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Committee on Legal Affairs

2009/0157(COD)

23.2.2011

***I
DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession
(KOM(2009)0154 – C7-0236/2009 – 2009/0157(COD))

Committee on Legal Affairs

Rapporteur: Kurt Lechner

Symbols for procedures

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

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

Amendments to a draft act

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession
(COM(2009)0154 – C7-0236/2009 – 2009/0157(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2009)0154),

– having regard to Article 251(2) and Articles 61(c) and 67(5), second indent, of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0236/2009),

– having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 14 July 2010[1],

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs (A7-0000/2011),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] OJ C 44, 11.2.2011, p. 148.

Amendment 1

Proposal for a regulation
Recital 8

Text proposed by the Commission	*Amendment*
(8) The scope of this Regulation should include all questions arising in civil law in connection with succession to the estates of deceased persons, namely all forms of transfer of ***property*** as a result of death, be it by voluntary transfer, transfer in accordance with a will or an agreement as to succession, or a legal transfer of property as a result of death.	(8) The scope of this Regulation should include all questions arising in civil law in connection with succession to the estates of deceased persons, namely all forms of transfer of ***assets*** as a result of death, be it by voluntary transfer, transfer in accordance with a will or an agreement as to succession, or a legal transfer of property as a result of death.

Or. de

Amendment 2

Proposal for a regulation
Recital 9

Text proposed by the Commission	*Amendment*
(9) The validity and effects of gifts are covered by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). They should therefore be excluded from the scope of this Regulation in the same way as other rights and assets created or transferred other than by succession. However, it is the law on succession determined pursuant to this Regulation which should specify if this gift or other form of provisions inter vivos ***giving rise to an immediate right in rem*** can lead to any obligation to restore or account for gifts when determining the shares of heirs or legatees in accordance with the law on succession.	(9) The validity and effects of gifts are covered by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). They should therefore be excluded from the scope of this Regulation in the same way as other rights and assets created or transferred other than by succession. However, it is the law on succession determined pursuant to this Regulation which should specify if this gift or other form of provisions ***executed*** inter vivos can lead to any obligation to restore or account for gifts when determining the shares of heirs or legatees in accordance with the law on succession.

Or. de

Amendment 3

Proposal for a regulation
Recital 10

Text proposed by the Commission	*Amendment*
(10) ***While this Regulation should cover the method of acquiring a right in rem in respect of tangible or intangible property as provided for in the law governing the succession,*** the exhaustive list ("numerus clausus") of rights in rem which may exist under the national law of the Member States, which is, in principle, governed by the lex rei sitae, should be included in the national rules governing conflict of laws. ***The publication of these rights, in particular the functioning of the land registry and the effects of entry or failure to make an entry into the register, which is also governed by local law, should also be excluded.***	(10) The exhaustive list ("numerus clausus") of rights in rem which may exist under the national law of the Member States, which is, in principle, governed by the lex rei sitae, should be included in the national rules governing conflict of laws. ***There should be adaptation in accordance with the recognised principles of international private law.***

Or. de

Amendment 4

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission	*Amendment*
	(10a) This Regulation should cover the method of acquiring a right in rem in respect of tangible or intangible property as provided for in the law governing the succession. Entries in public registers, the publication of the rights referred to and the effects of entries or failure to make entries, also governed by the lex rei sitae, should be excluded.

Or. de

Amendment 5

Proposal for a regulation
Recital 12

Text proposed by the Commission	*Amendment*
(12) In view of the increasing mobility of European citizens and in order to encourage good administration of justice within the European Union and to ensure that a genuine connecting factor exists between the succession and the Member State exercising jurisdiction, this Regulation should provide for the competence of the courts of the Member State of the ***last*** habitual residence of the deceased for the whole of the succession. For the same reasons, it should allow the competent court, ***by way of exception and*** under certain conditions, to transfer the case to the jurisdiction where the deceased had nationality if ***the latter*** is better placed to hear the case.	(12) In view of the increasing mobility of European citizens and in order to encourage good administration of justice within the European Union and to ensure that a genuine connecting factor exists between the succession and the Member State exercising jurisdiction, this Regulation should provide for the competence of the courts of the Member State of the habitual residence of the deceased for the whole of the succession ***in respect of both adversarial and non-adversarial proceedings***. For the same reasons, it should allow the competent court, under certain conditions, to transfer the case to the jurisdiction ***or to an entity with competence, pursuant to this Regulation, to issue a European Certificate of Succession*** where the deceased had nationality if ***either*** is better placed to hear the case.

Or. de

Amendment 6

Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) For determining the habitual residence as the centre of interests, account should be taken of the circumstances of the life of the deceased at the time of his or her death, and during

the preceding years, in particular the duration and regularity of his or her presence, and the circumstances of and reasons for it.

Or. de

Amendment 7

Proposal for a regulation
Recital 14

Text proposed by the Commission	*Amendment*
(14) In order to simplify the lives of heirs and legatees living in a Member State other than that in which the courts are competent to settle the succession, the settlement should authorise them to make declarations regarding the acceptance or waiver of succession in the manner provided for under the law of their last habitual residence, if necessary before the courts of that State.	(14) In order to simplify the lives of heirs and legatees living in a Member State other than that in which the courts are competent to settle the succession, the settlement should ***also*** authorise them to make declarations regarding the acceptance or waiver of succession in the manner provided for under the law of their last habitual residence, if necessary before the courts of that State.

Or. de

Amendment 8

Proposal for a regulation
Recital 15

Text proposed by the Commission	*Amendment*
(15) The close links between the succession rules and the substantive rules mean that the Regulation should provide for the exceptional competence of the courts of the Member State where the property is located if the law of this Member State requires the intervention of its courts in order to take measures covered by substantive law relating to the transmission of this property and its	***deleted***

recording in the land registers.

Or. de

Amendment 9

Proposal for a regulation
Recital 18

Text proposed by the Commission	*Amendment*
(18) This Regulation should make it easier for citizens to organise their succession in advance by enabling them to choose the applicable law. This choice should be subject to strict rules in order to respect the legitimate expectations of the heirs and legatees.	(18) This Regulation should make it easier for citizens to organise their succession in advance by enabling them to choose the applicable law. This choice should be subject to strict rules in order to respect the legitimate expectations of the heirs and legatees. ***In accordance with the favor testamenti principle, a person should be able to choose as the law governing his or her succession the law of the state whose nationality he or she possesses when the choice is made or at the time of his or her death. Where several nationalities are held, he or she should be able to choose from them. The choice of law should be sufficiently clear in the light of generally recognised interpretive criteria.***

Or. de

Amendment 10

Proposal for a regulation
Recital 19

Text proposed by the Commission	*Amendment*
(19***) The validity of the form of dispositions of property upon death is not covered by the Regulation.*** For the Member States which have ratified it, ***its*** scope is governed by the provisions of the Hague Convention of 5 October 1961 on	(19) For the Member States which have ratified it, ***the*** scope ***of formal validity*** is governed by the provisions of the Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions. ***However,***

the conflicts of laws relating to the form of testamentary dispositions.	***additional provisions on the validity of the form of dispositions of property upon death, including agreements as to succession, should be incorporated into this Regulation.***
	Or. de

Amendment 11

Proposal for a regulation
Recital 19 a (new)

Text proposed by the Commission	*Amendment*
	(19a) Additional provisions should be incorporated on the law applicable to testamentary capacity.
	Or. de

Amendment 12

Proposal for a regulation
Recital 20

Text proposed by the Commission	*Amendment*
(20) ***In order to facilitate recognition of succession rights acquired in a Member State, the conflict-of-laws rule should favour the validity of the agreements as to succession by accepting alternative connecting factors. The legitimate expectations of third parties should be preserved.***	(20) ***The validity of agreements as to succession and the rights deriving therefrom should be recognised in Member States. In the case of agreements as to succession, too, the law governing the succession should be specifically determined, for each individual testator, in accordance with the relevant provisions of this Regulation. Material validity, binding effect and the other legal issues specifically relating to agreements as to succession should be determined separately. Where relevant, these provisions should apply mutatis mutandis to joint wills.***

Or. de

Amendment 13

Proposal for a regulation
Recital 20 a (new)

Text proposed by the Commission	*Amendment*
	(20a) In the case of immovable succession property or succession property recorded in registers, this should be without prejudice to provisions of local law which relate to the establishment or transmission of rights in rem or the recording thereof in registers.

Or. de

Amendment 14

Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission	*Amendment*
	(23a) Should application of the rules of law of another State be based on a choice of law which has been made, in accordance with the principles of international private law only that State's substantive law must be applied. Should that not be the case, the international private law provisions of the State concerned should be applied in so far as they make reference to the law of a Member State. That State will apply its substantive law.

Or. de

Amendment 15

Proposal for a regulation
Recital 24

Text proposed by the Commission	*Amendment*
(24) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of foreign law ***in a given case*** where this would be contrary to the public policy of the forum. However, the courts should not be able to apply the public-policy exception in order to disregard the law of another Member State or to refuse to recognise or enforce a decision, an authentic instrument, a *legal transaction* or a European Certificate of Succession drawn up in another Member State ***when this*** would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination.	(24) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of foreign law where it would be ***manifestly*** contrary to the public policy of the forum. However, the courts should not be able to apply the public-policy exception in order to disregard the law of another Member State or to refuse to recognise or enforce a decision, an authentic instrument, a *court settlement* or a European Certificate of Succession drawn up in another Member State ***if doing so*** would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21, which prohibits all forms of discrimination. ***As a rule, differences in law on indefeasible interests should not be cited as grounds for disregarding application of the law of another Member State.***

Or. de

Amendment 16

Proposal for a regulation
Recital 26

Text proposed by the Commission	*Amendment*
(26) In order to take into account the different methods of settling the issues regarding successions in the Member States, this Regulation should guarantee the ***recognition*** and enforcement of authentic instruments. Nevertheless, the authentic instruments cannot be treated as	(26) In order to take into account the different methods of settling the issues regarding successions in the Member States, this Regulation should guarantee the ***free movement*** and enforcement of authentic instruments. Nevertheless, the authentic instruments cannot be treated as

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

court decisions with regard to their recognition. ***Within the limits of the provisions of the country of origin and country of enforcement,*** authentic instruments should enjoy the same evidentiary effect with regard to their contents, as well as a presumption of validity which can be eliminated if they are contested. This validity will therefore always be contestable. ***The legal act on which the instrument is based is subject to international private law and to the relevant law of succession.***

Or. de

Amendment 17

Proposal for a regulation
Recital 27

Text proposed by the Commission	*Amendment*
(27) An accelerated, manageable and efficient settlement of international successions within the European Union implies the possibility for the heir, legatee, executor of the will or administrator to prove easily on an out-of-court basis their capacity in the Member States in which the property involved in the succession is located. In order to facilitate free movement of this proof within the European Union, this Regulation should introduce a uniform model for the European Certificate of Succession and appoint the ***authority*** competent to issue it. In order to respect the principle of subsidiarity, this certificate should not replace the internal procedures of the Member States. The Regulation should specify the linkage with these procedures.	(27) An accelerated, manageable and efficient settlement of international successions within the European Union implies the possibility for the heir, legatee, executor of the will or administrator to prove easily on an out-of-court basis their capacity in the Member States in which the property involved in the succession is located. In order to facilitate free movement of this proof within the European Union, this Regulation should introduce***, for cross-border cases,*** a uniform model for the European Certificate of Succession and appoint the ***entity*** competent to issue it. ***That entity may be a court, an authority, a notary or a comparable body or individual. The entity will be appointed by the Member State whose courts have competence under the provisions of this Regulation. That should include competence through referral to a court or entity better placed to hear the case.*** In order to respect the principle of

subsidiarity, this certificate should not replace the internal procedures of the Member States. The Regulation should specify the linkage with these procedures.

Or. de

Amendment 18

Proposal for a regulation
Recital 30

Commission proposal	*Amendment*
(30) ***The measures necessary*** for the implementation of this Regulation should be ***adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission***[1].	(30) ***In order to ensure uniform conditions*** for the implementation of this Regulation***, implementing powers*** should be ***conferred on the Commission and exercised in accordance with Regulation (EU) No…/2011 of the European Parliament and of the Council of … laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers***[1].
[1] OJ L 184, 17.7.1999, p. 23.	***[1] OJ L ...***

Or. en

Amendment 19

Proposal for a regulation
Recital 31

Commission proposal	*Amendment*
(31) ***It would be particularly appropriate to enable the Commission to adopt*** any amendment to the forms provided for in this Regulation ***in accordance with the procedure laid down in Article 3 of Decision 1999/468/EC***.	(31) ***The advisory procedure should be used for the adoption of*** any amendment to the forms provided for in this Regulation***, taking into account the nature of the implementing act***.

Or. en

Amendment 20

Proposal for a regulation
Recital 33

Text proposed by the Commission	*Amendment*
(33) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by European citizens of their succession in an international context, the rights of heirs and legatees, and persons linked to the deceased and the creditors of the succession, cannot be *satisfactorily* met by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at ***Community*** level, the ***Community*** may take measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.	(33) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by European citizens of their succession in an international context, the rights of heirs and legatees, and persons linked to the deceased and the creditors of the succession, cannot be *adequately* met 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 take measures in accordance with the principle of subsidiarity as set out in Article 5 of the ***EU*** Treaty. 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.

Or. de

Amendment 21

Proposal for a regulation
Article 1 – paragraph 3 – point a

Text proposed by the Commission	*Amendment*
(a) the status of natural persons, as well as family relationships and relationships ***which are similar in effect***;	(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***;

Or. de

Amendment 22

Proposal for a regulation
Article 1 – paragraph 3 – point b

Text proposed by the Commission	*Amendment*
(b) the legal capacity of natural persons, ***notwithstanding*** Article 19(2)(c) and (d);	(b) the legal capacity of natural persons, ***without prejudice to*** Article 19(2)(c) and (d) ***and to Article 18a***;

Or. de

Amendment 23

Proposal for a regulation
Article 1 – paragraph 3 – point c

Text proposed by the Commission	*Amendment*
(c) the disappearance, absence and presumed death of a natural person;	(c) the disappearance, absence and presumed death of a natural person***, without prejudice to Article 23***;

Or. de

Amendment 24

Proposal for a regulation
Article 1 – paragraph 3 – point d

Text proposed by the Commission	*Amendment*
(d) questions regarding the matrimonial property regime and ***the*** property ***regime applicable to*** relationships ***which are*** deemed to have comparable effects to marriage;	(d) questions regarding the matrimonial property regime and property ***regimes for*** relationships deemed ***by the law applicable to such relationships*** to have comparable effects to marriage;

Or. de

Amendment 25

Proposal for a regulation
Article 1 – paragraph 3 – point e

Text proposed by the Commission	*Amendment*
(e) maintenance obligations;	(e) maintenance obligations ***unless established by reason of death***;

Or. de

Amendment 26

Proposal for a regulation
Article 1 – paragraph 3 – point f

Text proposed by the Commission	*Amendment*
(f) rights and assets created or transferred other than by succession to the estate of deceased persons, including gifts, such as in joint ownership with right of survival, pension plans, insurance contracts and or arrangements of a similar nature, ***notwithstanding*** Article 19(2)(j);	(f) rights and assets created or transferred other than by succession to the estate of deceased persons, including gifts, ***gifts inter vivos,*** such as in joint ownership with right of survival, pension plans, insurance contracts and or arrangements of a similar nature, ***without prejudice to*** Article 19(2)(j);

Or. de

2

Amendment 27

Proposal for a regulation
Article 1 – paragraph 3 – point g

Text proposed by the Commission	*Amendment*
(g) questions ***covered*** by ***company*** law, such as clauses contained in ***company*** memoranda of association and articles of association***, associations and legal persons and determining*** what will happen to the shares upon the death of ***their partners***;	(g) questions ***governed*** by ***the*** law ***of companies and other bodies, corporate or unincorporated***, such as clauses in ***the*** memoranda of association and articles of association ***of companies and other bodies, corporate or unincorporated which determine*** what will happen to the

shares upon the death of ***the members***;

Or. de

Amendment 28

Proposal for a regulation
Article 1 – paragraph 3 – point h

Text proposed by the Commission	*Amendment*
(h) the dissolving, closure and merging of enterprises, associations ***and*** legal persons;	(h) the dissolving, closure and merging of enterprises, associations ***or*** legal persons;

Or. de

Amendment 29

Proposal for a regulation
Article 1 – paragraph 3 – point i

Text proposed by the Commission	*Amendment*
(i) the constitution, ***functioning*** and dissolving of trusts;	(i) the constitution, ***administration*** and dissolving of trusts***, with the exception of trusts constituted through a disposition of property upon death or a legal transfer of property as a result of death***;

Or. de

Amendment 30

Proposal for a regulation
Article 1 – paragraph 3 – point j

Text proposed by the Commission	*Amendment*
(j) the nature of rights in rem ***relating to property and*** publicising ***these rights***.	(j) the nature of rights in rem***, the recording of rights in rem in a public register or the*** publicising ***thereof and the effects of recording or failing to record a***

right in rem in a public register.

Or. de

Amendment 31

Proposal for a regulation
Article 2 – point a

Text proposed by the Commission	*Amendment*
Definitions	Definitions
(a) “succession to the estates of deceased persons”: all forms of transfer of ***property*** as a result of death, be it by voluntary transfer, in accordance with a will or an agreement as to succession, or a legal transfer of property as a result of death;	(a) “succession to the estates of deceased persons": all forms of transfer of ***assets, rights and obligations*** as a result of death, be it by voluntary transfer, in accordance with a will or an agreement as to succession, or a legal transfer of property as a result of death;

Or. de

Amendment 32

Proposal for a regulation
Article 2 – point b

Text proposed by the Commission	*Amendment*
(b) “court”: any judicial authority or any competent authority in the Member States ***which carries*** out a judicial function in matters of succession. Other authorities which carry out by delegation of public power the functions falling within the jurisdiction of the courts as provided for in this Regulation shall be deemed to be courts.	(b) “court”: any judicial authority or any competent authority in the Member States ***or a court-appointed person or entity carrying*** out a judicial function in matters of succession. Other authorities which carry out by delegation of public power the functions falling within the jurisdiction of the courts as provided for in this Regulation shall be deemed to be courts.

Or. de

Amendment 33

Proposal for a regulation
Article 2 – point c

Text proposed by the Commission	*Amendment*
(c) "agreement as to succession": an agreement which confers, modifies or withdraws, with or without consideration, rights to the future succession of one or more persons who are party to the agreement;	Does not apply to English version.

Or. de

Amendment 34

Proposal for a regulation
Article 2 – point d

Text proposed by the Commission	*Amendment*
(d) "joint wills": wills drawn up by two or more persons in ***the same instrument for the benefit of a third party and/or*** on the basis of ***a reciprocal and mutual disposition***;	(d) "joint wills": wills drawn up by two or more persons in ***one or more instruments*** on the basis of ***their joint decision***;

Or. de

Amendment 35

Proposal for a regulation
Article 2 – point e

Text proposed by the Commission	*Amendment*
(e) "home Member State": the Member State in which***, depending on the case,*** the decision has been given, the *legal transaction* approved or concluded and the authentic instrument drawn up;	(e) "home Member State": the Member State in which the decision has been given, the *court settlement* approved or concluded and the authentic instrument drawn up;

Or. de

Amendment 36

Proposal for a regulation
Article 2 – point f

Text proposed by the Commission	*Amendment*
(f) “Member State ***addressed***”: the Member State in which recognition and/or enforcement of the decision, the *legal transaction* or the authentic instrument is ***requested***;	(f) "Member State ***of enforcement***": the Member State in which recognition, ***enforceability or*** enforcement of the decision, the *court settlement* or the authentic instrument is ***sought***;

Or. de

Amendment 37

Proposal for a regulation
Article 2 – point g

Text proposed by the Commission	*Amendment*
(g) “decision”: any decision ***given*** in a matter of succession to the estate of a deceased person by a court of a Member State, whatever the decision may be called, including a decree, order, ordinance or writ of execution, as well as the determination of costs or expenses by an officer of the court;	(g) “decision”: any ***measure or*** decision ***adopted*** in a matter of succession to the estate of a deceased person by a court of a Member State ***or by a court-appointed person or entity***, whatever the decision may be called, including a decree, order, ordinance or writ of execution, as well as the determination of costs or expenses by an officer of the court;

Or. de

Amendment 38

Proposal for a regulation
Article 2 – point g a (new)

Text proposed by the Commission	*Amendment*
	(ga) "court settlement": any settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings;

Or. de

Amendment 39

Proposal for a regulation
Article 2 – point h – introductory part

Text proposed by the Commission	*Amendment*
(h) “authentic instrument”: an instrument which has been formally drawn up or registered as an authentic instrument and the authenticity of which:	(h) "authentic instrument": an instrument ***in a matter of succession*** which has been formally drawn up or registered as an authentic instrument and the authenticity of which:

Or. de

Amendment 40

Proposal for a regulation
Article 2 – point i

Text proposed by the Commission	*Amendment*
(i) “European Certificate of Succession”: the certificate issued by the competent court pursuant to Chapter VI of this Regulation.	(i) “European Certificate of Succession”: the certificate issued by the competent court ***or competent entity*** pursuant to Chapter VI of this Regulation.

Or. de

Amendment 41

Proposal for a regulation
Article 4

Text proposed by the Commission	*Amendment*
Notwithstanding the provisions of this Regulation the courts of the Member State on whose territory the deceased had habitual residence at the time of *their* death shall be competent to rule ***in matters of successions***.	The courts of the Member State on whose territory the deceased had habitual residence at the time of death shall be competent to rule on ***the succession to the estate of the deceased as a whole***.

Or. de

Amendment 42

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Where the law of a Member State was chosen by the deceased to govern *their* succession in accordance with Article 17, the court seised in accordance with Article 4 may, at the request of one of the parties and if it considers that the courts of the Member State whose law has been chosen are better placed to rule on the succession, stay proceedings and invite the parties to seise the courts in that Member State with the application.	1. Where the law of a Member State was chosen by the deceased to govern *his or her* succession in accordance with Article 17, the court seised in accordance with Article 4 may, at the request of one of the parties and if it considers that the courts of the Member State whose law has been chosen are better placed to rule on the succession, stay proceedings and invite the parties to seise the courts in that Member State ***or, where appropriate, its competent entities under Article 37*** with the application.

Or. de

Amendment 43

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The ***competent*** court in accordance with Article 4 shall set a deadline by which the courts of the Member State ***whose law has been chosen*** must be seised in accordance with paragraph 1. If the courts are not seised by that deadline, the court seised shall continue to exercise its jurisdiction.	2. The court ***seised*** in accordance with Article 4 shall set ***the parties*** a deadline by which the courts of the Member State must be seised in accordance with paragraph 1. If the courts ***of that Member State*** are not seised by that deadline, the court seised ***in accordance with Article 4*** shall continue to exercise its jurisdiction.

Or. de

Amendment 44

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The courts of the Member State whose law has been chosen shall declare themselves competent within ***a maximum period of eight weeks*** from the date on which they were seised in accordance with paragraph 2. In this case, the court seised first shall decline jurisdiction. Otherwise, the court seised first shall continue to exercise its jurisdiction.	3. The courts of the Member State whose law has been chosen shall declare themselves competent within ***three months*** from the date on which they were seised in accordance with paragraph 2. In this case, the court seised first shall decline jurisdiction. Otherwise, the court seised first shall continue to exercise its jurisdiction.

Or. de

Amendment 45

Proposal for a regulation
Article 6 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	In the cases referred to in paragraph 1(a) and (b), competence shall cover the succession as a whole.

Or. de

Amendment 46

Proposal for a regulation
Article 7

Text proposed by the Commission	*Amendment*
The court before which proceedings are pending under Article 4, 5 or 6 shall also be competent ***to examine the*** counterclaim ***where this*** falls within the scope of this Regulation.	The court before which proceedings are pending under Articles 4, 5 or 6 shall also be competent ***as regards any*** counterclaim ***in so far as it*** falls within the scope of this Regulation.

Or. de

Amendment 47

Proposal for a regulation
Article 8

Text proposed by the Commission	*Amendment*
The courts in the Member State of the habitual residence of the heir or legatee shall also be competent to receive declarations concerning the acceptance or waiver of succession or legacy or designed to limit the liability of the heir or legatee where such declarations must be made before a court.	***In addition to the competent court under Article 4,*** the courts in the Member State of the habitual residence of the heir or legatee shall also be competent to receive declarations concerning the acceptance or waiver of succession or legacy or designed to limit the liability of the heir or legatee where such declarations must be made before a court.

Or. de

Amendment 48

Proposal for a regulation
Article 9

Text proposed by the Commission	*Amendment*
Article 9	***deleted***
Competence of courts in the place in which the property is located	
Where the law of the Member State of the place in which property is located requires the involvement of its courts in order to take measures under substantive law relating to the transmission of the property, its recording or transfer in the public register, the courts of the Member State shall be competent to take such measures.	

Or. de

Amendment 49

Proposal for a regulation
Article 10 – point b

Text proposed by the Commission	*Amendment*
Anrufung eines Gerichts	*Anrufung eines Gerichts*
(b) if the document has to be served before being lodged with the court, at the time when it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps that they were required to take to have the document lodged with the court**.**	(b) if the document has to be served before being lodged with the court, at the time when it is formally drawn up or registered by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps that they were required to take to have the document lodged with the court***, or***

Or. de

Amendment 50

Proposal for a regulation
Article 10 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) if the proceedings are opened of the court's own motion, at the time when the court takes the first procedural step.

Or. de

Amendment 51

Proposal for a regulation
Article 11

Text proposed by the Commission	*Amendment*
Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.	Where a court of a Member State is seised of a ***succession*** case over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Or. de

Amendment 52

Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters shall apply instead of	Does not apply to English version.

the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document has had to be sent from one Member State to another pursuant to that Regulation.

Or. de

Amendment 53

Proposal for a regulation
Article 12 – paragraph 3

Text proposed by the Commission	*Amendment*
3. ***Where the provisions of*** *Council* Regulation (EC) No 1393/2007 ***are*** not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document has to be sent abroad pursuant to that Convention.	3. ***Ist die*** Verordnung (EG) Nr. 1393/2007 nicht anwendbar, so gilt Artikel 15 des Haager Übereinkommens vom 15. ***Should*** Regulation (EC) No 1393/2007 not ***be*** applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document has to be sent abroad pursuant to that Convention.

Or. de

Amendment 54

Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission	*Amendment*
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.	Does not apply to English version.

Or. de

Amendment 55

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission	*Amendment*
1. A person may choose as the law to govern the succession as a whole the law of the State whose nationality *they possess*.	1. A person may choose as the law to govern the succession as a whole the law of the State whose nationality *he or she possesses* ***at the time of making the choice***. ***The choice of law shall also be valid if a person, at the time of his or her death, possesses the nationality of the State whose law he or she has chosen.***

Or. de

Amendment 56

Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The law applicable to the succession must be ***expressly*** determined and included in a ***declaration in the form of a*** disposition of property upon death.	2. The law applicable to the succession must be determined and included in a disposition of property upon death.

Or. de

Justification

The term 'expressly' (Article 17(2)) should be deleted from the wording of the legislation. Choosing a law is a statement of intent to which the generally recognised interpretive criteria should be applied. It is a general principle of law of succession that the wishes of a testator should be acted on to the greatest extent possible ('favor testamenti').

Amendment 57

Proposal for a regulation
Article 17 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Modification or revocation ***by its author*** of such a determination of applicable law ***must meet the conditions for the modification or revocation of a disposition of property upon death***.	4. ***For*** modification or revocation of such a determination of applicable law, ***paragraphs 2 and 3 shall apply mutatis mutandis***.

Or. de

Amendment 58

Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission	*Amendment*
1. An agreement regarding a person's succession shall be governed by the law which, under this Regulation, would have been applicable to the succession of that person ***in the event of their death on the day on which the agreement was concluded. If, in accordance with this law, the agreement is not valid, its validity shall nevertheless be accepted if it is in accordance with the law which, at the time of death, is applicable to the succession under this Regulation. The agreement shall therefore be governed by this law.***	1. An agreement regarding a person's succession shall be governed by the law which, under this Regulation, would have been applicable to the succession ***to the estate*** of that person ***if succession had opened at the time when*** the agreement was concluded.

Or. de

Justification

The second and third sentences of Article 18(1) are based on the 'favor testamenti' principle. In an agreement as to succession, however, contractual undertakings are entered into between parties on the basis of, and trusting in, the legal system hypothetically applicable when the agreement is concluded. It should not be possible for that basis to be changed by changing the law on succession, where there is only one party, and the two sentences should

therefore be deleted.

Amendment 59

Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission	*Amendment*
2. An agreement concerning the succession of several persons shall be ***valid in substantive terms only if this validity is accepted*** by the law which, ***pursuant to Article 16***, would have applied to the succession of ***one*** of the persons whose succession is involved ***in the event of death on the day on which*** the agreement was concluded. If ***the contract is valid pursuant to the law*** applicable to the succession ***of*** only one of those ***persons, that law shall apply. Where the contract is valid pursuant to the law applicable to the succession of several of these persons,*** the agreement shall be governed by the law with which it has the closest links.	2. An agreement concerning the succession of several persons shall be ***governed*** by the law which, ***under this Regulation***, would have been applicable to the succession of ***all*** of the persons whose succession is involved ***if succession had opened at the time when*** the agreement was concluded. If***, subsequently, more than one legal system in accordance with the first sentence is*** applicable to the ***agreement, and an agreement as to*** succession ***is recognised*** only ***by*** one of those ***legal systems, the agreement shall be governed by that law. If*** the agreement ***is recognised by more than one of those legal systems, it*** shall be governed by the law with which it has the closest links.

Or. de

Amendment 60

Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The parties may determine as the law governing their agreement the law which ***the person or*** one of the persons whose succession is involved could have chosen in accordance with Article 17.	3. The parties may determine as the law governing their agreement the law which one of the persons whose succession is involved could have chosen in accordance with Article 17***, provided that that legal system recognises agreements as to succession***.

Or. de

Amendment 61

Proposal for a regulation
Article 18 – paragraph 4

Text proposed by the Commission	*Amendment*
4. ***The application of the law provided for in this Article shall not prejudice the rights of any person who is not party to the agreement and who, in accordance with the law determined in Article 16 or 17, has an indefeasible interest or another right of which it cannot be deprived by the person whose succession is involved.***	4. ***Paragraphs 1, 2 and 3 relate only to contractual aspects of dispositions of property upon death, such as the material validity of agreements as to succession, the nature and scope of the binding effect thereof, interpretation and revocation thereof and withdrawal from them.***

Or. de

Amendment 62

Proposal for a regulation
Article 18 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. This Article shall apply mutatis mutandis to joint wills.

Or. de

Amendment 63

Proposal for a regulation
Article 18 a (new)

Text proposed by the Commission	*Amendment*
	Article 18a
	Capacity to dispose of property upon death
	1. The testator shall have the capacity to dispose of property upon death if he had

that capacity under:
(a) the law which would have governed the succession to his estate if he had died on the day on which the disposition was made, or
(b) the law applicable, pursuant to this Regulation, to his succession at the time of death.

2. Paragraph 1 shall apply mutatis mutandis to the modification and revocation of a disposition of property upon death and to withdrawal from an agreement as to succession.

Or. de

Amendment 64

Proposal for a regulation
Article 18 b (new)

Text proposed by the Commission	*Amendment*
	Article 18b
	Formal validity of dispositions of property upon death
	1. A disposition of property upon death shall be formally valid if it:
	(a) were formally valid under the law which would have governed the succession to the estate of the testator if he had died on the day on which the disposition was made, or
	(b) is formally valid under the law applicable, pursuant to this Regulation, to his succession at the time of death.
	2. Paragraph 1 shall apply mutatis mutandis to the modification and revocation of a disposition of property upon death and to withdrawal from an agreement as to succession.

Or. de

Justification

It must be ensured that dispositions of property upon death which were formally valid when they were made are not invalidated by a change of law on succession and that the question of the formal validity of agreements as to succession is clarified.

Amendment 65

Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The law determined in Chapter ***III*** shall govern the succession as a whole, from its opening to the final transfer of the inheritance to the beneficiaries.	1. The law determined in ***this*** Chapter shall govern the succession as a whole, from its opening to the final transfer of the inheritance to the beneficiaries.

Or. de

Amendment 66

Proposal for a regulation
Article 19 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the ***eligibility*** of the heirs and legatees, including the inheritance rights of the surviving spouse, determination of the respective shares of such persons, the responsibilities imposed on them by the deceased, ***and*** the other rights governing succession which have their source in the death;	(b) the ***determination*** of the heirs and legatees, including the inheritance rights of the surviving spouse ***or partner***, determination of the respective shares of such persons, the responsibilities imposed on them by the deceased, the other rights governing succession which have their source in the death, ***and waivers of succession***;

Or. de

Amendment 67

Proposal for a regulation
Article 19 – paragraph 2 – point f

Text proposed by the Commission	*Amendment*
(f) the ***transfer*** of assets ***and*** rights making up the ***succession to the heirs and legatees***, including the conditions and effects of accepting or waiving the succession or legacy;	(f) the ***transmission to the heirs and, as the case may be, to the legatees*** of ***the*** assets***,*** rights ***and obligations*** making up the ***estate***, including the conditions and effects of accepting or waiving the succession or legacy***, without prejudice to Article 20a***;

Or. de

Amendment 68

Proposal for a regulation
Article 19 – paragraph 2 – point g

Text proposed by the Commission	*Amendment*
(g) the powers of the heirs, the executors of the wills and other administrators of the *succession*, in particular the sale of ***property*** and the payment of creditors;	(g) the powers of the heirs, the executors of the wills and other administrators of the *estate*, in particular ***as regards*** the sale of ***assets*** and the payment of creditors;

Or. de

Amendment 69

Proposal for a regulation
Article 19 – paragraph 2 – point i

Text proposed by the Commission	*Amendment*
(i) the freely disposable portion, the reserved portions and the other restrictions on the freedom to dispose of property upon death, including the allocations deducted from the succession ***by a judicial authority or another authority*** for the benefit of the	(i) the freely disposable portion, the reserved portions and the other restrictions on the freedom to dispose of property upon death, including the allocations deducted from the succession for the benefit of the relatives of the deceased***, and waiver of***

relatives of the deceased;	***reserved portions***;

Or. de

Amendment 70

Proposal for a regulation
Article 19 – paragraph 2 – point k

Text proposed by the Commission	*Amendment*
(k) the validity***,*** interpretation***, amendment and revocation*** of a disposition of property upon death, ***with the exception of its formal validity***;	(k) the ***material*** validity ***and*** interpretation of a disposition of property upon death, ***as well as the modification and revocation of such a disposition, without prejudice to Articles 18a and 18b, and***;

Or. de

Amendment 71

Proposal for a regulation
Article 19 – paragraph 2 – point l

Text proposed by the Commission	*Amendment*
(l) ***sharing*** the inheritance.	(l) ***the sharing-out of*** the inheritance***, without prejudice to Article 20a***.

Or. de

Amendment 72

Proposal for a regulation
Article 20

Text proposed by the Commission	*Amendment*
Without prejudice to Article 19, acceptance or waiver of the succession or a legacy or a declaration made to limit the liability of the heir or legatee shall ***also*** be	***A declaration concerning*** acceptance or waiver of the succession or a legacy or a declaration made to limit the liability of the heir or legatee shall be valid ***as to form***

valid where it meets the ***conditions*** of the law of the State in which the heir or legatee has ***their place of*** habitual residence.	where it meets the ***requirements*** of ***the law applicable to the succession or*** the law of the State in which the heir or legatee has ***his*** habitual residence.

Or. de

Amendment 73

Proposal for a regulation
Article 20 a (new)

Text proposed by the Commission	*Amendment*
	Article 20a
	Lex rei sitae
	This Regulation shall be without prejudice to the application of the provisions of law of a State where immovable succession property or succession property recorded in public registers is located which relate to the establishment or transmission of ownership of other rights in rem in respect of such succession property or to the entry thereof in public registers.

Or. de

Amendment 74

Proposal for a regulation
Article 20 a (new)

Text proposed by the Commission	*Amendment*
	Article 20a
	Lex rei sitae
	This Regulation shall be without prejudice to the application of the provisions of law of a State where immovable succession property or succession property recorded in public

	registers is located which relate to the establishment or transmission of ownership or other rights in rem in respect of such succession property, or to the entry thereof in public registers, only in so far as title is acquired by means of an act of establishment or of transmission or a court judgment.

Or. de

Amendment 75

Proposal for a regulation
Article 26

Text proposed by the Commission	*Amendment*
Where this Regulation provides for the application of the law of a State, it means the rules of law in force in that State other than its rules of private international law.	Where this Regulation provides for the application of the law of a State, it means the rules of law in force in that State other than its rules of private international law***, with the exception of rules of private international law which refer in full or in part to the law of a Member State***.

Or. de

Amendment 76

Proposal for a regulation
Article 27 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The application of a rule of ***the*** law determined by this Regulation may be refused only if such application is incompatible with the public policy of the forum.	1. The application of a rule of ***a State's*** law determined by this Regulation may be refused only if such application is ***manifestly*** incompatible with the public policy of the forum.

Or. de

Amendment 77

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission	*Amendment*
2. In particular, the application of a rule of the law determined by this Regulation may not be considered to be contrary to the public policy of the forum on the sole ground that its clauses regarding the reserved portion of an estate differ from those in force in the forum.	***deleted***

Or. de

Justification

The rapporteur regards the wording in Article 27(2) as unnecessary and proposes that the concept be incorporated into the recital concerning Article 27.

Amendment 78

Proposal for a regulation
Article 34 – title

Text proposed by the Commission	*Amendment*
Recognition of authentic instruments	Authentic instruments

Or. de

Amendment 79

Proposal for a regulation
Article 34

Text proposed by the Commission	*Amendment*
Authentic instruments formally drawn up or registered in a Member State ***shall be recognised*** in the ***other*** Member States, except where the validity of these instruments is contested ***in accordance with the procedures provided for in the***	Authentic instruments ***on succession matters*** formally drawn up or registered in a Member State ***may circulate freely*** in the Member States ***and shall be exempt from any legalisation procedure or similar formalities. In other Member States, they***

home Member State and provided that such recognition is not contrary to public policy in the Member State ***addressed***.	***shall have the same evidentiary effect as those States' national instruments, though no more than they enjoy in the home Member State***, except where the validity of these instruments is contested and provided that such recognition is not ***manifestly*** contrary to public policy in the Member State ***of enforcement***.

Or. de

Amendment 80

Proposal for a regulation
Article 36 – paragraph 1

Text proposed by the Commission	*Amendment*
1. This Regulation introduces a European Certificate of Succession, which shall ***constitute proof of the capacity of heir or legatee and of the powers of the executors of wills or third-party administrators. This certificate shall be issued by the competent authority pursuant to this Chapter, in accordance with the law applicable to succession pursuant to Chapter III of this Regulation***.	1. This Regulation introduces***, for cross-border purposes,*** a European Certificate of Succession ***(hereinafter referred to as "the Certificate")***, which shall ***produce its effects in all Member States under the conditions set out in this Chapter***. *(The term 'the Certificate' is to be introduced throughout the legislative text. Adopting the amendment will necessitate corresponding changes throughout.)*

Or. de

Amendment 81

Proposal for a regulation
Article 36 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. The Certificate shall be for use by heirs or legatees and executors of wills or

administrators of the estate who need to prove respectively - in a State other than the State whose competent entity has issued the Certificate in accordance with the provisions of this Chapter - their status and/or rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate under the law applicable pursuant to Chapter III.

Or. de

Amendment 82

Proposal for a regulation
Article 36 – paragraph 1 b (new)

Text proposed by the Commission	*Amendment*
	1b. The Certificate may be used, in particular, as proof of one or more of the following: ***(a) the rights of each person entitled to succeed designated in the Certificate and his or her respective share of the estate;*** ***(b) the attribution of a specific asset or specific assets forming part of the estate to the person or persons entitled to succeed designated in the Certificate;*** ***(c) the powers of the person designated in the Certificate to execute the will or administer the estate.***

Or. de

Amendment 83

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The use of ***the European*** Certificate ***of Succession*** shall not be ***obligatory***. The ***certificate*** shall not be a substitute for	2. The use of the Certificate shall not be ***mandatory***. The ***Certificate*** shall not be a substitute for internal procedures.

internal procedures. However, the effects of the ***certificate*** shall also be recognised in the Member State whose ***authorities have*** issued it in accordance with this Chapter.

However, the effects of the ***Certificate*** shall also be recognised in the Member State whose ***competent entity has*** issued it in accordance with this Chapter.

Or. de

Amendment 84

Proposal for a regulation
Article 37 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The ***certificate*** shall be issued upon application by any person ***obliged*** to provide proof of the capacity of heir or legatee and of the powers of the executors of wills or third-party administrators.	1. The ***Certificate*** shall be issued upon application by any person ***requiring it in order*** to provide proof ***- in a State other than the State whose competent entity has issued the Certificate in accordance with this Chapter -*** of the capacity of heir or legatee or of the powers of the executors of wills or third-party administrators.

Or. de

Amendment 85

Proposal for a regulation
Article 37 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The ***certificate*** shall be drawn up by the ***competent court in the*** Member State ***whose courts are*** competent ***pursuant to*** Articles 4, 5 and 6.	2. The ***Certificate*** shall be ***issued*** by the ***court which is competent pursuant to the provisions of a*** Member State ***or by the competent entity (both hereinafter referred to as "the competent entity").*** Articles 4, 5 and 6 ***shall apply mutatis mutandis***. (The term 'competent entity' is to be introduced throughout the legislative text. *Adopting the amendment will necessitate corresponding changes throughout.)*

Or. de

Amendment 86

Proposal for a regulation
Article 37 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. The Member States shall forward the relevant information on competent entities to the Commission with a view to making it available to the public.

Or. de

Amendment 87

Proposal for a regulation
Article 38 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. Any person applying for the issue of a ***certificate of succession*** shall provide, via the form a model of which is provided in Annex I, where such information is in their possession:	1. Any person applying for the issue of a ***Certificate*** shall provide, via the form a model of which is provided in Annex I, where such information is in their possession:

Or. de

Amendment 88

Proposal for a regulation
Article 38 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) information concerning the deceased: surname, forename(s), sex, civil status, nationality, *their* identification code (where possible), address of ***last*** habitual	(a) information concerning the deceased: surname, forename(s), sex, civil status, nationality, identification code (where possible), address of habitual residence ***at***

residence, date and place of *their* death;	***time of death***, date and place of death;

Or. de

Amendment 89

Proposal for a regulation
Article 38 – paragraph 1 – point e

Text proposed by the Commission	*Amendment*
(e) whether the deceased has stipulated a marriage contract; if so, *they* must attach a copy of ***the marriage*** contract;	(e) whether the deceased has stipulated a marriage ***or partnership*** contract; if so, *the applicant* must attach a copy of ***that*** contract;

Or. de

Amendment 90

Proposal for a regulation
Article 38 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The applicant must prove the accuracy of the information provided by means of authentic instruments. If the documents cannot be produced or can be produced only with disproportionate difficulties, other forms of evidence shall be admissible.	2. ***Where appropriate,*** the applicant must prove the accuracy of the information provided by means of authentic instruments. If the documents cannot be produced or can be produced only with disproportionate difficulties, other forms of evidence shall be admissible.

Or. de

Amendment 91

Proposal for a regulation
Article 38 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The competent ***court*** shall take the appropriate measures to guarantee the veracity of the declarations made. Where its domestic law allows, the ***court*** shall request that such declarations *are* made on oath.	3. The competent ***entity*** shall take the appropriate measures to guarantee the veracity of the declarations made. Where ***and to the extent*** its domestic law allows, the competent ***entity*** shall require that such declarations *be* made on oath ***or in an affirmation or in any other form with equivalent formality***.

Or. de

Amendment 92

Proposal for a regulation
Article 40 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The ***certificate*** shall be issued only if the competent ***court*** considers that the facts which are presented as the grounds for the application are established. The competent ***court*** shall issue the certificate promptly.	1. The ***Certificate*** shall be issued only if the competent ***entity*** considers that the facts which are presented as the grounds for the application are established. The competent ***entity*** shall issue the Certificate promptly.

Or. de

Amendment 93

Proposal for a regulation
Article 40 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The competent ***court*** shall carry out, of its own accord and on the basis of the applicant's declarations and the instruments and other means of proof	2. The competent ***entity*** shall carry out, of its own accord and on the basis of the applicant's declarations and the instruments and other means of proof

provided by *them*, the enquiries necessary to verify the facts and to search for any further proof that seems necessary.	provided by *him or her*, the enquiries necessary to verify the facts and to search for any further proof that seems necessary.

Or. de

Amendment 94

Proposal for a regulation
Article 40 – paragraph 3

Text proposed by the Commission	*Amendment*
3. For the purposes of this Chapter, the Member States shall grant access to the competent ***courts*** in other Member States, in particular to the civil status registers, to registers recording acts and facts relating to the succession or to the ***matrimonial*** regime of the family of the deceased and to the land registers.	3. For the purposes of this Chapter, the Member States shall grant access to the competent ***entities*** in other Member States, in particular to the civil status registers, to registers recording acts and facts relating to the succession or to the ***property*** regime of the family of the deceased and to the land registers.

Or. de

Amendment 95

Proposal for a regulation
Article 40 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The ***issuing court*** may summon before it any persons involved and any administrators or executors and make public statements inviting any other beneficiaries to the succession to assert their rights.	4. The ***competent entity*** may summon before it any persons involved and any administrators or executors and make public statements inviting any other beneficiaries to the succession to assert their rights.

Or. de

Amendment 96

Proposal for a regulation
Article 41 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The ***European*** Certificate ***of Succession*** shall be issued using the standard form in Annex II.	1. The ***Certificate*** shall be issued using the standard form in Annex II.

Or. de

Amendment 97

Proposal for a regulation
Article 41 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) the ***issuing court***, the elements of fact and law for which the ***court*** considers itself to be competent to issue the certificate and the date of issue;	(a) the ***competent entity***, the elements of fact and law for which the ***entity*** considers itself to be competent to issue the certificate and the date of issue;

Or. de

Amendment 98

Proposal for a regulation
Article 41 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) information concerning the deceased: surname, *forenames*, sex, civil status, nationality, *their* identification code (where possible), address of ***last*** habitual residence, date and place of death;	(b) information concerning the deceased: surname, *forename(s)*, sex, civil status, nationality, identification code (where possible), address of habitual residence ***at time of death***, date and place of death;

Or. de

Amendment 99

Proposal for a regulation
Article 41 – paragraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) any marriage *contracts* stipulated by the deceased;	(c) any marriage ***or partnership*** *contract* stipulated by the deceased;

Or. de

Amendment 100

Proposal for a regulation
Article 41 – paragraph 2 – point h

Text proposed by the Commission	*Amendment*
(h) where there are several heirs, the share for each of them and***, if applicable,*** the list of rights and assets for any given heir;	(h) where there are several heirs, the share for each of them and the list of rights and assets for any given heir;

Or. de

Amendment 101

Proposal for a regulation
Article 41 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. Information under paragraph 2 need not be provided if, for use of the Certificate and for the purposes thereof, it does not appear necessary to do so and if the applicant so requests, or if the applicable law does not provide accordingly, or if it is not relevant.

Or. de

Amendment 102

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The ***European*** Certificate ***of Succession*** shall be recognised automatically in all the Member States with regard to ***the*** capacity ***of the*** heirs***,*** legatees, and powers of the executors of wills or third-party administrators.	1. The Certificate shall be recognised automatically in all the Member States with regard to capacity ***as*** heirs ***and - should the applicable law so provide -*** legatees, and powers of the executors of wills or third-party administrators.

Or. de

Amendment 103

Proposal for a regulation
Article 42 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The content of the ***certificate*** shall be presumed to be accurate in all the Member States throughout the period of its validity. It shall be presumed that the person designated by the certificate as the heir, legatee, executor of the will or administrator ***shall hold the right to the succession or*** the powers of administration ***stated in*** the ***certificate*** and that there shall be no conditions or restrictions other than those ***stated therein***.	2. The content of the ***Certificate*** shall be presumed to be accurate in all the Member States throughout the period of its validity. It shall be presumed that the person designated by the Certificate as the heir, legatee, executor of the will or administrator ***has the respective capacity or holds*** the powers of administration ***deriving from*** the ***Certificate*** or the applicable law and that there are no conditions or restrictions other than those ***deriving therefrom***.

Or. de

Amendment 104

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Any person who ***pays or passes on property to*** the bearer of a certificate who is authorised to carry out such acts on the basis of the ***certificate*** shall be released from *their* obligations, unless *they know* that the contents of the ***certificate*** are not accurate.	3. Any person ***providing consideration to*** the bearer of a certificate who is authorised to carry out such acts on the basis of the ***Certificate*** shall be released from *his or her* obligations, unless *he or she knows* that the contents of the ***Certificate*** are not accurate.

Or. de

Amendment 105

Proposal for a regulation
Article 42 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Any person who has acquired succession property from ***the bearer of a certificate*** who ***is authorised to possess the property in accordance with the list attached to the certificate*** shall be considered to have acquired it from a person with the authority to possess the property, unless *they know* that the contents of the certificate are not accurate.	4. Any person who has acquired succession property from the person who***, according to the Certificate, has the relevant authorisation*** shall be considered***, in accordance with paragraph 2,*** to have acquired it from a person with the authority to possess the property, unless *he or she knows* that the contents of the certificate are not accurate

Or. de

Amendment 106

Proposal for a regulation
Article 42 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The ***certificate*** shall constitute a valid document allowing for the transcription or	5. The ***Certificate*** shall constitute a valid document allowing for the transcription or

entry of the inherited acquisition in the public registers of the Member State in which the property is located. Transcription shall take place in accordance with the conditions laid down in the law of the Member State in which the register is held and shall produce the effects specified therein.	entry of the inherited acquisition in the public registers of the Member State in which the property is located. Transcription shall take place in accordance with the conditions laid down in the law of the Member State in which the register is held and shall produce the effects specified therein.

Or. de

Amendment 107

Proposal for a regulation
Article 43 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The original of the ***certificate*** shall be retained by the issuing ***court***, which shall issue one or more authentic copies to the applicant or to any person having a legitimate interest.	1. The original of the ***Certificate*** shall be retained by the issuing ***competent entity***, which shall issue one or more authentic copies to the applicant or to any person having a legitimate interest.

Or. de

Amendment 108

Proposal for a regulation
Article 43 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The copies issued shall have the effects provided for in Article 42 for a limited period of ***three*** months. Once this period has elapsed***, the bearers of the certificate or any other interested persons must request*** a new authentic copy ***from the issuing court in order to assert their rights to succession***.	2. The copies issued shall have the effects provided for in Article 42 for a limited period of ***six*** months. ***Where justified, the competent entity may lay down a longer period. The end of the period during which a copy produces legal effects shall be entered on it.*** Once the period has elapsed, a new authentic copy ***shall be applied for if necessary***.

Or. de

Amendment 109

Proposal for a regulation
Article 43 – paragraph 3 – introductory part

Text proposed by the Commission	*Amendment*
3. The certificate shall, at the request of an interested party addressed to the ***issuing court***, or spontaneously by the ***authority*** in question:	3. The certificate shall, at the request of an interested party addressed to the ***competent entity***, or spontaneously by the ***competent entity***:

Or. de

Amendment 110

Proposal for a regulation
Article 43 – paragraph 3 – point b

Text proposed by the Commission	*Amendment*
(b) have a comment entered into its margin suspending its effects where it is contested that the ***certificate*** is accurate;	(b) have a comment entered into its margin suspending its effects where it is contested that the ***Certificate*** is accurate;

Or. de

Amendment 111

Proposal for a regulation
Article 43 – paragraph 3 – point c

Text proposed by the Commission	*Amendment*
(c) be cancelled where it is established that it is not accurate.	Does not apply to English version.

Or. de

Amendment 112

Proposal for a regulation
Article 43 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The ***issuing court*** shall note in the margin of the original of the ***certificate*** its rectification, the suspension of its effects or its cancellation and shall notify the applicant(s) thereof.	The ***competent entity*** shall note in the margin of the original of the ***Certificate*** its rectification, the suspension of its effects or its cancellation and shall notify the applicant(s) thereof.

Or. de

Amendment 113

Proposal for a regulation
Article 47

Commission proposal	*Amendment*
Any amendment to the forms referred to in Articles 38 and 41 shall be adopted in accordance with the ***consultative*** procedure ***set out*** in Article 48(2).	***The Commission may adopt implementing acts giving effect to*** any amendment to the forms referred to in Articles 38(1) and 41**.** ***Those implementing acts*** shall be adopted in accordance with the ***advisory*** procedure ***referred to*** in Article 48(2).

Or. en

Amendment 114

Proposal for a regulation
Article 48 – paragraph 1

Commission proposal	*Amendment*
1. The Commission shall be assisted by the committee established by Article 75 of Regulation (EC) No 44/2001.	1. The Commission shall be assisted by the the committee established by Article 75 of Regulation (EC) No 44/2001. ***That committee shall be a committee within the meaning of Regulation (EU) No …/2011.***

Or. en

Amendment 115

Proposal for a regulation
Article 48 – paragraph 2

Commission proposal	*Amendment*
2. Where reference is made to this paragraph, ***Articles 3 and 7 of Decision 1999/468/EC*** shall apply, ***having regard to the provisions of Article 8 thereof***.	2. Where reference is made to this paragraph, ***Article 4 of Regulation (EU) No …/2011*** shall apply.

Or. en

Amendment 116

Proposal for a regulation
Article 50 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Where the deceased had determined the law applicable to *their* succession prior to the date of application of this Regulation, this determination shall be considered to be valid provided that it meets the conditions listed in Article 17.	2. Where the deceased had determined the law applicable to *his or her* succession prior to the date of application of this Regulation, ***including the period prior to entry into force,*** this determination shall be considered to be valid, provided that it meets the conditions listed in Article 17.

Or. de

Justification

Purely as a precaution, and so as to rule out possible misunderstandings, it should be made clear that the determination also applies if it is made before the regulation enters into force.

Amendment 117

Proposal for a regulation
Article 50 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Where the parties to an agreement as to succession had determined the law applicable to that agreement prior to the date of application of this Regulation, this determination shall be considered to be valid provided that it meets the conditions listed in Article 18.	3. Where the parties to an agreement as to succession had determined the law applicable to that agreement prior to the date of application of this Regulation, ***including the period prior to entry into force,*** this determination shall be considered to be valid, provided that it meets the conditions listed in Article 18.

Or. de

Amendment 118

Proposal for a regulation
Article 50 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. A choice of law made prior to the date of application of this Regulation, including the period prior to entry into force, shall remain valid in the Member States in which it was valid at the time when it was made.

Or. de

Amendment 119

Proposal for a regulation
Article 50 – paragraph 3 b (new)

Text proposed by the Commission	*Amendment*
	3b. An invalid disposition of property upon death made prior to the date of application of this Regulation, including the period prior to entry into force, shall

become valid if it is valid pursuant to this Regulation.

Or. de

Amendment 120

Proposal for a regulation
Article 50 – paragraph 3 c (new)

Text proposed by the Commission	*Amendment*
	3c. If a disposition of property upon death was made prior to the date of application of this Regulation, including the period prior to entry into force, in accordance with the law of a State which the deceased could have chosen under Article 17 of this Regulation, that law shall be deemed to have been so determined.

Or. de

Amendment 121

Proposal for a regulation
Article 50 – paragraph 3 d (new)

Text proposed by the Commission	*Amendment*
	3d. The applicability of this Regulation shall not invalidate a disposition of property upon death which would have been valid if succession had opened at the time when the disposition was made. Validity shall be determined under the law, including international private law, which would have been applicable at that time.

Or. de

Justification

Wills made before the Regulation is applicable should not be invalidated because of the fact

of its applicability - not only because changes cannot reasonably be expected to be made to wills, but also because changes may no longer be possible, in some cases, if a person no longer has testamentary capacity.

EXPLANATORY STATEMENT

I. Introduction

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

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

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

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

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

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

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

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

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

To sum up:

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

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

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

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

Handling cross-border successions would be made considerably easier.

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

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

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

To clarify matters, it should be pointed out that:
(1) the applicable law has no influence on the applicable inheritance tax law;
(2) the regulation would cover international private law (IPL) only; substantive inheritance law would remain unchanged;
(3) the United Kingdom and Ireland have made use of their right to opt out.

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

II. Specific issues

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

Habitual residence

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

Right to choose the law applicable

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

Distinction made with Member States' substantive and procedural law

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

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

Agreements as to succession

In IPL, agreements as to succession are a particular problem in that, in some countries, they are unknown or even not allowed. It should be clear that the law on succession and hence, for example, on indefeasible interests would be separately determined by the regulation, for each party to an agreement as to succession, and that Article 18 relates only to the specific legal issues surrounding such agreements, meaning that Article 18(4) can be deleted.

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

Public policy

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

Misgivings that there would be new ways and means of evading law on indefeasible interests are baseless. Law on indefeasible interests exists in virtually all Member States, albeit in differing forms. If a testator opts for his or her home country's law, there is no reason even to consider the possibility of evasion. If the choice-of-law right had been linked to habitual

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

Recognition of authentic instruments

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

European Certificate of Succession

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