanced cooperation between Member States. In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, the Union has therefore competence to act. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (73) This Regulation respects fundamental rights and observes the principles recognised in the Charter, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the principle of non-discrimination and the right to an effective remedy and to a fair trial. This Regulation should be applied by the courts and other competent authorities of the Member States in compliance with those rights and principles.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Regulation shall apply to matrimonial property regimes.

It shall not apply to revenue, customs or administrative matters.

⁽¹⁾ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

⁽²⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

⁽³⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

2. The following shall be excluded from the scope of this Regulation:
 - (a) the legal capacity of spouses;
 - (b) the existence, validity or recognition of a marriage;
 - (c) maintenance obligations;
 - (d) the succession to the estate of a deceased spouse;
 - (e) social security;
 - (f) the entitlement to transfer or adjustment between spouses, in the case of divorce, legal separation or marriage annulment, of rights to retirement or disability pension accrued during marriage and which have not generated pension income during the marriage;
 - (g) the nature of rights *in rem* relating to a property; and
 - (h) any recording in a register of rights in immovable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

Article 2

Competence in matters of matrimonial property regimes within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of matrimonial property regimes.

Article 3

Definitions

1. For the purposes of this Regulation:
 - (a) 'matrimonial property regime' means a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution;
 - (b) 'matrimonial property agreement' means any agreement between spouses or future spouses by which they organise their matrimonial property regime;
 - (c) 'authentic instrument' means a document in a matter of a matrimonial property regime 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;
 - (d) 'decision' means any decision in a matter of a matrimonial property regime 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;
 - (e) 'court settlement' means a settlement in a matter of matrimonial property regime which has been approved by a court, or concluded before a court in the course of proceedings;

- (f) 'Member State of origin' means the Member State in which the decision has been given, the authentic instrument drawn up, or the court settlement approved or concluded;
- (g) 'Member State of enforcement' means the Member State in which recognition and/or enforcement of the decision, the authentic instrument, or the court settlement is requested.

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 matrimonial property regimes which exercise judicial functions or act by delegation of power by a judicial authority or under its control, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 64.

CHAPTER II

JURISDICTION

Article 4

Jurisdiction in the event of the death of one of the spouses

Where a court of a Member State is seised in matters of the succession of a spouse pursuant to Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that succession case.

Article 5

Jurisdiction in cases of divorce, legal separation or marriage annulment

1. Without prejudice to paragraph 2, where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No 2201/2003, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application.
2. Jurisdiction in matters of matrimonial property regimes under paragraph 1 shall be subject to the spouses' agreement where the court that is seised to rule on the application for divorce, legal separation or marriage annulment:
 - (a) is the court of a Member State in which the applicant is habitually resident and the applicant had resided there for at least a year immediately before the application was made, in accordance with the fifth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003;
 - (b) is the court of a Member State of which the applicant is a national and the applicant is habitually resident there and had resided there for at least six months immediately before the application was made, in accordance with sixth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003;
 - (c) is seised pursuant to Article 5 of Regulation (EC) No 2201/2003 in cases of conversion of legal separation into divorce; or
 - (d) is seised pursuant to Article 7 of Regulation (EC) No 2201/2003 in cases of residual jurisdiction.

3. If the agreement referred to in paragraph 2 of this Article is concluded before the court is seised to rule on matters of matrimonial property regimes, the agreement shall comply with Article 7(2).

Article 6

Jurisdiction in other cases

Where no court of a Member State has jurisdiction pursuant to Article 4 or 5 or in cases other than those provided for in those Articles, jurisdiction to rule on a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:

- (a) in whose territory the spouses are habitually resident at the time the court is seised; or failing that
- (b) in whose territory the spouses were last habitually resident, insofar as one of them still resides there at the time the court is seised; or failing that
- (c) in whose territory the respondent is habitually resident at the time the court is seised; or failing that
- (d) of the spouses' common nationality at the time the court is seised.

Article 7

Choice of court

1. In cases which are covered by Article 6, the parties may agree that the courts of the Member State whose law is applicable pursuant to Article 22, or point (a) or (b) of Article 26(1), or the courts of the Member State of the conclusion of the marriage shall have exclusive jurisdiction to rule on matters of their matrimonial property regime.
2. The agreement referred to in paragraph 1 shall be expressed in writing and dated and signed by the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

Article 8

Jurisdiction based on the appearance of the defendant

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable pursuant to Article 22 or point (a) or (b) of Article 26(1), and before which a defendant enters an appearance, shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Article 4 or 5(1).
2. Before assuming jurisdiction pursuant to paragraph 1, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

Article 9

Alternative jurisdiction

1. By way of exception, if a court of the Member State that has jurisdiction pursuant to Article 4, 6, 7 or 8 holds that, under its private international law, the marriage in question is not recognised for the purposes of matrimonial property regime proceedings, it may decline jurisdiction. If the court decides to decline jurisdiction, it shall do so without undue delay.

2. Where a court having jurisdiction pursuant to Article 4 or 6 declines jurisdiction and where the parties agree to confer jurisdiction to the courts of any other Member State in accordance with Article 7, jurisdiction to rule on the matrimonial property regime shall lie with the courts of that Member State.

In other cases, jurisdiction to rule on the matrimonial property regime shall lie with the courts of any other Member State pursuant to Article 6 or 8, or the courts of the Member State of the conclusion of the marriage.

3. This Article shall not apply when the parties have obtained a divorce, legal separation or marriage annulment which is capable of being recognised in the Member State of the forum.

Article 10

Subsidiary jurisdiction

Where no court of a Member State has jurisdiction pursuant to Article 4, 5, 6, 7 or 8, or when all the courts pursuant to Article 9 have declined jurisdiction and no court has jurisdiction pursuant to Article 9(2), the courts of a Member State shall have jurisdiction in so far as immovable property of one or both spouses are located in the territory of that Member State, but in that event the court seised shall have jurisdiction to rule only in respect of the immovable property in question.

Article 11

Forum necessitatis

Where no court of a Member State has jurisdiction pursuant to Article 4, 5, 6, 7, 8 or 10, or when all the courts pursuant to Article 9 have declined jurisdiction and no court of a Member State has jurisdiction pursuant to Article 9(2) or Article 10, the courts of a Member State may, on an exceptional basis, rule on a matrimonial property regime case 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 12

Counterclaims

The court in which proceedings are pending pursuant to Article 4, 5, 6, 7, 8, 9 (2), 10 or 11 shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

Article 13

Limitation of proceedings

1. Where the estate of the deceased whose succession falls under Regulation (EU) No 650/2012 comprises assets located in a third state, the court seised to rule on the matrimonial property regime 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 14

Seising a court

For the purpose 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;
- (b) if the document has to be served before being lodged with the court, at a 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 on 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 15

Examination as to jurisdiction

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

Article 16

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 pursuant to this Regulation shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council ⁽¹⁾ shall apply instead of paragraph 1 of this Article 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.

⁽¹⁾ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

*Article 17***Lis pendens**

1. Where proceedings involving the same cause of action and between the same parties are brought before 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. In the cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised.
3. 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 18***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 the actions referred to in paragraph 1 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 19***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 LAW*Article 20***Universal application**

The law designated as applicable by this Regulation shall be applied whether or not it is the law of a Member State.

*Article 21***Unity of the applicable law**

The law applicable to a matrimonial property regime pursuant to Article 22 or 26 shall apply to all assets falling under that regime, regardless of where the assets are located.

*Article 22***Choice of the applicable law**

1. The spouses or future spouses may agree to designate, or to change, the law applicable to their matrimonial property regime, provided that that law is one of the following:
 - (a) the law of the State where the spouses or future spouses, or one of them, is habitually resident at the time the agreement is concluded; or
 - (b) the law of a State of nationality of either spouse or future spouse at the time the agreement is concluded.
2. Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall have prospective effect only.
3. Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law.

*Article 23***Formal validity of the agreement on a choice of applicable law**

1. The agreement referred to in Article 22 shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.
2. If the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.
3. If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.
4. If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

*Article 24***Consent and material validity**

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it pursuant to Article 22 if the agreement or term were valid.

2. Nevertheless, a spouse may, in order to establish that he did not consent, rely upon the law of the country in which he has his habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 25

Formal validity of a matrimonial property agreement

1. The matrimonial property agreement shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. If the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

3. If the law applicable to the matrimonial property regime imposes additional formal requirements, those requirements shall apply.

Article 26

Applicable law in the absence of choice by the parties

1. In the absence of a choice-of-law agreement pursuant to Article 22, the law applicable to the matrimonial property regime shall be the law of the State:

- (a) of the spouses' first common habitual residence after the conclusion of the marriage; or, failing that
- (b) of the spouses' common nationality at the time of the conclusion of the marriage; or, failing that
- (c) with which the spouses jointly have the closest connection at the time of the conclusion of the marriage, taking into account all the circumstances.

2. If the spouses have more than one common nationality at the time of the conclusion of the marriage, only points (a) and (c) of paragraph 1 shall apply.

3. By way of exception and upon application by either spouse, the judicial authority having jurisdiction to rule on matters of the matrimonial property regime may decide that the law of a State other than the State whose law is applicable pursuant to point (a) of paragraph 1 shall govern the matrimonial property regime if the applicant demonstrates that:

- (a) the spouses had their last common habitual residence in that other State for a significantly longer period of time than in the State designated pursuant to point (a) of paragraph 1; and
- (b) both spouses had relied on the law of that other State in arranging or planning their property relations.

The law of that other State shall apply as from the conclusion of the marriage, unless one spouse disagrees. In the latter case, the law of that other State shall have effect as from the establishment of the last common habitual residence in that other State.

The application of the law of the other State shall not adversely affect the rights of third parties deriving from the law applicable pursuant to point (a) of paragraph 1.

This paragraph shall not apply when the spouses have concluded a matrimonial property agreement before the establishment of their last common habitual residence in that other State.

Article 27

Scope of the applicable law

The law applicable to the matrimonial property regime pursuant to this Regulation shall govern, inter alia:

- (a) the classification of property of either or both spouses into different categories during and after marriage;
- (b) the transfer of property from one category to the other one;
- (c) the responsibility of one spouse for liabilities and debts of the other spouse;
- (d) the powers, rights and obligations of either or both spouses with regard to property;
- (e) the dissolution of the matrimonial property regime and the partition, distribution or liquidation of the property;
- (f) the effects of the matrimonial property regime on a legal relationship between a spouse and third parties; and
- (g) the material validity of a matrimonial property agreement.

Article 28

Effects in respect of third parties

1. Notwithstanding point (f) of Article 27, the law applicable to the matrimonial property regime between the spouses may not be invoked by a spouse against a third party in a dispute between the third party and either or both of the spouses unless the third party knew or, in the exercise of due diligence, should have known of that law.

2. The third party is deemed to possess the knowledge of the law applicable to the matrimonial property regime, if:

(a) that law is the law of:

- (i) the State whose law is applicable to the transaction between a spouse and the third party;
- (ii) the State where the contracting spouse and the third party have their habitual residence; or,
- (iii) in cases involving immovable property, the State in which the property is situated;

or

(b) either spouse had complied with the applicable requirements for disclosure or registration of the matrimonial property regime specified by the law of:

- (i) the State whose law is applicable to the transaction between a spouse and the third party;

- (ii) the State where the contracting spouse and the third party have their habitual residence; or
 - (iii) in cases involving immovable property, the State in which the property is situated.
3. Where the law applicable to the matrimonial property regime between the spouses cannot be invoked by a spouse against a third party by virtue of paragraph 1, the effects of the matrimonial property regime in respect of the third party shall be governed:
- (a) by the law of the State whose law is applicable to the transaction between a spouse and the third party; or
 - (b) in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.

Article 29

Adaptation of rights *in rem*

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the matrimonial property regime 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 under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.

Article 30

Overriding mandatory provisions

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
2. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime pursuant to this Regulation.

Article 31

Public policy (*ordre public*)

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

Article 32

Exclusion of renvoi

The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.

*Article 33***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 matrimonial property regimes, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to 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 spouses, be construed as referring to the law of the territorial unit in which the spouses have their habitual residence;
 - (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 spouses, be construed as referring to the law of the territorial unit with which the spouses have 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.

*Article 34***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 matrimonial property regimes, 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 spouses have the closest connection shall apply.

*Article 35***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 matrimonial property regimes shall not be required to apply this Regulation to conflicts of laws arising between such units only.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS*Article 36***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 procedures provided for in Articles 44 to 57, apply for the decision to be recognised.
3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 37

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 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 38

Fundamental rights

Article 37 of this Regulation shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles recognised in the Charter, in particular in Article 21 thereof on the principle of non-discrimination.

Article 39

Prohibition of review of jurisdiction of the court of origin

1. The jurisdiction of the court of the Member State of origin may not be reviewed.
2. The public policy (*ordre public*) criterion referred to in Article 37 shall not apply to the rules on jurisdiction set out in Articles 4 to 11.

Article 40

No review as to substance

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

*Article 41***Staying of recognition proceedings**

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

*Article 42***Enforceability**

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 44 to 57.

*Article 43***Determination of domicile**

To determine whether, for the purposes of the procedure provided for in Articles 44 to 57, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

*Article 44***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 communicated by that Member State to the Commission in accordance with Article 64.
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 45***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 established in accordance with the advisory procedure referred to in Article 67(2), without prejudice to Article 46.

*Article 46***Non-production of the attestation**

1. If the attestation referred to in point (b) of Article 45(3) 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 or transliteration 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 47***Declaration of enforceability**

The decision shall be declared enforceable immediately on completion of the formalities set out in Article 45 without any review under Article 37. 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 48***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 49***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 by either party.
2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 64.
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 16 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 50***Procedure to contest the decision given on appeal**

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 64.

*Article 51***Refusal or revocation of a declaration of enforceability**

The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 37. It shall give its decision without delay.

*Article 52***Staying of proceedings**

The court with which an appeal is lodged under Article 49 or Article 50 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 53***Provisional, including protective, measures**

1. When a decision must be recognised in accordance with this Chapter, 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 46 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 49(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 54***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 55***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 56***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 in the Member State of enforcement.

*Article 57***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 58***Acceptance of authentic instruments**

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A 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 established in accordance with the advisory procedure referred to in Article 67(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

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

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged for as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of matrimonial property regimes, that court shall have jurisdiction over that question.

Article 59

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 44 to 57.

2. For the purposes of point (b) of Article 45(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or Article 50 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 60

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 44 to 57.

2. For the purposes of point (b) of Article 45(3), 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 established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or 50 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

GENERAL AND FINAL PROVISIONS

Article 61

Legalisation and other similar formalities

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

Article 62

Relations with existing international conventions

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation or of a decision pursuant to the second or third subparagraph of Article 331(1) TFEU and which concern matters covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 TFEU.

2. Notwithstanding paragraph 1, this Regulation shall, as between Member States, take precedence over conventions concluded between 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 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden containing international private law provisions on marriage, adoption and guardianship, as revised in 2006; of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised in June 2012; and of the Convention of 11 October 1977 between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements in civil matters, by the Member States which are parties thereto, in so far as they provide for simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of matrimonial property regime.

Article 63

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 matrimonial property regimes, including information on the type of authority which has competence in matters of matrimonial property regimes and on the effects in respect of third parties referred to in Article 28.

The Member States shall keep the information permanently updated.

Article 64

Information on contact details and procedures

1. By 29 April 2018, the Member States shall communicate to the Commission:
 - (a) the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 44(1) and with appeals against decisions on such applications in accordance with Article 49(2);
 - (b) the procedures to contest the decision given on appeal referred to in Article 50.

The Member States shall apprise the Commission of any subsequent changes to that 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) of paragraph 1.

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 65

Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in 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 notified 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 66

Establishment and subsequent amendment of the attestations and forms referred to in point (b) of Article 45(3) and Articles 58, 59 and 60

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in point (b) of Article 45(3) and Articles 58, 59 and 60. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

Article 67

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 68

Review clause

1. By 29 January 2027, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. Where necessary, the report shall be accompanied by proposals to amend this Regulation.
2. By 29 January 2024, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of Articles 9 and 38 of this Regulation. This report shall evaluate in particular the extent to which these Articles have ensured access to justice.
3. For the purposes of the reports referred to in paragraphs 1 and 2, Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts.

Article 69

Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019 subject to paragraphs 2 and 3.
2. If the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.

3. Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019.

Article 70

Entry into force

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

2. This Regulation shall apply in the Member States which participate in enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships, as authorised by Decision (EU) 2016/954.

It shall apply from 29 January 2019, except for Articles 63 and 64 which shall apply from 29 April 2018, and Articles 65, 66 and 67, which shall apply from 29 July 2016. For those Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU, this Regulation shall apply as from the date indicated in the decision concerned.

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

Done at Luxembourg, 24 June 2016.

For the Council

The President

A.G. KOENDERS

**REGULATION (EU) No 650/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 July 2012**

on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

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

to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-laws rules as measures facilitating the mutual recognition of decisions, and provides for the drawing-up of an instrument relating to wills and succession.

- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague Programme: strengthening freedom, security and justice in the European Union' ⁽⁴⁾. That programme underlines the need to adopt an instrument in matters of succession dealing, in particular, with the questions of conflict of laws, jurisdiction, mutual recognition and enforcement of decisions in the area of succession and a European Certificate of Succession.
- (6) At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'The Stockholm Programme – An open and secure Europe serving and protecting citizens' ⁽⁵⁾. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.
- (7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.
- (8) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the creation of a European Certificate of Succession.

⁽¹⁾ OJ C 44, 11.2.2011, p. 148.

⁽²⁾ Position of the European Parliament of 13 March 2012 (not yet published in the Official Journal) and decision of the Council of 7 June 2012.

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁵⁾ OJ C 115, 4.5.2010, p. 1.

- (9) The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.
- (10) This Regulation should not apply to revenue matters or to administrative matters of a public-law nature. It should therefore be for national law to determine, for instance, how taxes and other liabilities of a public-law nature are calculated and paid, whether these be taxes payable by the deceased at the time of death or any type of succession-related tax to be paid by the estate or the beneficiaries. It should also be for national law to determine whether the release of succession property to beneficiaries under this Regulation or the recording of succession property in a register may be made subject to the payment of taxes.
- (11) This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation.
- (12) Accordingly, this Regulation should not apply to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters, and property regimes of relationships deemed to have comparable effects to marriage. The authorities dealing with a given succession under this Regulation should nevertheless, depending on the situation, take into account the winding-up of the matrimonial property regime or similar property regime of the deceased when determining the estate of the deceased and the respective shares of the beneficiaries.
- (13) Questions relating to the creation, administration and dissolution of trusts should also be excluded from the scope of this Regulation. This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries.
- (14) Property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, should also be excluded from the scope of this Regulation. However, it should be the law specified by this Regulation as the law applicable to the succession which determines whether gifts or other forms of dispositions *inter vivos* giving rise to a right *in rem* prior to death should be restored or accounted for for the purposes of determining the shares of the beneficiaries in accordance with the law applicable to the succession.
- (15) This Regulation should allow for the creation or the transfer by succession of a right in immovable or movable property as provided for in the law applicable to the succession. It should, however, not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.
- (16) However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by succession, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right *in rem* under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right *in rem*, the authorities or competent persons of the State whose law applied to the succession may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.
- (17) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.
- (18) The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of the deceased to the succession property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided for by this Regulation. In particular, the European Certificate of Succession issued under this

Regulation should constitute a valid document for the recording of succession property in a register of a Member State. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.

- (19) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.
- (20) This Regulation should respect the different systems for dealing with matters of succession applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.
- (21) This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.
- (22) Acts issued by notaries in matters of succession in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the

rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.

- (23) In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.
- (24) In certain cases, determining the deceased's habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.
- (25) With regard to the determination of the law applicable to the succession the authority dealing with the succession may in exceptional cases – where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that he was manifestly more closely connected with another State – arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected. That manifestly closest connection should, however, not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex.

- (26) Nothing in this Regulation should prevent a court from applying mechanisms designed to tackle the evasion of the law, such as *fraude à la loi* in the context of private international law.
- (27) The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.
- (28) One such mechanism should be to allow the parties concerned to conclude a choice-of-court agreement in favour of the courts of the Member State of the chosen law. It would have to be determined on a case-by-case basis, depending in particular on the issue covered by the choice-of-court agreement, whether the agreement would have to be concluded between all parties concerned by the succession or whether some of them could agree to bring a specific issue before the chosen court in a situation where the decision by that court on that issue would not affect the rights of the other parties to the succession.
- (29) If succession proceedings are opened by a court of its own motion, as is the case in certain Member States, that court should close the proceedings if the parties agree to settle the succession amicably out of court in the Member State of the chosen law. Where succession proceedings are not opened by a court of its own motion, this Regulation should not prevent the parties from settling the succession amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the succession is not the law of that Member State.
- (30) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death, this Regulation should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised.
- (31) In order to remedy, in particular, situations of denial of justice, this Regulation should provide a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a succession which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.
- (32) In order to simplify the lives of heirs and legatees habitually resident in a Member State other than that in which the succession is being or will be dealt with, this Regulation should allow any person entitled under the law applicable to the succession to make declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or concerning the limitation of his liability for the debts under the succession, to make such declarations in the form provided for by the law of the Member State of his habitual residence before the courts of that Member State. This should not preclude such declarations being made before other authorities in that Member State which are competent to receive declarations under national law. Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession.
- (33) It should not be possible for a person who wishes to limit his liability for the debts under the succession to do so by a mere declaration to that effect before the courts or other competent authorities of the Member State of his habitual residence where the law applicable to the succession requires him to initiate specific legal proceedings, for instance inventory proceedings, before the competent court. A declaration made in such circumstances by a person in the Member State of his habitual residence in the form provided for by the law of that Member State should therefore not be formally valid for the purposes of this Regulation. Nor should the documents instituting the legal proceedings be regarded as declarations for the purposes of this Regulation.
- (34) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters.
- (35) One such procedural rule is a *lis pendens* rule which will come into play if the same succession case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the succession case.

- (36) Given that succession matters in some Member States may be dealt with by non-judicial authorities, such as notaries, who are not bound by the rules of jurisdiction under this Regulation, it cannot be excluded that an amicable out-of-court settlement and court proceedings relating to the same succession, or two amicable out-of-court settlements relating to the same succession, may be initiated in parallel in different Member States. In such a situation, it should be for the parties involved, once they become aware of the parallel proceedings, to agree among themselves how to proceed. If they cannot agree, the succession would have to be dealt with and decided upon by the courts having jurisdiction under this Regulation.
- (37) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable them to know in advance which law will apply to their succession. Harmonised conflict-of-laws rules should be introduced in order to avoid contradictory results. The main rule should ensure that the succession is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.
- (38) This Regulation should enable citizens to organise their succession in advance by choosing the law applicable to their succession. That choice should be limited to the law of a State of their nationality in order to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.
- (39) A choice of law should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. A choice of law could be regarded as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his disposition to specific provisions of the law of the State of his nationality or where he had otherwise mentioned that law.
- (40) A choice of law under this Regulation should be valid even if the chosen law does not provide for a choice of law in matters of succession. It should however be for the chosen law to determine the substantive validity of the act of making the choice, that is to say, whether the person making the choice may be considered to have understood and consented to what he was doing. The same should apply to the act of modifying or revoking a choice of law.
- (41) For the purposes of the application of this Regulation, the determination of the nationality or the multiple nationalities of a person should be resolved as a preliminary question. The issue of considering a person as a national of a State falls outside the scope of this Regulation and is subject to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union.
- (42) The law determined as the law applicable to the succession should govern the succession from the opening of the succession to the transfer of ownership of the assets forming part of the estate to the beneficiaries as determined by that law. It should include questions relating to the administration of the estate and to liability for the debts under the succession. The payment of the debts under the succession may, depending, in particular, on the law applicable to the succession, include the taking into account of a specific ranking of the creditors.
- (43) The rules of jurisdiction laid down by this Regulation may, in certain cases, lead to a situation where the court having jurisdiction to rule on the succession will not be applying its own law. When that situation occurs in a Member State whose law provides for the mandatory appointment of an administrator of the estate, this Regulation should allow the courts of that Member State, when seised, to appoint one or more such administrators under their own law. This should be without prejudice to any choice made by the parties to settle the succession amicably out of court in another Member State where this is possible under the law of that Member State. In order to ensure a smooth coordination between the law applicable to the succession and the law of the Member State of the appointing court, the court should appoint the person(s) who would be entitled to administer the estate under the law applicable to the succession, such as for instance the executor of the will of the deceased or the heirs themselves or, if the law applicable to the succession so requires, a third-party administrator. The courts may, however, in specific cases where their law so requires, appoint a third party as administrator even if this is not provided for in the law applicable to the succession. If the deceased had appointed an executor of the will, that person may not be deprived of his powers unless the law applicable to the succession allows for the termination of his mandate.
- (44) The powers exercised by the administrators appointed in the Member State of the court seised should be the powers of administration which they may exercise under the law applicable to the succession. Thus, if, for instance, the heir is appointed as administrator he should have the powers to administer the estate which an heir

would have under that law. Where the powers of administration which may be exercised under the law applicable to the succession are not sufficient to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the administrator(s) appointed in the Member State of the court seised may, on a residual basis, exercise powers of administration to that end provided for by the law of that Member State. Such residual powers could include, for instance, establishing a list of the assets of the estate and the debts under the succession, informing creditors of the opening of the succession and inviting them to make their claims known, and taking any provisional, including protective, measures intended to preserve the assets of the estate. The acts performed by an administrator in exercise of the residual powers should respect the law applicable to the succession as regards the transfer of ownership of succession property, including any transaction entered into by the beneficiaries prior to the appointment of the administrator, liability for the debts under the succession and the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession. Such acts could, for instance, only entail the alienation of assets or the payment of debts where this would be allowed under the law applicable to the succession. Where under the law applicable to the succession the appointment of a third-party administrator changes the liability of the heirs, such a change of liability should be respected.

- (45) This Regulation should not preclude creditors, for instance through a representative, from taking such further steps as may be available under national law, where applicable, in accordance with the relevant Union instruments, in order to safeguard their rights.
- (46) This Regulation should allow for potential creditors in other Member States where assets are located to be informed of the opening of the succession. In the context of the application of this Regulation, consideration should therefore be given to the possibility of establishing a mechanism, if appropriate by way of the e-Justice portal, to enable potential creditors in other Member States to access the relevant information so that they can make their claims known.
- (47) The law applicable to the succession should determine who the beneficiaries are in any given succession. Under most laws, the term 'beneficiaries' would cover heirs and legatees and persons entitled to a reserved share although, for instance, the legal position of legatees is not the same under all laws. Under some laws, the legatee may receive a direct share in the estate whereas under other laws the legatee may acquire only a claim against the heirs.
- (48) In order to ensure legal certainty for persons wishing to plan their succession in advance, this Regulation should lay down a specific conflict-of-laws rule concerning the admissibility and substantive validity of dispositions of property upon death. To ensure the uniform application of that rule, this Regulation should list which elements should be considered as elements pertaining to substantive validity. The examination of the substantive validity of a disposition of property upon death may lead to the conclusion that that disposition is without legal existence.
- (49) An agreement as to succession is a type of disposition of property upon death the admissibility and acceptance of which vary among the Member States. In order to make it easier for succession rights acquired as a result of an agreement as to succession to be accepted in the Member States, this Regulation should determine which law is to govern the admissibility of such agreements, their substantive validity and their binding effects between the parties, including the conditions for their dissolution.
- (50) The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects of such an agreement as between the parties, should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.
- (51) Where reference is made in this Regulation to the law which would have been applicable to the succession of the person making a disposition of property upon death if he had died on the day on which the disposition was, as the case may be, made, modified or revoked, such reference should be understood as a reference to either the law of the State of the habitual residence of the person concerned on that day or, if he had made a choice of law under this Regulation, the law of the State of his nationality on that day.
- (52) This Regulation should regulate the validity as to form of all dispositions of property upon death made in writing by way of rules which are consistent with those of the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. When determining whether a given disposition of property upon death is formally valid under this Regulation, the competent authority should disregard the fraudulent creation of an international element to circumvent the rules on formal validity.

- (53) For the purposes of this Regulation, any provision of law limiting the permitted forms of dispositions of property upon death by reference to certain personal qualifications of the person making the disposition, such as, for instance, his age, should be deemed to pertain to matters of form. This should not be interpreted as meaning that the law applicable to the formal validity of a disposition of property upon death under this Regulation should determine whether or not a minor has the capacity to make a disposition of property upon death. That law should only determine whether a personal qualification such as, for instance, minority should bar a person from making a disposition of property upon death in a certain form.
- (54) For economic, family or social considerations, certain immovable property, certain enterprises and other special categories of assets are subject to special rules in the Member State in which they are located imposing restrictions concerning or affecting the succession in respect of those assets. This Regulation should ensure the application of such special rules. However, this exception to the application of the law applicable to the succession requires a strict interpretation in order to remain compatible with the general objective of this Regulation. Therefore, neither conflict-of-laws rules subjecting immovable property to a law different from that applicable to movable property nor provisions providing for a reserved share of the estate greater than that provided for in the law applicable to the succession under this Regulation may be regarded as constituting special rules imposing restrictions concerning or affecting the succession in respect of certain assets.
- (55) To ensure uniform handling of a situation in which it is uncertain in what order two or more persons whose succession would be governed by different laws died, this Regulation should lay down a rule providing that none of the deceased persons is to have any rights in the succession of the other or others.
- (56) In some situations an estate may be left without a claimant. Different laws provide differently for such situations. Under some laws, the State will be able to claim the vacant estate as an heir irrespective of where the assets are located. Under some other laws, the State will be able to appropriate only the assets located on its territory. This Regulation should therefore lay down a rule providing that the application of the law applicable to the succession should not preclude a Member State from appropriating under its own law the assets located on its territory. However, to ensure that this rule is not detrimental to the creditors of the estate, a proviso should be added enabling the creditors to seek satisfaction of their claims out of all the assets of the estate, irrespective of their location.
- (57) The conflict-of-laws rules laid down in this Regulation may lead to the application of the law of a third State. In such cases regard should be had to the private international law rules of that State. If those rules provide for *renvoi* either to the law of a Member State or to the law of a third State which would apply its own law to the succession, such *renvoi* should be accepted in order to ensure international consistency. *Renvoi* should, however, be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.
- (58) Considerations of public interest should allow courts and other competent authorities dealing with matters of succession in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.
- (59) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of succession, irrespective of whether such decisions were given in contentious or non-contentious proceedings, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.
- (60) In order to take into account the different systems for dealing with matters of succession in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of succession.
- (61) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.

- (62) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (63) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. The legal acts recorded in an authentic instrument could be, for instance, the agreement between the parties on the sharing-out or the distribution of the estate, or a will or an agreement as to succession, or another declaration of intent. The legal relationships could be, for instance, the determination of the heirs and other beneficiaries as established under the law applicable to the succession, their respective shares and the existence of a reserved share, or any other element established under the law applicable to the succession. A party wishing to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the succession.
- (64) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (65) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (66) Should an authority, in the application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority, taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation, or, where the question is raised as an incidental question in the course of proceedings, by the court seized of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.
- (67) In order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Succession (hereinafter referred to as 'the Certificate'), to be issued for use in another Member State. In order to respect the principle of subsidiarity, the Certificate should not take the place of internal documents which may exist for similar purposes in the Member States.
- (68) The authority which issues the Certificate should have regard to the formalities required for the registration of immovable property in the Member State in which the register is kept. For that purpose, this Regulation should provide for an exchange of information on such formalities between the Member States.
- (69) The use of the Certificate should not be mandatory. This means that persons entitled to apply for a Certificate should be under no obligation to do so but should be free to use the other instruments available under this Regulation (decisions, authentic instruments and court settlements). However, no authority or person presented with a Certificate issued in another Member State should be entitled to request that a decision, authentic instrument or court settlement be presented instead of the Certificate.
- (70) The Certificate should be issued in the Member State whose courts have jurisdiction under this Regulation. It should be for each Member State to determine in its internal legislation which authorities are to have competence to issue the Certificate, whether they be courts as defined for the purposes of this Regulation or other authorities with competence in matters of succession, such as, for instance, notaries. It should also be for each Member State to determine in its internal legislation whether the issuing authority may involve other competent bodies in the issuing process, for instance bodies competent to receive statutory declarations in lieu of an oath. The Member States should

communicate to the Commission the relevant information concerning their issuing authorities in order for that information to be made publicly available.

over conventions concluded exclusively between two or more Member States in so far as such conventions concern matters governed by this Regulation.

- (71) The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death. The evidentiary effect of the Certificate should not extend to elements which are not governed by this Regulation, such as questions of affiliation or the question whether or not a particular asset belonged to the deceased. Any person who makes payments or passes on succession property to a person indicated in the Certificate as being entitled to accept such payment or property as an heir or legatee should be afforded appropriate protection if he acted in good faith relying on the accuracy of the information certified in the Certificate. The same protection should be afforded to any person who, relying on the accuracy of the information certified in the Certificate, buys or receives succession property from a person indicated in the Certificate as being entitled to dispose of such property. The protection should be ensured if certified copies which are still valid are presented. Whether or not such an acquisition of property by a third person is effective should not be determined by this Regulation.
- (72) The competent authority should issue the Certificate upon request. The original of the Certificate should remain with the issuing authority, which should issue one or more certified copies of the Certificate to the applicant and to any other person demonstrating a legitimate interest. This should not preclude a Member State, in accordance with its national rules on public access to documents, from allowing copies of the Certificate to be disclosed to members of the public. This Regulation should provide for redress against decisions of the issuing authority, including decisions to refuse the issue of a Certificate. Where the Certificate is rectified, modified or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid wrongful use of such copies.
- (73) Respect for international commitments entered into by the Member States means that this Regulation should not affect the application of international conventions to which one or more Member States are party at the time when this Regulation is adopted. In particular, the Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions should be able to continue to apply the provisions of that Convention instead of the provisions of this Regulation with regard to the formal validity of wills and joint wills. Consistency with the general objectives of this Regulation requires, however, that this Regulation take precedence, as between Member States,
- (74) This Regulation should not preclude Member States which are parties to the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration from continuing to apply certain provisions of that Convention, as revised by the intergovernmental agreement between the States parties thereto.
- (75) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring the Member States to communicate certain information regarding their legislation and procedures relating to succession within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC ⁽¹⁾. In order to allow for the timely publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.
- (76) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement and for the application for a European Certificate of Succession, as well as for the Certificate itself.
- (77) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽²⁾ should apply.
- (78) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments and to the European Certificate of Succession. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

⁽²⁾ OJ L 124, 8.6.1971, p. 1.

for control by Member States of the Commission's exercise of implementing powers ⁽¹⁾.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

- (79) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.
- (80) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by citizens of their succession in a Union context and the protection of the rights of heirs and legatees and of persons close to the deceased, as well as of the creditors of the succession, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (81) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation must be applied by the courts and other competent authorities of the Member States in observance of those rights and principles.
- (82) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom and Ireland of notifying their intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.
- (83) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,
1. This Regulation shall apply to succession to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.
2. 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 point (c) of Article 23(2) and to Article 26;
 - (c) questions relating to the disappearance, absence or presumed death of a natural person;
 - (d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;
 - (e) maintenance obligations other than those arising by reason of death;
 - (f) the formal validity of dispositions of property upon death made orally;
 - (g) property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature, without prejudice to point (i) of Article 23(2);
 - (h) 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;

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

- (i) the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated;
 - (j) the creation, administration and dissolution of trusts;
 - (k) the nature of rights *in rem*; and
 - (l) 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.
- (f) 'Member State of enforcement' means the Member State in which the declaration of enforceability or the enforcement of the decision, court settlement or 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;
 - (h) '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;

Article 2

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 3

Definitions

1. For the purposes of this Regulation:

- (a) 'succession' means succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession;
- (b) '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;
- (c) 'joint will' means a will drawn up in one instrument by two or more persons;
- (d) '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 the decision has been given, the court settlement approved or concluded, the authentic instrument established or the European Certificate of Succession issued;

- (i) 'authentic instrument' means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

- (i) relates to the signature and the content of the authentic instrument; and

- (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

2. For the purposes of this Regulation, the term 'court' means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 79.

CHAPTER II

JURISDICTION*Article 4***General jurisdiction**

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

*Article 5***Choice-of-court agreement**

1. Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.

2. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

*Article 6***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 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

- (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 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.

*Article 7***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 22 shall have jurisdiction to rule on the succession if:

- (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;
- (b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State; or
- (c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.

*Article 8***Closing of own-motion proceedings in the event of a choice of law**

A court which has opened succession proceedings of its own motion under Article 4 or Article 10 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 22.

*Article 9***Jurisdiction based on appearance**

1. Where, in the course of proceedings before a court of a Member State exercising jurisdiction pursuant to Article 7, it appears that not all the parties to those proceedings were party to the choice-of-court agreement, the court shall continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court.

2. If the jurisdiction of the court referred to in paragraph 1 is contested by parties to the proceedings who were not party to the agreement, the court shall decline jurisdiction.

In that event, jurisdiction to rule on the succession shall lie with the courts having jurisdiction pursuant to Article 4 or Article 10.

*Article 10***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 assets of the estate 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.

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

Article 11

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 12

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 13

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 of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession, shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.

Article 14

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;
- (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 15

Examination as to jurisdiction

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

Article 16

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 that end.

2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters (service of documents)⁽¹⁾ shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

⁽¹⁾ OJ L 324, 10.12.2007, p. 79.

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 17

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 18

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 those 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 19

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 LAW

Article 20

Universal application

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

Article 21

General rule

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

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.

Article 22

Choice of law

1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.

Article 23

The scope of the applicable law

1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:
- (a) the causes, time and place of the opening of the succession;
 - (b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;
 - (c) the capacity to inherit;
 - (d) disinheritance and disqualification by conduct;
 - (e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;
 - (f) 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 29(2) and (3);
 - (g) liability for the debts under the succession;
 - (h) the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs;
 - (i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and
 - (j) the sharing-out of the estate.

Article 24

Dispositions of property upon death other than agreements as to succession

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

2. Notwithstanding paragraph 1, a person may choose as the law to govern his disposition of property upon death, as regards its admissibility and substantive validity, the law which that

person could have chosen in accordance with Article 22 on the conditions set out therein.

3. Paragraph 1 shall apply, as appropriate, to the modification or revocation of a disposition of property upon death other than an agreement as to succession. In the event of a choice of law in accordance with paragraph 2, the modification or revocation shall be governed by the chosen law.

Article 25

Agreements as to succession

1. An agreement as to succession regarding the succession of one person shall be governed, as regards 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, as regards 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 to govern their agreement as to succession, as regards 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 22 on the conditions set out therein.

Article 26

Substantive validity of dispositions of property upon death

1. For the purposes of Articles 24 and 25 the following elements shall pertain to substantive validity:

- (a) the capacity of the person making the disposition of property upon death to make such a disposition;

- (b) the particular causes which bar the person making the disposition from disposing in favour of certain persons or which bar a person from receiving succession property from the person making the disposition;
- (c) the admissibility of representation for the purposes of making a disposition of property upon death;
- (d) the interpretation of the disposition;
- (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.

2. Where a person has the capacity to make a disposition of property upon death under the law applicable pursuant to Article 24 or Article 25, a subsequent change of the law applicable shall not affect his capacity to modify or revoke such a disposition.

Article 27

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 in which the disposition was made or the agreement as to succession concluded;
- (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;
- (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 his domicile, either at the time when the disposition was made or the agreement concluded, or at the time of death;
- (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 his habitual residence, either at the time when the disposition was made or the agreement concluded, or at the time of death; or
- (e) in so far as immovable property is concerned, of the State in which that property is located.

The determination of the question whether or not the testator or any person whose succession is concerned by the agreement

as to succession had his 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, nationality or other personal conditions of the testator or of the persons whose succession is concerned by an agreement as to succession shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications to be possessed by any witnesses required for the validity of a disposition of property upon death.

Article 28

Validity as to form of a declaration concerning acceptance or waiver

A declaration concerning the acceptance or 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 Article 21 or Article 22; or
- (b) the law of the State in which the person making the declaration has his habitual residence.

Article 29

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

1. Where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Article.

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

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

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

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

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

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

When exercising such powers, however, the administrators shall respect, in particular, the determination of the beneficiaries and

their succession rights, including their rights to a reserved share or claim against the estate or the heirs under the law applicable to the succession.

Article 30

Special rules imposing 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, impose 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, they are applicable irrespective of the law applicable to the succession.

Article 31

Adaptation of rights *in rem*

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

Article 32

Commorientes

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 that situation or make no provision for it at all, none of the deceased persons shall have any rights to the succession of the other or others.

Article 33

Estate without a claimant

To the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the estate as a whole.

Article 34

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 21(2), Article 22, Article 27, point (b) of Article 28 and Article 30.

Article 35

Public policy (*ordre public*)

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

Article 36

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 are to 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 27, 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 37

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 that 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 38

Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession shall not be required to apply this Regulation to conflicts of laws arising between such units only.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 39

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 45 to 58, apply for that decision to be recognised.

3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 40

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 41

No review as to the substance

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

Article 42

Staying of recognition proceedings

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

Article 43

Enforceability

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 45 to 58.

Article 44

Determination of domicile

To determine whether, for the purposes of the procedure provided for in Articles 45 to 58, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

Article 45

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 communicated by that Member State to the Commission in accordance with Article 78.

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 46

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 established in accordance with the advisory procedure referred to in Article 81(2), without prejudice to Article 47.

*Article 47***Non-production of the attestation**

1. If the attestation referred to in point (b) of Article 46(3) 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 48***Declaration of enforceability**

The decision shall be declared enforceable immediately on completion of the formalities in Article 46 without any review under Article 40. 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 49***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 50***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 communicated by the Member State concerned to the Commission in accordance with Article 78.
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 16 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 51***Procedure to contest the decision given on appeal**

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 78.

*Article 52***Refusal or revocation of a declaration of enforceability**

The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 40. It shall give its decision without delay.

*Article 53***Staying of proceedings**

The court with which an appeal is lodged under Article 50 or Article 51 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 54***Provisional, including protective, measures**

1. When a decision must be recognised in accordance with this Chapter, 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 48 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 50(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 55

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 56

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 57

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 58

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 59

Acceptance of authentic instruments

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member

State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A 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 established in accordance with the advisory procedure referred to in Article 81(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

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

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of succession, that court shall have jurisdiction over that question.

Article 60

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 45 to 58.

2. For the purposes of point (b) of Article 46(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The court with which an appeal is lodged under Article 50 or Article 51 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 61

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 45 to 58.

2. For the purposes of point (b) of Article 46(3), 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 established in accordance with the advisory procedure referred to in Article 81(2).

3. The court with which an appeal is lodged under Article 50 or Article 51 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 62

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 69.

2. The use of the Certificate shall not be mandatory.

3. The Certificate shall not take the place of 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 69 in the Member State whose authorities issued it in accordance with this Chapter.

Article 63

Purpose of the Certificate

1. The Certificate is for use by heirs, 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:

- (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 64

Competence to issue the Certificate

The Certificate shall be issued in the Member State whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11. The issuing authority shall be:

- (a) a court as defined in Article 3(2); or
- (b) another authority which, under national law, has competence to deal with matters of succession.

Article 65

Application for a Certificate

1. The Certificate shall be issued upon application by any person referred to in Article 63(1) (hereinafter referred to as 'the applicant').

2. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The application shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order 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 66(2):

- (a) details concerning the deceased: surname (if applicable, surname at birth), 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, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;

- (c) details concerning the representative of the applicant, if any: surname (if applicable, surname at birth), given name(s), address and representative capacity;
- (d) details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;
- (e) details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification number (if applicable) and address;
- (f) the intended purpose of the Certificate in accordance with Article 63;
- (g) the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;
- (h) the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased;
- (i) an indication of whether the deceased had made a disposition of property upon death; if neither the original nor a copy is appended, an indication regarding the location of the original;
- (j) 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, an indication regarding the location of the original;
- (k) an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;
- (l) a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;
- (m) any other information which the applicant deems useful for the purposes of the issue of the Certificate.

Article 66

Examination of the application

1. Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other 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 by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.

2. 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.

3. Where this is provided for by 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.

4. The issuing authority shall take all necessary steps to inform the beneficiaries of the application for a Certificate. It shall, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.

5. For the purposes of this Article, the competent authority of a Member State shall, upon request, provide the issuing authority of another Member State with information held, in particular, in the land registers, the civil status registers and registers recording documents and facts of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased, where that competent authority would be authorised, under national law, to provide another national authority with such information.

Article 67

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 established in accordance with the advisory procedure referred to in Article 81(2).

The issuing authority shall not issue the Certificate in particular if:

- (a) the elements to be certified are being challenged; or
- (b) 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 68

Contents of the Certificate

The Certificate shall contain the following information, to the extent required for the purpose for which it is issued:

- (a) the name and address of the issuing authority;
- (b) the reference number of the file;
- (c) the elements on the basis of which the issuing authority considers itself competent to issue the Certificate;
- (d) the date of issue;
- (e) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- (f) details concerning the deceased: surname (if applicable, surname at birth), 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;
- (g) details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);
- (h) 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;
- (i) the law applicable to the succession and the elements on the basis of which that law has been determined;

- (j) information as to whether the succession is testate or intestate, 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;
- (k) if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;
- (l) the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
- (m) the list of rights and/or assets for any given legatee;
- (n) 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;
- (o) 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 69

Effects of the Certificate

1. The Certificate shall produce its effects in all Member States, without any special procedure being required.
2. The Certificate shall be presumed to accurately demonstrate 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 conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.
3. Any person who, acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

4. Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with 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 points (k) and (l) of Article 1(2).

Article 70

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.

2. The issuing authority shall, for the purposes of Articles 71(3) and 73(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.

3. The certified copies issued shall be valid for a limited period of six months, to be indicated in the certified copy by way of an expiry date. In exceptional, duly justified cases, the issuing authority may, by way of derogation, decide that the period of validity is to be longer. Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the purposes indicated in Article 63, apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority.

Article 71

Rectification, modification or withdrawal of the Certificate

1. The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.

2. The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.

3. The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been

issued pursuant to Article 70(1) of any rectification, modification or withdrawal thereof.

Article 72

Redress procedures

1. Decisions taken by the issuing authority pursuant to Article 67 may be challenged by any person entitled to apply for a Certificate.

Decisions taken by the issuing authority pursuant to Article 71 and point (a) of Article 73(1) 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 a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority.

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

Article 73

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 71; or
- (b) the judicial authority, at the request of any person entitled to challenge a decision taken by the issuing authority pursuant to Article 72, 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 70(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 74

Legalisation and other similar formalities

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

Article 75

Relationship 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, Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions shall continue to apply the provisions of that Convention instead of Article 27 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 private international law provisions on succession, wills and estate administration, as revised by the intergovernmental agreement between those States of 1 June 2012, by the Member States which are parties thereto, in so far as it provides for:

- (a) rules on the procedural aspects of estate administration as defined by the Convention and assistance in that regard by the authorities of the States Contracting Parties to the Convention; and
- (b) simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of succession.

Article 76

Relationship with Council Regulation (EC) No 1346/2000

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

Article 77

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, of a legacy or of a reserved share.

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

The Member States shall keep the information permanently updated.

Article 78

Information on contact details and procedures

1. By 16 January 2014, 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 45(1) and with appeals against decisions on such applications in accordance with Article 50(2);
- (b) the procedures to contest the decision given on appeal referred to in Article 51;
- (c) the relevant information regarding the authorities competent to issue the Certificate pursuant to Article 64; and
- (d) the redress procedures referred to in Article 72.

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

⁽¹⁾ OJ L 160, 30.6.2000, p. 1.

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) of paragraph 1.

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.

Article 79

Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in 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 notified 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 80

Establishment and subsequent amendment of the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81(2).

Article 81

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 82

Review

By 18 August 2025 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different Member States or an out-of-court settlement in one Member State effected in parallel with a settlement before a court in another Member State. The report shall be accompanied, where appropriate, by proposals for amendments.

Article 83

Transitional provisions

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

2. Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were 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. A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.

4. If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.

*Article 84***Entry into force**

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

It shall apply from 17 August 2015, except for Articles 77 and 78, which shall apply from 16 January 2014, and Articles 79, 80 and 81, which shall apply from 5 July 2012.

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

Done at Strasbourg, 4 July 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS