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

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

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:

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| (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; |

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| (b) | the legal capacity of natural persons, without prejudice to point (c) of Article 23(2) and to Article 26; |

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| (c) | questions relating to the disappearance, absence or presumed death of a natural person; |

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| (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; |

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| (e) | maintenance obligations other than those arising by reason of death; |

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| (f) | the formal validity of dispositions of property upon death made orally; |

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| (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); |

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| (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; |

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| (i) | the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated; |

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| (j) | the creation, administration and dissolution of trusts; |

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| (k) | the nature of rights in rem; and |

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| (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. |

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:

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| (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; |

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| (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; |

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| (c) | ‘joint will’ means a will drawn up in one instrument by two or more persons; |

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| (d) | ‘disposition of property upon death’ means a will, a joint will or an agreement as to succession; |

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| (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; |

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| (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; |

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| (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; |

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| (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; |

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| (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:

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

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

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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:

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| (a) | may be made the subject of an appeal to or review by a judicial authority; and |

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| (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:

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| (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 |

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| (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:

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| (a) | a court previously seised has declined jurisdiction in the same case pursuant to Article 6; |

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| (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 |

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| (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:

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| (a) | the deceased had the nationality of that Member State at the time of death; or, failing that, |

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| (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:

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| (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; |

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| (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 |

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| (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 extrajudicial documents in civil or commercial matters (service of documents)[(9)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0650#ntr9-L_2012201EN.01010701-E0009) 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.

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:

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| (a) | the causes, time and place of the opening of the succession; |

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| (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; |

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| (c) | the capacity to inherit; |

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| (d) | disinheritance and disqualification by conduct; |

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| (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; |

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| (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); |

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| (g) | liability for the debts under the succession; |

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| (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; |

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| (i) | any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and |

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| (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.