



Training of lawyers on EU Civil Law (TRADICIL)

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**Jurisdiction in matters of succession under
Regulation No 650/2012**

Warsaw, 2 March 2026



Co-funded by the European Union



Scope

Territorial

EU except:

- Ireland (preamble, p. 82)
- Denmark (preamble, p. 83)

(UK – initially excluded
now – out of EU)

Temporal

The succession of
persons who die on or
after 17.8.2015.

Including:

- choice of law
- dispositions mortis
causa

– made prior to
17.8.2015 on conditions
laid down in art. 83

Material

The estates of
deceased persons.

~~revenue~~

~~customs~~

~~administrative matters~~

~~family relationships~~

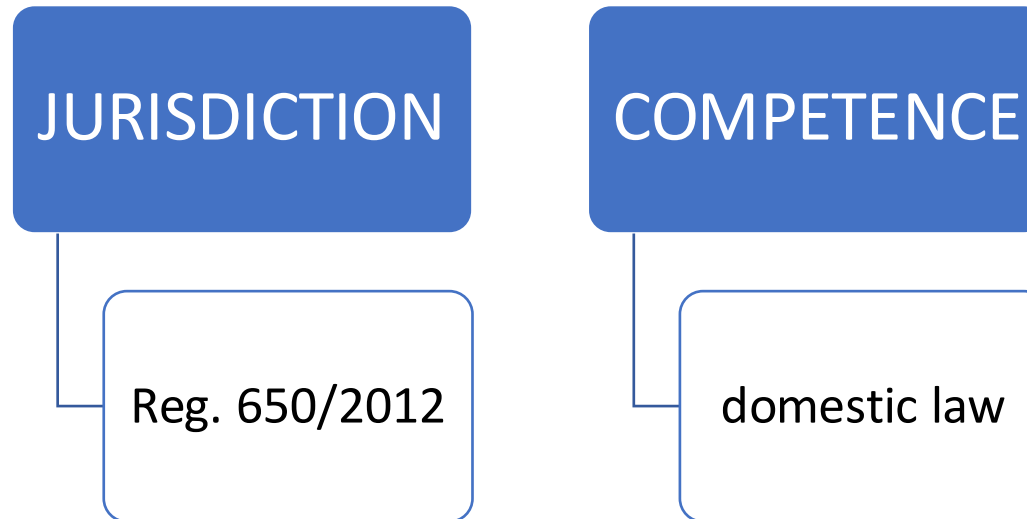
~~etc. – art. 1(2)~~



Scope

Article 2

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





Principles

- one court for the whole estate (exemptions in art. 12, 13, 19)
- in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised (rec. 23)
- choice of law → choice of jurisdiction
- no choice of law → no choice of jurisdiction



Court / Decision

Article 79(1)

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

Article 3(2)

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

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

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



Court / Decision

European Judicial Atlas in civil matters

This section of the European e-Justice Portal aims to be a one-stop-shop in the area of practical information concerning judicial cooperation in civil matters.

European payment order

National information and online forms concerning Regulation No. 1896/2006

Small claims

National information and online forms concerning Regulation No. 861/2007

Judgments in civil and commercial matters - Brussels I Regulation

National information and online forms concerning Regulation No. 44/2001

Brussels I Regulation (recast)

National information and online forms concerning Regulation No. 1215/2012

Legal aid

National information and online forms concerning Directive 2003/8/EC

Maintenance obligations

National information and online forms concerning Regulation No. 4/2009

Brussels IIa Regulation - Matrimonial matters and matters of parental responsibility

National information and online forms concerning Regulation No. 2201/2003.

Brussels IIb Regulation - Matrimonial matters and matters of parental responsibility (recast)

National information and online forms concerning Regulation No. 2019/1111

Serving documents (recast)

National information and online forms concerning Regulation No. 2020/1784

Taking evidence (recast)

National information and online forms concerning Regulation No. 2020/1783

European enforcement order

National information and online forms concerning Regulation No. 805/2004

Mutual recognition of protection measures in civil matters

National information concerning Regulation No. 606/2013

Divorce and legal separation

National information concerning Regulation No. 1259/2010

Mediation

National information concerning Directive 2008/52/EC

Succession

National information and online forms concerning Regulation No. 650/2012



Court / Decision

C-658/17:

Article 3(2) (...) must be interpreted as meaning that,

- failure by a Member State to notify the Commission of the exercise of judicial functions by notaries, as required under that provision, is not decisive for their classification as a ‘court’.
- a notary who draws up a deed of certificate of succession at the unanimous request of all the parties (...) does not constitute a ‘court’ within the meaning of that provision and, consequently, Article 3(1)(g) of that regulation must be interpreted as meaning that such a deed does not constitute a ‘decision’ within the meaning of that provision.



Court / Decision

C-80/19:

Article 3(2) (...) must be interpreted as meaning that,

- subject to verification by the referring court, Lithuanian notaries do not exercise judicial functions when issuing certificates of succession.
- However, it is for the referring court to determine whether those notaries act by delegation or under the control of a judicial authority and whether, consequently, they can be classed as ‘courts’ within the meaning of that provision.



Court / Decision

C-80/19 and rec. 22:

Notaries can be classed
as „courts”?

yes



are bound by
~~They can apply the~~
rules of jurisdiction.

no



They can issue national
certificates of succession
without applying the
general rules of jurisdiction.



General rule (art. 4)

habitual residence

recital 23:

Overall assessment of the circumstances of the life of the deceased:

- during the years preceding his death,
- at the time of his death,

taking account of all relevant factual elements, in particular:

- the duration and regularity of the deceased's presence in the State concerned
- the conditions and reasons for that presence.

Close and stable connection with the State concerned taking into account the specific aims of the Regulation.



„in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised”



General rule (art. 4)

habitual residence

recital 24:

In certain cases, determining habitual residence may prove complex, in particular:

For professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin.

- depending on the circumstances → still habitual residence in his State of origin in which the centre of interests of his family and his social life was located

Lived in several States alternately or travelled from one State to another without settling permanently in any of them.

- if he was a national of one of those States or had all his main assets in one of them, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.



General rule (art. 4)

- [C-20/17](#):
 - Article 4 (...) must be interpreted as precluding legislation (...), which provides that, although the deceased did not, at the time of death, have his habitual residence in that Member State, the courts of that Member State are to retain jurisdiction to issue national certificates of succession, in the context of a succession with cross-border implications, where the assets of the estate are located in that Member State or the deceased was a national of that Member State.
- [C-80/19](#):
 - The last habitual residence of the deceased (...) must be established by the authority dealing with the succession in only one of those Member States.



General rule (art. 4)

- [C-523/07](#):
 - The concept of ‘habitual residence’ under Article 8(1) of [Regulation No 2201/2003](#) must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment.



Subsidiary jurisdiction (art. 10)

- C-645/20:

- Article 10(1)(a) (...) must be interpreted as meaning that
- a court of a Member State must raise of its own motion its jurisdiction under the rule of subsidiary jurisdiction referred to in that provision where, having been seised on the basis of the rule of general jurisdiction established in Article 4 of that regulation, it finds that it has no jurisdiction under that latter provision.

doit relever d'office



Subsidiary jurisdiction (art. 10)

- [C-291/23](#):
 - Article 10(1) (...) must be interpreted as meaning that
 - in order to determine whether the subsidiary jurisdiction of the courts of the Member State in which assets of the estate are located may be exercised, in order to rule on the succession as a whole, it is necessary to examine whether those assets were located in that Member State not at the time those courts were seised, but rather at the time of death.

The deceased had a credit balance in a German bank account – an asset of the estate located in Germany – but that account had already been closed at the time the action was filed.



Choice-of-court agreement (art. 5-8)

- basic condition: choice of law (made by the deceased)
- unanimously
- written and signed agreement
- of certain date



Declining of jurisdiction at request (art. 6.a)

Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

(a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets

convergence with art. 7(a):

... shall have jurisdiction to rule on the succession if a court previously seised has declined jurisdiction in the same case pursuant to Article 6.



Declining of jurisdiction at request (art. 6.a)

[C-422/20](#):

- It is not necessary to expressly decline jurisdiction, but that intention must be unequivocally apparent from the decision.
- The court seised following a declining of jurisdiction is not competent to examine whether the conditions were satisfied in order to decline of jurisdiction.
- The rules of jurisdiction set out in art. 6(a) and 7(a) also apply in the event that, in the will, drawn up before 17.8.2015, the deceased had not chosen the law applicable, and that the designation of that law can be inferred from Article 83(4) alone.

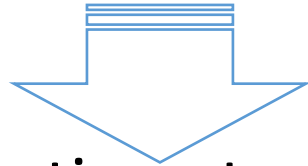


Prorogatio tacita (art. 9)

Jurisdiction based on appearance

If:

- not all the parties were party to the choice-of-court agreement
- the remaining parties enter an appearance without contesting the jurisdiction of the court



the court shall continue to exercise jurisdiction.



Forum necessitatis (art. 11)

No court of a Member State has jurisdiction.



The courts of a Member State may rule on the succession:

- on an exceptional basis,
- 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.



Acceptance or waiver (art. 13)

C-651/21:

Article 13 (...)

must be interpreted as not precluding, after an heir has already had registered with a court of the Member State in which he or she is habitually resident his or her declaration of acceptance or of waiver of the succession of a deceased person whose habitual residence was, at the time of his or her death, in another Member State, another heir from applying for a subsequent registration of that declaration with the court of the latter Member State having jurisdiction



Acceptance or waiver (art. 13)

[C-57/24](#):

The courts of the Member State in which a person habitually resides who applies to be freed from the legal consequences of failing to make a declaration of waiver of a succession, within the required period, do not have jurisdiction to approve such an application.



Lis pendens (art. 17)

Copilot:





Lis pendens (art. 17)

If:

- the same cause of action and between the same parties,
- 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.

Jurisdiction of the court first seised established

→ any other court shall decline jurisdiction.



Related actions (art. 18)

If:

- related actions are pending
- brought in the courts of different Member States,
→ any court other than the court first seised **may**
- stay its proceedings,
- 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.



Related actions (art. 18)

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.

e.g.:

- determination of the beneficiaries
- sharing-out of the estate

See [C-406/22](#) (Convention of 27 September 1968, Art. 22).



Limitation of proceedings (art. 12)

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.

All without prejudice to the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.



Limitation of proceedings (art. 12)

p. 71-79 in [Opinion of Advocate General – C-21/22](#):

Article 12(1) is aimed, first and foremost, at third States which claim exclusive jurisdiction to rule on a transfer by succession of immovable property on their territory. However, the expectation that a decision will not take effect in a third State may be based on any other reason provided for in the law of that State, for example, the law of the place where the property is situated has not been applied.

A potential consequence of Article 12(1) is the rupture of the unitary treatment of a succession.

As regards international jurisdiction, if the court with jurisdiction pursuant to Regulation No 650/2012 excludes from its decision certain property in the estate, due to concerns that that decision will not be effective in the third country where the property is located, it is reasonable for the interested parties to put forward their claims before the courts of that State.



Examinations (art. 15-16)

- Examination as to jurisdiction
 - Court seised, no jurisdiction
→ it shall declare of its own motion that it has no jurisdiction.
- Examination as to admissibility
 - Defendant habitually resident in another State does not enter an appearance
→ the court 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.
- Applicable:
 - Article 22 of [Regulation No 2020/1784](#)
 - or Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.



Provisional measures (art. 19)

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.



Recapitulation

- Habitual residence of the deceased first
- Flexibility via choice
- No choice of law → no choice of jurisdiction
- Location of assets is of significant importance
- Notaries – rather not to be deemed as „courts”
- Unity principle: Whole estate under one court
 - Exemptions: art. 12, 13, 19
- Protections against parallel proceedings



Training of lawyers on EU Civil Law (TRADICIL)

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Applicable law

Warsaw, 2 March 2026



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Definitions

Although Regulation (EU) N° 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, as well as on the creation of a European Certificate of Succession (hereinafter referred to as "**the Succession Regulation N° 650/2012**")—for various linguistic, cultural, and legal reasons—uses the term "**nationality**" to describe *lex patriae*, the presentation uses the term "**citizenship**". Both terms are considered interchangeable within the EU context, and no distinction is made between them. However, some EU member states do make that distinction.

In the presentation, a singular **they** is used instead of "he or she", or the generic he.

Timeframe & Scope

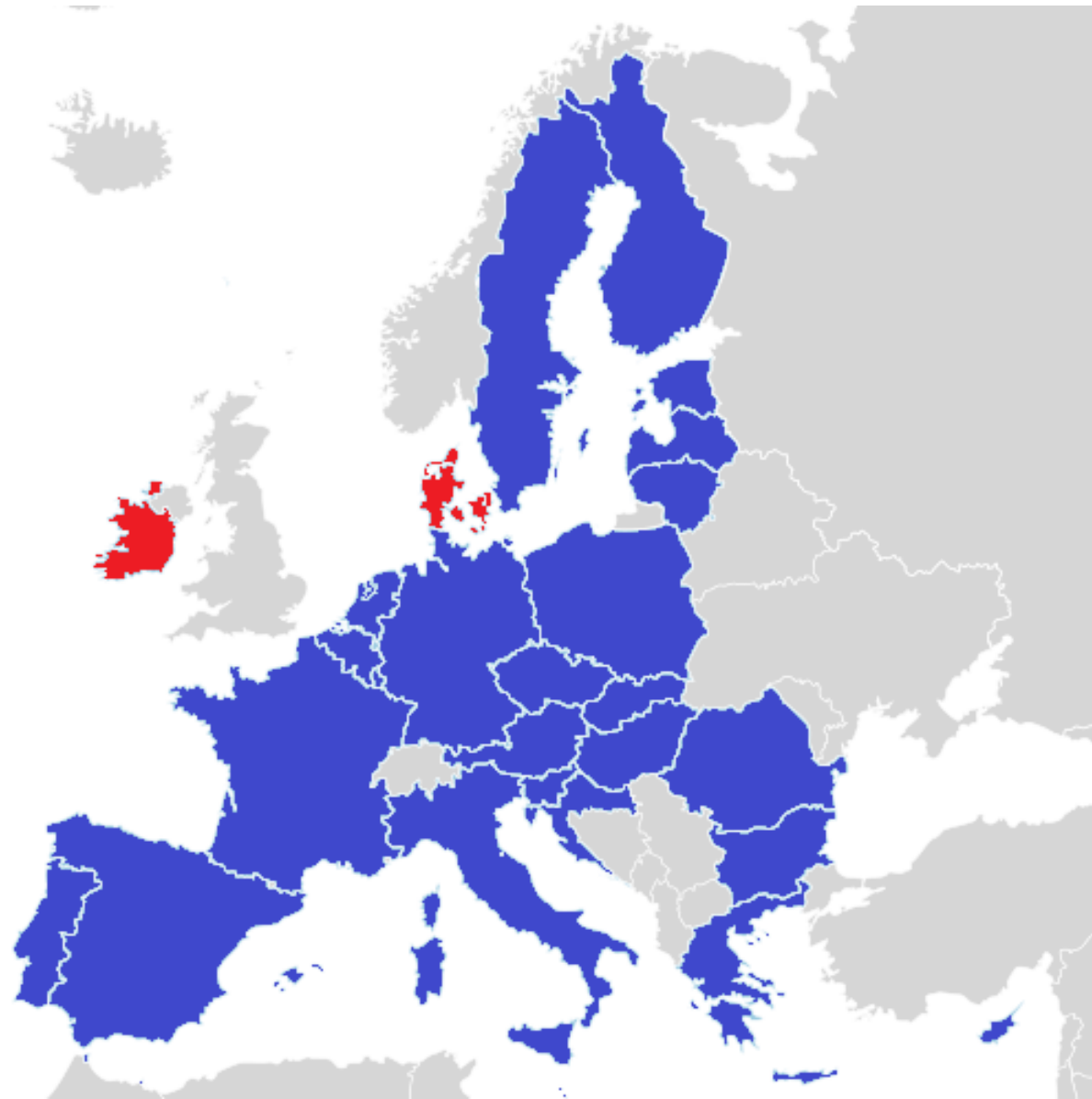
The Succession Regulation N° 650/2012 applies to the succession (both testate and intestate) of those who died on or after August 17th, 2015 (*vide* transitional provision → Article 83(2–4)).

What's not covered: e.g., the questions of deciding upon the disappearance, absence, or presumed death of a natural person; matrimonial property regimes and property regimes of relationships similar to marriage; the legal capacity of natural persons; and the nature of rights *in rem* (Article 1(2)), as well as internal conflict of laws within one country (Articles 36–38).

Who's in?

Ireland (and the UK before Brexit) & Denmark are out (the red ones)

The rest is in (the blue ones)



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A bit of a history

Before the Succession Regulation N° 650/2012, there were primarily two main approaches used by EU member states to determine the applicable law (*lex successionis*, *lex hereditatis*) in succession matters: either the citizenship of the deceased (*lex patriae*) or the location (or locations) of the estate (*lex rei sitae*). In Poland, as well as—according to my best knowledge—in Spain and Greece, the applicable law was based mostly on the deceased's citizenship. In Romania, it was the habitual residence; however, earlier on for movable property (personal property) *lex patriae* had been applied, while for immovable property (real estate) *lex rei sitae* had been used. In France and Bulgaria, the applicable law was *lex domicilii* for movable property (personal property) and *lex rei sitae* for immovable property (real estate). In Czechia and Slovakia, it had been generally *lex patriae*. However, in Czechia, this was amended in 2012 to the law of the habitual residence, unless the deceased held Czech citizenship and at least one of the heirs had habitual residence in Czechia, in which case Czech law applied.

Current situation

Currently, the primary rule for determining the applicable law in matters of succession is the habitual residence of the deceased (Article 21(1)). As you know, this is not a new concept; it already existed in Rome I and Rome II Regulations. Choosing the habitual residence of the deceased over their domicile is based more on factual circumstances than on legal definitions, which makes sense considering that each member state may have a different interpretation of domicile. The concept of *animus manendi* –the intention to establish a permanent residence–is still considered but holds less weight than when defining domicile. The habitual residence of the deceased not only determines the applicable law but also establishes jurisdiction.

Of course, every rule has its exceptions. Therefore, we have Article 21(2) and Article 22.

How to define the habitual residence?

There is no legal definition provided in the Succession Regulation N° 650/2012 itself. The habitual residence of the deceased is understood as the place where the individual's activity was centered at the time of death. Consequently, the person must have resided there for a certain period. Although the regulation does not specify a precise timeframe, the residence must be stable and rather permanent. There has to be a genuine connecting factor and a close and stable connection between the person and the country of their habitual residence (Recital 23).

How to define the habitual residence?

One shall take into consideration, among other factors:

- **Duration and stability** of stay, e.g., living in a country vs. Being a "sun seeking" retiree, or a cross-border commuter
- **Personal ties** with the place of stay, e.g., family and social circle
- **Professional ties and their nature**, e.g., permanent job vs. temporary job, student exchange program, status of a visiting professor, stationing as a soldier, or staying at a diplomatic mission
- **Location of most of the person's assets**, especially immovable property (real estate)
- **Significance and use of those assets**, e.g., home vs. securities and investments
- **Reasons for staying**, e.g., emotional, medical, or legal (such as being in jail)
- **Citizenships and nationalities** of the person
- **Languages spoken**

vide Mercredi vs. Chaffe Case C-497/10, CELEX 62010CJ0497 & Case C-523/07, CELEX 62007CJ0523

Exceptions (Article 21(2))



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The first exception states that if there is another country (and therefore another law) with which the deceased was **manifestly more closely connected at the time of death**, the habitual residence shall not be taken into account. Instead, the law of the country with which the deceased was manifestly more closely connected at the time of death shall become the applicable law (Article 21(2)). This exception shall be applied with due caution, though.

Manifestly more closely connected—what does it really mean?

There is no legal definition provided in the Succession Regulation N° 650/2012 itself. The rule could be applied, for example, in the case of a person who abruptly moves their residence but whose interests of life remain in the country where they used to live and hold citizenship. The exception could also apply in a case where the deceased had moved to the country of their habitual residence fairly recently before their death, and all the circumstances of the case indicate that they are still manifestly more closely connected with another country (Recital 25).

Who determines whether this exception applies? Whoever deals with it. It is the responsibility of the relevant authority handling the case—such as a court or a notary public—to do so *ex officio* [z urzędu].

Exceptions (Article 22)

The second exception grants the person the right to choose the governing law (*professio iuris*). This can be any existing law, whether or not it is the law of an EU member state, as long as it is the law of the country of which they are a citizen—either at the time of selecting the applicable law or at the time of their death (Article 20). The governing law could be that of Zimbabwe, Japan, France, Germany, or other countries.

What if they hold dual citizenship e.g., Polish and French? In that case, the more choices, the better—they can select either one.

How should one determine the citizenship(s)? One must check the laws of the country or countries where the person is or was a citizen to verify whether the requirements for holding citizenship(s) are met.

Tricky aspects—*professio iuris*

What happens when a citizen of a third country, having habitual residence in a member state, wishes to choose the law of that third country as the applicable law? Does it matter if the member state of their habitual residence has, prior to the adoption of the Succession Regulation N° 650/2012, concluded a bilateral agreement with said third country that determines the applicable law and does not expressly permit the choice of law?

Tricky aspects—*professio iuris*

In this case, a Ukrainian citizen residing habitually in Poland wanted to select Ukrainian law as the governing law.

Article 75, in conjunction with Article 22, allows a citizen of a third country residing in a member state to choose the law of that third country as the governing law, even if the said member state has concluded, prior to the adoption of the Succession Regulation N° 650/2012, a bilateral agreement with that third country that determines the applicable law and does not expressly permit the choice of law (*vide* Case C-21/22, CELEX 62022CJ0021).

So what's the order?

Article 22
*Professio
iuris*

and if not

Article 21(1)
Habitual
residence
at the time
of death

but

Article 21(2)
Manifestly
more
closely
connection
may exist

What's the purpose of choosing yourself the governing law?

Well, primarily freedom of testation.

Then legal certainty and legal security.

And for some people it is also a part of their cultural identity.

Why is it important?

Most people have a basic understanding of the rules and regulations of their home country. However, in the era of global mobility, we move so frequently and across such great distances that this foundational knowledge often becomes unusable. Despite the existence of the Succession Regulation N° 650/2012, a **fully harmonized inheritance law has yet to be established** across the EU. This means that certain legal concepts exist in one member state but are entirely unknown in others. While making decisions in succession matters, it is important for the person making such decisions to choose the law with which they are familiar and that they understand.

Why is it important?

The applicable law determines a wide range of key aspects, such as the causes, time and place of the opening of the succession; the meaning and form of forgiveness; rules of debt inheritance; the existence of general succession *ipso iure*; the necessity of meeting certain requirements to be considered an heir; existing forms of documents to choose from (e.g., a will, a joint will, a codicil, an agreement as to succession); the possibility and forms of modification or revocation of such documents; the sharing-out of the estate, the capacity to make a disposition of property upon death; the interpretation of the disposition; as well as fraud, duress, mistake, and any other questions relating to the consent or intention of the person making the disposition (Articles 23–26).

Why is it important?

For instance, Polish law does not recognize joint wills and codicils; thus, such documents cannot be created under Polish law. However, thanks to the Succession Regulation N° 650/2012, they are legally binding in Poland if they were written under a foreign applicable law and concern estates located in Poland.

Why is it important?

For example, in Polish law, there is the concept of legacy by vindication [zapis windykacyjny], which does not exist in German law. As a result, a Polish notary public refused to draw up a will that included such a legacy by vindication concerning immovable property (real estate) located in Germany. In that will, a Polish citizen residing habitually in Germany wished to select Polish law as the governing law. The citizen appealed the notary's decision, and the Polish court requested a preliminary ruling under Article 267 TFEU.

Why is it important?



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The CJEU ruled that the Polish notary public had no right to refuse drafting such a will. Under the Succession Regulation N° 650/2012, the Polish concept of legacy by vindication can apply to German immovable property (real estate)—even though such a legal concept does not exist in the German legal system (*vide* Kubicka, Case C-218/16, CELEX 62016CJ0218).

How to choose the governing law?

Directly ("made expressly") or indirectly ("demonstrated by the terms of such a disposition") (Recital 39).

Directly by naming the applicable law (e.g., shall be governed by German law) or by naming the rule (e.g., shall be governed by the law of the country of which I am a citizen upon my death).

Indirectly by mentioning legal concepts existing only in *lex patriae* (e.g., setting up a legacy by vindication [zapis windykacyjny]) or referring to specific legal provisions of *lex patriae* (e.g., Article 963 of the Polish Civil Code).

What about discriminatory laws?

If the applicable law consists of **discriminatory laws**, those discriminatory laws shall not be taken into consideration as **manifestly incompatible with the public policy (*ordre public*)** of the forum (Article 35).

For instance, if the applicable law states that a woman cannot inherit at all solely on the basis of her gender, or that illegitimate children (children born out of wedlock) have a different status as heirs than legitimate children (children born into the marriage), then the **public policy (*ordre public*) clause** shall be applied.

What about countries with multiple territorial legal systems?

The Succession Regulation N° 650/2012 does not apply to internal conflict of laws within a single country (Articles 36–38), for example, in case of Spain and its multiple territorial legal systems and succession laws.

So, what happens if a person chooses Spanish law as the governing law? Well, it means that Spanish law has been selected as a whole, including its conflict of laws rules (private international law). Therefore, Spanish law will determine whether, in a particular case, Catalan succession law or Navarrese succession law shall be applied (Article 36(1)).

What about countries with multiple territorial legal systems?

And what if the chosen law does not include any internal conflict of laws rules? Well, then the Succession Regulation N° 650/2012 determines the applicable internal law (Article 36(2)).

What about countries with multiple territorial legal systems?

The law of the habitual residence of the deceased will be the law of the territorial unit in which the deceased had their habitual residence at the time of death.

The law of the citizenship of the deceased will be the law of the territorial unit with which the deceased had the closest connection.

The law of other elements as connecting factors will be the law of the territorial unit in which the relevant element is located.

What about countries with multiple personal legal systems?

What happens if a country has multiple personal legal systems, where different laws apply to individuals based on their personal attributes –such as religion, ethnicity, or kinship? Exactly the same, that law itself will determine which system of law shall be applied (Article 37). However, in countries with multiple personal legal systems, there is a greater likelihood that their law is manifestly incompatible with the public policy (*ordre public*) of the forum (Article 35).

What about countries with multiple personal legal systems?

And what if the chosen law does not include any internal conflict of laws rules? Well, then the Succession Regulation N° 650/2012 determines the applicable internal law (Article 37).

The applicable law will be the law with which the deceased had the closest connection.

Tricky aspects–matrimonial property regime

According to Article 1(2)(d), questions relating to matrimonial property regimes shall be excluded from the scope of the Succession Regulation N° 650/2012. Nevertheless, it is not always easy to decide where the matrimonial property regime ends and the succession law begins. For instance, a national provision that prescribes, upon the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate is, in fact, considered part of the succession law regulations, even though at first glance it seems to be a question of the matrimonial property regime (*vide* Mahnkopf vs Mahnkopf, Case C-558/16, CELEX 62016CJ0558).

Tricky aspects—a waiver of succession

What happens when an heir resides in one country, but the applicable law is that of another country, and the heir wishes to waive their inheritance before their local court? Which law should determine the formal requirements for such a waiver? The law of the heir's habitual residence or the applicable law?

Tricky aspects—a waiver of succession

It could be both – the applicable law or the law of the heir's habitual residence (Article 28). Heirs' capacity to perform legal acts [zdolność do czynności prawnych] is determined by their law (*lex personalis*), though.

A declaration concerning the waiver of succession made by an heir before a court of the Member State of their habitual residence is regarded as valid as to form in the case where the formal requirements applicable before that court have been complied with, without it being necessary, for the purposes of that validity, for that declaration to meet the formal requirements of the law applicable to the succession (*vide* Case C-617/20, CELEX 62020CJ0617).

Tricky aspects—the *actio pauliana*

Modern *actio pauliana*—a legal action taken by creditors to protect them from fraudulent legal transactions, specifically transactions intended to reduce a debtor's estate, such as a waiver of succession made by an heir to protect the deceased estate of certain value from heir's creditors—exists in certain legal systems of the member states (e.g., in Poland, Italy, Belgium, Romania, and to some extent in France).

Shall the *actio pauliana* be also governed by the applicable law, although technically—at least in Poland—it is a part of the law of obligations, not the succession law (inheritance law)?

Tricky aspects—the *actio pauliana*

So far, that question has not been brought before the CJEU. Nevertheless, the *actio pauliana* itself has been the subject of a CJEU ruling.

The case arose when a Polish creditor (Feniks) discovered that its Polish debtor (Coliseum 2101) sold its immovable property (real estate) located in Poland to a Spanish third party (Azteca). This transaction reduced the Polish debtor's estate to such an extent that it became insolvent, and the Polish creditor was no longer able to recover its debt. The Spanish third party claimed that it should be sued in Spain under Article 4(1) of Brussels I bis, while the Polish creditor initiated proceedings against them in Poland under Article 7(1)(a) of Brussels I bis. The CJEU ruled in favor of applying Article 7(1)(a) of Brussels I bis.

Tricky aspects—the *actio pauliana*

The CJEU decided that the *actio pauliana* is a matter relating to a contract under Brussels I bis (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), and not a separate matter (*vide* Feniks vs Azteca, Case C-337/17, CELEX 62017CJ0337).

Since there is no *numerus clausus* (closed list) in the succession as a whole clause (Article 23(2)), this ruling opens the door to a convincing argument that the *actio pauliana* is directly connected to the succession as a whole clause (Article 23(1)), rather than being a separate matter. Therefore, it shall be governed by the applicable law.



Training of lawyers on EU Civil Law (TRADICIL)

Joaquín Bayo-Delgado

EU Succession Law. Comparative analysis: Spain

Warsaw, 2 March 2026



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Spain: a pluri-legislative state

- Spain has 17 Autonomous Communities, out of which
 - Galicia
 - Basque Country
 - Navarre
 - Aragón
 - Catalonia
 - Balearic Isles
- Have civil legislative power and their own succession law
- Plus, Spanish Civil Code, applicable in the rest of regions



Spanish Civil Code (1)

- Will (most normal, before a notary public)
- Forced heirs
 - Legitimate portion: $\frac{2}{3}$ for children; $\frac{1}{3}$ may be for only one
 - Forced heirs:
 1. children & descendants ($\frac{2}{3}$);
 2. parents and ascendants ($\frac{1}{2}$, or $\frac{1}{3}$ if there is widow/er);
 3. widows or widowers (usufruct of $\frac{1}{3}$ if there are children; of $\frac{1}{2}$ with ascendants; of $\frac{2}{3}$ without children or ascendants)
 - Grounds for disinheritance: denial of personal contact, etc.

Spanish Civil Code (2)

- Intestate succession
 - Heirs:
 1. Children and descendants
 2. Parents and ascendants
 3. Widow/er
 4. Siblings and nephews
 5. Uncles and cousins (= 4th degree)
 6. The Estate

Galician law

- Will, joint will, will on behalf of spouse, succession agreements, donation to exclude forced heirs, covenant on universal widow/er's usufruct
- Forced heirs
 1. Children and descendants
 2. Widow/er (1/4 usufruct if there are children and descendants; 1/2 usufruct if there are no descendants)
- Intestate succession:> Spanish Civil Code (Estate>Galician Autonomous Community)

Basc law

- Will and succession agreements and empowerment to testate.
- Forced heirs
 1. Children and descendants (1/3)
 2. Widow/er or surviving partner (1/2 usufruct if there are descendants; 2/3 usufruct if there are no descendants; + use of home while no marriage or partnership)
 3. In some areas: reservation of real estate in favour of descendant and ascendants
 4. Freedom of will in Ayala Valley
 5. Especial heritage of farms in Guipuzcoa Province
- Intestate succession: equivalent to CC, but widow/er or surviving partner before parents and ascendants and Basc Autonomous Community as last intestate heir.

Navarre law

- Will, succession agreement and universal donation “mortis causa”, empowerment to testate
- Practical full freedom except:
 - Universal usufruct of the widow/er or surviving partner
 - Formal need to mention children and descendants
 - Maintenance for children and descendants, once extinguished widow/er’s or surviving partner’s usufruct, or no usufruct exists
 - Reservation for common children with deceased spouse/partner of assets received from him/her
- Intestate succession
 1. Children and descendants
 2. Widow/er or surviving partner
 3. Parents and ascendants
 4. “Foral” Community of Navarre

Aragonese law

- Will, joint will, succession agreements (also with *inter vivos* effects) and covenant on universal widow/er's usufruct
- Forced heirs:
 1. Children and descendants (1/2) –possibility for only one); all must be mentioned
 2. Maintenance for descendants in need
- Intestate succession
 - Children and descendants
 - Parents and ascendants
 - Widow/er's universal usufruct (with guarantees during marriage) unless is heir
 - Relatives up to 4th degree
 - Autonomous Community of Aragón

Catalan Civil Code (1)

- Strong tradition of Roman law (directly applicable until 1960)
- Will (including provisions on digital services accounts)
 - mandatory appointment of heir or universal executor
 - empowerment of widow/er or surviving partner to choose heir among common descendants
 - empowerment of two relatives to choose heir among descendants
 - empowerment of a “trusted heir” to decide on the succession
 - Appointment of heir for the case that one heir or legatee dies without will
- Succession agreement among spouses or partners, or relatives (including *inter vivos* effects)
- Agreement with testator to become heir
- Donations *mortis causa*

Catalan Civil Code (2)

- Forced heirs:
 1. Children and descendants (1/4)
 2. Parents (1/4)
 3. Widow/er or surviving partner: max. $\frac{1}{4}$ if necessary for living needs
- Intestate succession
 1. Children and descendants
 2. Widow/er or surviving partner: universal usufruct if descendant are heirs; if not, heir (but parents have rights to $\frac{1}{4}$)
 3. Parents and ascendants
 4. Relatives up to 4th degree
 5. Generalitat de Catalunya

Balearic law

- Will and succession agreements
 - Mandatory appointment of heir
 - Empowerment of a “trusted heir” to decide on the succession
 - Succession agreements: different rules for
 - Majorca and Minorca
 - Eivissa and Formentera

(Also applicable to resident foreigners: STSJIB, 1/2023, 13 Jan. ECLI:ES:TSJBAL:2023:42)
- Forced heirs
 1. Children and descendants (1/3 <5 children; 1/2 >4 children)
 2. Parents (1/4)
 3. Widow/er or surviving partner (usufruct 1/2 with children; usufruct 2/3 with parents; 4/4 with other heirs)
- Intestate succession: = Spanish Civil Code + last heir
Balearic Aut. Community + surviving partner = widow/er.

Interterritorial conflict rules

- Articles 14.1 & 16.1 > 9.8 Spanish Civil Code:
 - *De cuius* is Spanish citizen:
 - “Personal law”: law of his/her regional neighbourhood (*vecindad civil*); after 10 years of residence in a region, its regional “vecindad” is acquired; possibility of option after 2 years; in case of doubt, place of birth
 - Inconsistency when there is an international element (<article 21.1 Reg. 650/202)
 - Choice of law Art. 22 Reg. 650/202 for Spaniards whose *vecindal civil* has changed at death:
 - Art. 22 + Art. 36.2.b), changing nationality by *vecindad civil*)
 - *De cuius* is a foreigner:
 - Law of his/her habitual residence: STS 786/2025, 19 May, ECLI:ES:TS:2025:2215 & STSJBal 1/2021, 14 May, ECLI:ES:TSJBAL:2021:460



Training of lawyers on EU Civil Law (TRADICIL)

Marta Kuligowska

European certificate of succession

Warsaw, 2 March 2026



Co-funded by the European Union

Article 62


Creation of a European Certificate of Succession

1. This Regulation creates a European Certificate of Succession (hereinafter referred to as ‘the Certificate’) which shall be issued for use in another Member State and shall produce the effects listed in Article 69.
2. The use of the Certificate shall not be mandatory.

Article 62

Creation of a European Certificate of Succession

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3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.

Article 62

Creation of a European Certificate of Succession

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- Use: cross-border inheritance
- Optional
- Doesn't replace internal documents
- All Member States (Danemark and Ireland excluded)

Article 63

Purpose of the Certificate

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1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

Article 63


Purpose of the Certificate

2. The Certificate may be used, in particular, to demonstrate one or more of the following:
 - (a) | the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;
 - (b) | the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;
 - (c) | the powers of the person mentioned in the Certificate to execute the will or administer the estate.

Article 63

Purpose of the Certificate

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- For whom?: for heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate
- When? When they need to invoke their status or exercise their rights
- For what? Certificate demonstrates status, rights, attribution of assets, power to execute the will/administer the estate

Article 64

Competence to issue the Certificate

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


(a) | a court as defined in Article 3(2);

(b) | another authority which, under national law, has competence to deal with matters of succession.

Article 4

General jurisdiction

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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 7

Jurisdiction in the event of a choice of law

The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

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

Article 10


Subsidiary jurisdiction

1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:
 - (a) the deceased had the nationality of that Member State at the time of death; or, failing that,
 - (b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

Article 10

Subsidiary jurisdiction

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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

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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 3(2)

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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,

Article 3(2)

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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:

Article 3(2)

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

(b) have a similar force and effect as a decision of a judicial authority on the same matter.

Article 3(2)

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- 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.

Article 64

Competence to issue the Certificate

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- Competent authority in the Member State whose courts have jurisdiction
- Not only the court
- Competence on matters of succession
- Impartial, right of parties to be heard
- Right to appeal a decision
- Member State notifies about competent authorities other than a court

Article 65

Application for a Certificate

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1. The Certificate shall be issued upon application by any person referred to in Article 63(1) (hereinafter referred to as ‘the applicant’).
2. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in Article 81(2).

Article 65

Application for a Certificate

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3. The application shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66(2):3.
 - (a) | details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;

Article 65

Application for a Certificate

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

(c) | details concerning the representative of the applicant, if any: surname (if applicable, surname at birth), given name(s), address and representative capacity;

Article 65

Application for a Certificate

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(d) | details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;

(e) | details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification number (if applicable) and address;

Article 65

Application for a Certificate

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- (f) | the intended purpose of the Certificate in accordance with Article 63;
- (g) | the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;
- (h) | the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased;

Article 65


Application for a Certificate

- (i) | an indication of whether the deceased had made a disposition of property upon death; if neither the original nor a copy is appended, an indication regarding the location of the original;
- (j) | an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage; if neither the original nor a copy of the contract is appended, an indication regarding the location of the original;
- (k) | an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;

Article 65

Application for a Certificate

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(l) | a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;

(m) | any other information which the applicant deems useful for the purposes of the issue of the Certificate.

Article 65

Application for a Certificate


- Who can apply?
 - a) Heirs
 - b) Legatees with direct rights
 - c) Executors
 - d) Administrators of the estate
- The application must include:
 - a) Details about the deceased
 - b) Applicable law
 - c) Basis of entitlement
 - d) Other relevant information

The authority may request relevant additional documents.

Article 66

Examination of the application

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1. Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.
2. Where the applicant has been unable to produce copies of the relevant documents which satisfy the conditions necessary to establish their authenticity, the issuing authority may decide to accept other forms of evidence.

Article 66

Examination of the application

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3. Where this is provided for by its own law and subject to the conditions laid down therein, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath.
4. The issuing authority shall take all necessary steps to inform the beneficiaries of the application for a Certificate. It shall, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.

Article 66

Examination of the application

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

Article 66

Examination of the application

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- issuing authority verifies the application
- Authority may accept other forms of evidence
- May require an oath/statutory declaration by its own law
- Informs beneficiaries
- Competent authority provides issuing authority with information held in its registers

Article 67

Issue of the Certificate

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1. The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. It shall use the form established in accordance with the advisory procedure referred to in Article 81(2).1.


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

- (a) | the elements to be certified are being challenged;
- (b) | the Certificate would not be in conformity with a decision covering the same elements.

Article 67

Issue of the Certificate

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#TRADICIL

2. The issuing authority shall take all necessary steps to inform the beneficiaries of the issue of the Certificate.

Article 67


Issue of the Certificate

- Issued without delay
- Informs the beneficiaries
- Refusal to issue:
 - a) Contents challenged
 - b) Contradictory to decisions issued

Article 68

Contents of the Certificate

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

- (a) | the name and address of the issuing authority;
- (b) | the reference number of the file;
- (c) | the elements on the basis of which the issuing authority considers itself competent to issue the Certificate;
- (d) | the date of issue;

Article 68

Contents of the Certificate

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

Article 68

Contents of the Certificate

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(g) | details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);

(h) | information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;

Article 68

Contents of the Certificate

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- (i) | the law applicable to the succession and the elements on the basis of which that law has been determined;
- (j) | information as to whether the succession is testate or intestate, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;
- (k) | if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;

Article 68

Contents of the Certificate

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- (l) | the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
- (m) | the list of rights and/or assets for any given legatee;

Article 68

Contents of the Certificate

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- (n) | the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;
- (o) | the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death.

Article 68


Contents of the Certificate

- ECS must contain:
 - a) Details of issuing authority
 - b) Details of deceased
 - c) Applicable law
 - d) Heirs and their shares
 - e) Assets allocated
 - f) Powers of executors/administrators

Article 69

Effects of the Certificate

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1. The Certificate shall produce its effects in all Member States, without any special procedure being required.

Article 69

Effects of the Certificate

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2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

Article 69

Effects of the Certificate

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3. Any person who, acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

Article 69

Effects of the Certificate

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4. Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with authority to dispose of the property concerned, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

Article 69

Effects of the Certificate

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5. The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).

Article 1(2)

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2. The following shall be excluded from the scope of this Regulation:
- (k) the nature of rights in rem; and
 - (l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

Article 69

Effects of the Certificate

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- The ECS:
 - a) Produces effects in another Member States without extra procedures
 - b) Presumed accurate
 - c) Protects third parties acting in good faith on the base of the ECS
 - d) valid proof for registration of property in public registers

Article 70

Certified copies of the Certificate

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#TRADICIL

1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.
2. The issuing authority shall, for the purposes of Articles 71(3) and 73(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.2.

Article 70

Certified copies of the Certificate

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#TRADICIL

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

Article 70

Certified copies of the Certificat

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#TRADICIL

- The original stays with the issuing authority
- Certified copies issued to applicants
- list of persons to whom certified copies have been issued
- Copies valid for 6 months, when justified longer
- Extension possible

Article 71

Rectification, modification or withdrawal of the Certificate

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#TRADICIL

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

Article 71

Rectification, modification or withdrawal of the Certificate

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#TRADICIL

3. The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any rectification, modification or withdrawal thereof.

Article 71

Rectification, modification or withdrawal of the Certificate

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- In case of errors the authority may:
 - a) correct clerical mistakes
 - b) modify or withdraw the ECS if inaccurate
- Persons with certified copies have to be informed

Article 72

Redress procedures

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


Decisions taken by the issuing authority pursuant to Article 71 and point (a) of Article 73(1) may be challenged by any person demonstrating a legitimate interest.

The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State.

Article 72

Redress procedures

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2. If, as a result of a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority.

Article 72

Redress procedures

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

Article 72

Redress procedures

- A person competent to apply for a Certificate may challenge:
 - a) the refusal to issue,
 - b) the contents.
- Anyone with legitimate interest may challenge:
 - a) rectification/modification/withdrawal/ suspension
- the contents.
- Appeals follow national procedural law.

Article 72


Redress procedures

- Jurisdiction: of the issuing authority
- Law applicable: of the issuing authority
- If:
 - a) Certificate issued not accurate – Certificate rectified/modified or withdrawn
 - b) If refusal to issue unjustified – Certificate issued

Article 73

Suspension of the effects of the Certificate

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1. The effects of the Certificate may be suspended by:
 - (a) | the issuing authority, at the request of any person demonstrating a legitimate interest, pending a modification or withdrawal of the Certificate pursuant to Article 71; or
 - (b) | the judicial authority, at the request of any person entitled to challenge a decision taken by the issuing authority pursuant to Article 72, pending such a challenge.

Article 73

Suspension of the effects of the Certificate

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2. The issuing authority or, as the case may be, the judicial authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any suspension of the effects of the Certificate.

During the suspension of the effects of the Certificate no further certified copies of the Certificate may be issued.

Article 73

Suspension of the effects of the Certificate

- The issuing authority may suspend the effects of the ECS:
 - a) Pending modification or withdrawal
- The judicial authority may suspend the effects of the ECS:
 - a) Pending a challenge of the decision
 - b) Persons with certified copies must be informed
- No further copies may be issued



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Dimitra Bikou

**European and National Certificates of Succession:
Coexistence, Circulation and Conflict. The Greek
perspective in a comparative context**

Warsaw, 2 March 2026

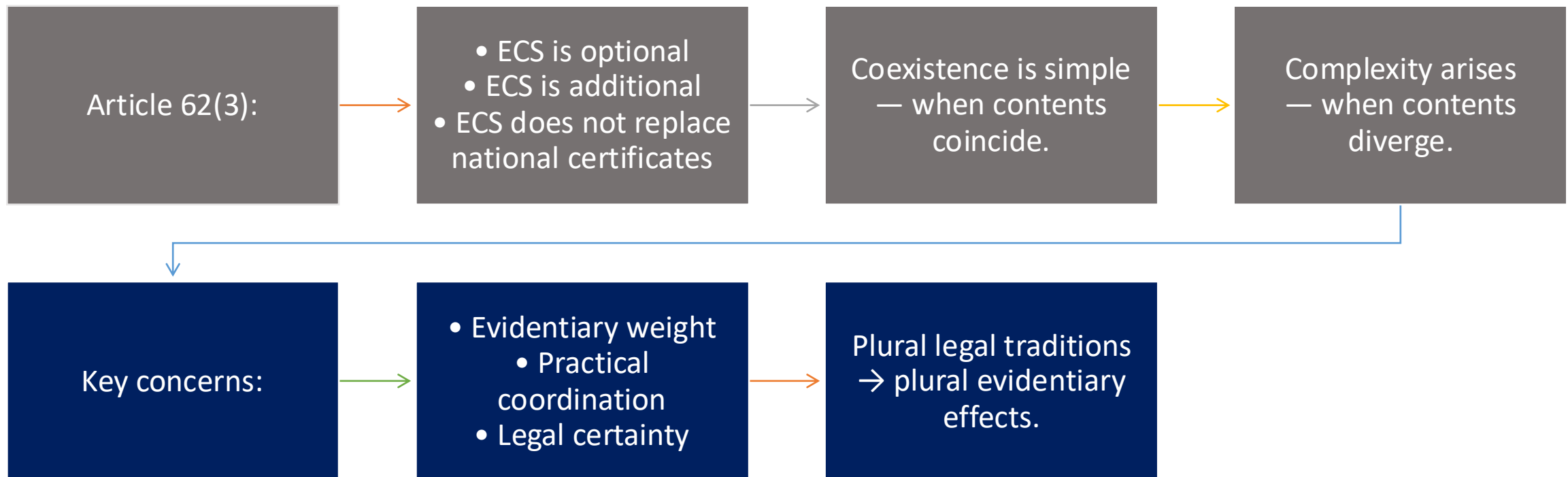


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Opening Question

- Succession Regulation – Core Pillars:
 - Jurisdiction
 - Applicable law
 - Recognition of decisions
 - European Certificate of Succession
- Objective:
- **Unity and legal certainty in cross-border succession**
- Key Question:
- What happens when the European Certificate coexists with national certificates?
- Article 62(3):
 - No replacement
 - Structured coexistence
- The issue is not substitution.
- It is coordination.

The Core Problem



Nature of the European Certificate

The ECS is:

- An autonomous EU instrument
- Created directly by the Regulation
- Independent from national classifications

It is:

- Optional
- Cross-border in purpose
- Not a judicial decision
- Not constitutive of rights

Article 69:

- Presumption of accuracy
- Cross-border effect
- No recognition procedure

The ECS certifies.
It does not create rights.

Case WB (C-658/17)

- WB (C-658/17)
- Issue:
- Are notaries automatically “courts” under Article 3?
- Holding:
 - National classification is irrelevant
 - Functional approach applies
 - Judicial function is decisive
- Principle:
- Autonomous interpretation of EU concepts.

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Circulation Without Recognition

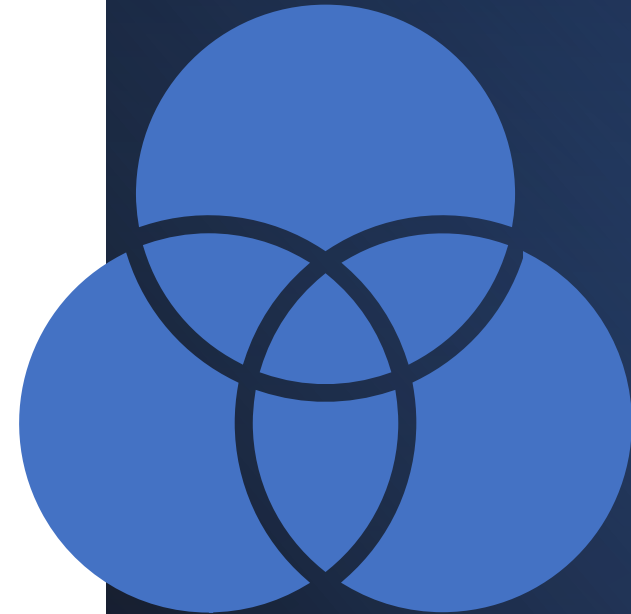
- ECS circulates:
 - Without exequatur
 - Without declaration of enforceability
 - Without prior judicial control
- Article 69:
 - Presumption of accuracy
 - Protection of good-faith third parties
- Effects arise directly from EU law.
- Structural Question:
- How does this European presumption interact with national evidentiary systems?



Registration and Lex Rei Sitae

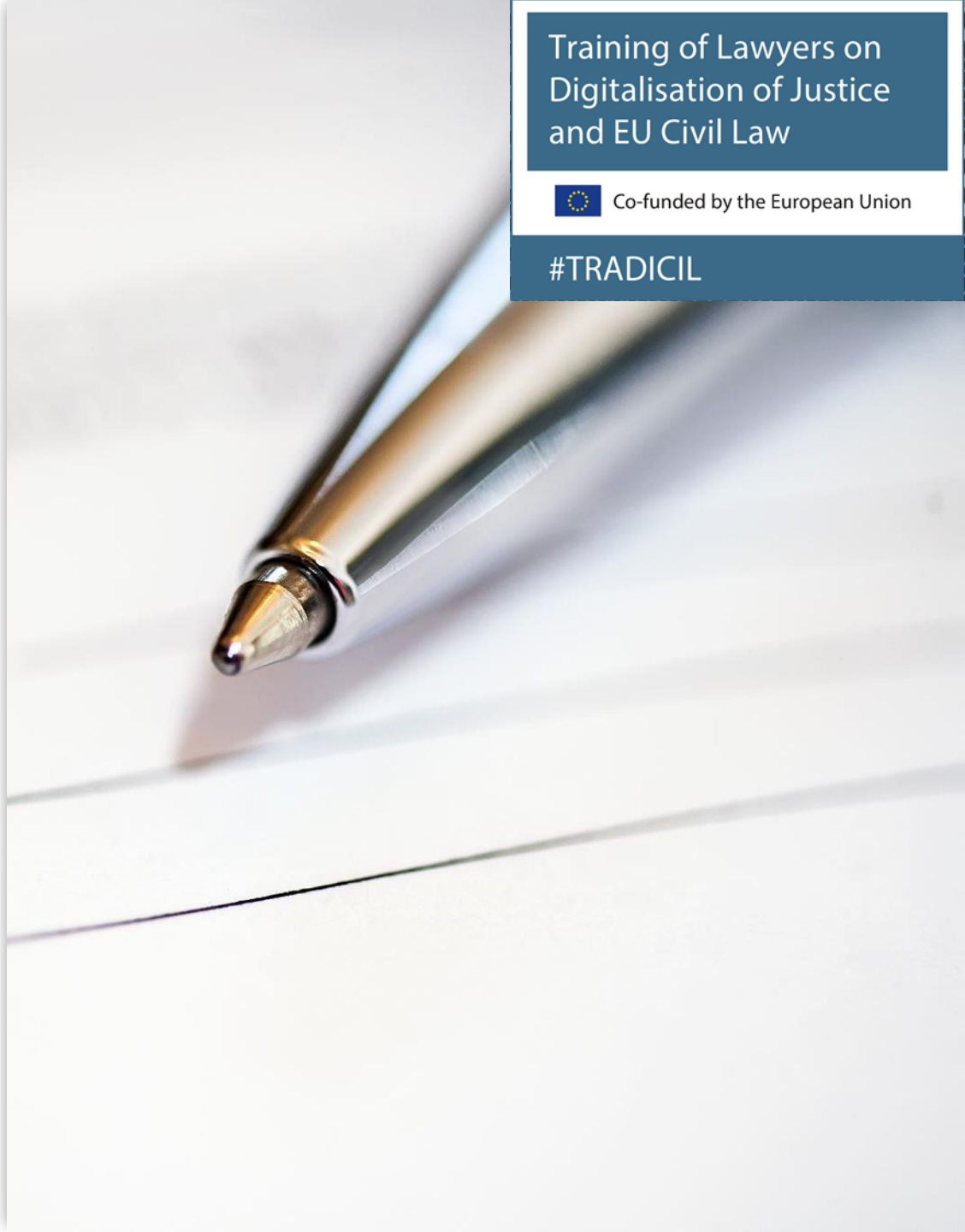
R.J.R. (C-301/20)

- The Court clarified:
 - ECS is a valid title for registration
 - Member States may require technical information
- The Regulation does not harmonise:
 - Land registration systems
 - Substantive property law
- Lex rei sitae governs:
 - Registration formalities
 - Property law conditions
- ECS proves rights. It does not create them.



Why National Certificates Still Matter

- National certificates:
 - Are embedded in domestic systems
 - Reflect procedural traditions
 - Carry established evidentiary effects
- In practice:
 - Land registries rely on them
 - Banks rely on them
 - Authorities are accustomed to them
- This reflects legal culture — not resistance to EU law.



Comparative National Models

- **Greece**
 - Κληρονομητήριο
 - Issued by lawyer
 - Declaratory nature
 - Central in transactions
- **Germany**
 - Erbschein
 - Issued by probate court
 - Strong legitimising effect
- **France**
 - Acte de notoriété
 - Issued by notary
 - Strong notarial tradition
- **Cyprus**
 - Grant of Probate
 - Common law logic
 - Prima facie evidence
 - Conclusion:
 - Institutional diversity → coordination challenges.

Structured Coexistence

- Article 62(3):
 - No hierarchy
 - No replacement
 - Deliberate coexistence
- In most cases:
- Parallel operation is harmonious.
- When divergence appears:
 - Coordination questions arise
 - Legal certainty must be preserved

Jurisdictional Unity (Oberle)

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- Oberle (C-20/17)
- Holding:
- Article 4 determines jurisdiction for the succession as a whole.
- Includes:
 - National certificates
 - ECS proceedings
- No parallel international jurisdiction.
- Unity of succession prevails.

Evidentiary Divergence

National certificates:

- Different evidentiary strengths
- Different legal traditions

ECS:

- Uniform European presumption

The Regulation:

- Establishes no formal hierarchy

This is not jurisdictional conflict.
It is evidentiary coordination.

Duty of Verification

- ECS is not automatic.
- Issuing authority must:
 - Verify facts
 - Determine applicable law
 - Confirm heirship
- Purpose:
- Facilitate cross-border succession.
- Not:
- Create parallel legal realities.
- Legal certainty depends on careful issuance.

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Greek Practical Perspective

- In Greece:
 - Strict land registry formalism
 - Terminology of rights in rem matters
 - Institutional preference for κληρονομητήριο
- Result:
- ECS sometimes underused.
- Explanation:
 - Procedural habit
 - not rejection of EU law.
- Adaptation is gradual.

Structured Coexistence in Practice

- The system is based on:
 - Unity of jurisdiction
 - Autonomous EU concepts
 - Mutual trust
 - Procedural diversity
- The ECS integrates national traditions.
- It does not abolish them.

From Legal Design to Effectiveness

- Remaining challenges:
 - Administrative divergence
 - Translation issues
 - Rectification and revocation
 - Protection of good-faith third parties
- Effectiveness depends on:
 - Consistent interpretation
 - Careful application
 - Institutional coordination

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Conclusion

The future of European succession law is not uniformity.

It is:

Unity of jurisdiction
+
Diversity of procedural traditions

Structured coexistence
is the defining feature of the system.