



Federal Ministry
of Justice and
Consumer Protection



The EU Succession Regulation

Since 17 August 2015, the European Succession Regulation (otherwise known as Brussels IV)¹ has been applicable in every EU Member State with the exception of the United Kingdom, Ireland and Denmark. The Regulation contains provisions on **succession cases** with a **transnational component**.

Examples:

- A German testator who lives abroad.
- An estate that includes assets located abroad (e.g. a holiday home in Spain, a bank account in Belgium).

What is regulated by the EU Succession Regulation?

The European Succession Regulation governs three aspects of transnational succession cases:

1. It regulates which national law of succession is applicable to successions with a transnational component (Articles 20 et seqq. of Brussels IV) if no special international treaties exist (such as those with Turkey and Iran).
2. It stipulates which court or other authority has jurisdiction in such cases (so-called *international jurisdiction*, Articles 4 et seqq. of Brussels IV).
3. It defines the European Certificate of Succession (Articles 62 et seqq. of Brussels IV).

The newly created European Certificate of Succession is applicable in almost the entire EU. It is primarily used to verify an heir's status and is designed to serve alongside the existing national inheritance certificates (such as the German *Erbschein*), making it easier for heirs to settle inheritance matters abroad.

This EU Succession Regulation does not, however, affect the provisions of individual Member States in the areas of substantive inheritance law (e.g. the question of who is a legal heir) and inheritance tax law.

¹ 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 (original version: OJ 2012, L 201/107).

What is the impact of the EU Succession Regulation?

The EU Succession Regulation has two objectives in its approach to transnational succession cases. First, it aims to make it easier for individuals to plan their succession in advance. Second, by shortening the required proceedings, it should enable heirs to settle estates more quickly.

The EU Succession Regulation's underlying concept for all of this can be summarised as follows: one succession case, one court, one applicable law, one European Certificate of Succession. In other words, each succession case should be handled by the courts of just one country in accordance with that country's applicable law.

Applicable law

Particularly significant is the rule governing the applicable law in transnational succession cases. From 16 August 2015, the law applicable to successions is no longer generally the law of the deceased's nationality (as had previously been the situation in Germany). Instead, the provisions of the EU Succession Regulation mean that from now on, the law applicable to successions is the law of the country where the deceased was habitually resident at the time of death (Article 21 of Brussels IV).

The EU Succession Regulation determines which nation's law is uniformly applicable to the whole succession. No distinction is made between movable and immovable assets (the *single scheme* principle).

Examples:

- If a German national was habitually resident in France at the time of death, French succession law is applicable.
- If a French national was habitually resident in Germany at the time of death, German succession law is applicable.

But determining the country of habitual residence is not always a straightforward task.

Examples:

- A testator moves to another country in order to work there (perhaps for a long period) while still maintaining a close and stable connection with Germany.
- A testator was not permanently resident in any one location but alternated between significant periods spent in Germany and Spain.

No definitive conclusions can be drawn here. Instead, habitual residence must be determined by evaluating the overall circumstances of the testator's life. Relevant criteria might include the duration and regularity of a person's residence in a particular country, or where the main focus of that person's family or social life is located. Someone who spends four months of each year living in Spain and the rest of the time in Germany is generally considered to have their habitual residence in Germany.

Choice of law

Someone whose habitual residence is not in the country of his or her nationality, but who nevertheless wishes his or her succession to be governed by the law of his or her nationality, can make a choice of law (Article 22 of Brussels IV).

Example:

A German national living in France wants his succession to be governed by German and not French succession law: this person needs to make a choice of law in favour of German law.

Choosing the law of one's nationality is also advisable if there are any doubts about the person's country of habitual residence. This choice must be expressly declared in a will or inheritance contract (via a *disposition of property upon death*) or must be clearly apparent from the terms of such a disposition. Expressly electing the applicable law is advisable for reasons of legal certainty.

Preservation of existing rights

The EU Succession Regulation grants extensive protection to choices of law made prior to 17 August 2015 and to dispositions of property upon death likewise made prior to this date if the person dies on or after 17 August 2015 (see Article 83 of Brussels IV for details). Previously made dispositions (including any choice of law made therein) remain generally admissible and valid if they are admissible and valid according to the provisions of one of the alternative legal systems mentioned in Article 83 of Brussels IV (such as the law of the deceased's nationality).

International jurisdiction

The courts (or other competent authorities) of a single EU Member State generally have jurisdiction over the whole succession (*international jurisdiction*). These are generally the courts (or other competent authorities) in the country where the deceased was habitually resident at the time of death. But if a testator had previously made a valid choice of law declaring the law of his or her nationality to be applicable when he or she dies, the parties to the proceedings (e.g. the heirs) can conclude a choice-of-court agreement. This *choice-of-court agreement* can stipulate that jurisdiction should lie with the courts (or other authorities) in the country of the deceased's nationality (Article 5 of Brussels IV).

German inheritance certificate and European Certificate of Succession

The EU Succession Regulation has furthermore created a European Certificate of Succession (Articles 62 et seqq. of Brussels IV). This document can be used to verify an heir's legal status and is intended to make the settling of transnational estates simpler and more efficient. The certificate is valid in all EU Member States (except for the United Kingdom, Ireland and Denmark) and has the same effect in each of these EU Member States. Its use is not mandatory (Article 62 (2) of Brussels IV). Thus it does not replace documents such as the German inheritance certificate (*Erbschein*) but is rather a supplementary inheritance document.

Example

A German national has been living on his vineyard in Tuscany for many years. When he dies there, he leaves behind not just the vineyard but also a house in Munich.

According to Article 21 (1) of Brussels IV, Italian law is applicable to the whole succession because at the time of death, the deceased was habitually resident in Italy.

The deceased would also have had the option of electing the law of his nationality (e.g. in his will). In that event, German succession law would have been applicable – likewise for the whole succession.

But as a general rule, the Italian courts have jurisdiction to rule on the whole succession (Article 4 of Brussels IV) because the key factor in determining international jurisdiction is the deceased's habitual residence at the time of death.

However, if the heirs who live in Germany want the German courts to have jurisdiction instead, they can achieve this via a choice-of-court agreement. It should be noted that this is only possible if the deceased had previously elected the law of his nationality as being applicable (i.e. German law in this particular case).

If the heirs wish to apply for a European Certificate of Succession, the Italian courts likewise have jurisdiction over the whole succession. But here again, if the deceased had previously elected the law of his nationality as being applicable (e.g. via a choice-of-court agreement), the heirs can insist that German courts should have jurisdiction and can apply to them for a European Certificate of Succession.

What is the position in relation to Turkey?

The EU Succession Regulation does not affect the provisions of international conventions that were valid before the EU Succession Regulation was adopted (Article 75 of Brussels IV). The “German-Turkish Succession Agreement”² is of major practical significance in this respect. Most importantly, it contains provisions on international jurisdiction and applicable law (Articles 14 and 15 in particular). It differs from the EU Succession Regulation in that the *single scheme* principle does not apply. Rather, it distinguishes between movable and immovable assets in determining both international jurisdiction and the applicable law. For immovable assets and thus for real estate, the *lex rei sitae* (i. e. the law of the place where the property is located) is authoritative. Jurisdiction lies with the courts in the country where the estate’s immovable assets are situated. For movables, the succession law to be applied is determined by the deceased’s nationality. Jurisdiction lies with the courts in the country of his or her nationality.

What can and should I do as a testator?

Think about your own situation

Although thinking about your own death is an unappealing prospect for obvious reasons, you should nevertheless start planning your estate at an early stage. Take a moment to determine where you are habitually resident and whether this is likely to stay the same or if a move abroad might become a possibility. Give some thought to how you wish your estate to be distributed and whether you need to make a *disposition of property upon death* for this to happen. Also think about whether it would be prudent or necessary for you to make a *choice of law* as described above. This might be advisable because there can be significant differences between succession regulations in Germany and abroad. For example, the provisions on issues such as intestate succession and forced heirship may be different than in Germany.

If you are married, you should also bear the law of matrimonial property in mind. If German succession law is applicable to a case of intestate succession where the spouses lived under the property regime of *community of accrued gains*, the accrued gains are equalised by increasing the surviving spouse’s share of the inheritance.

2 Annex to Article 20 of the German-Turkish Consular Agreement of 28 May 1929, Imperial Gazette 1930 II 747.

Since foreign provisions can be significantly different in this respect too, it may be worthwhile making a choice of applicable law in order to influence how your succession is structured or how your matrimonial property is equalised. In order to avoid any friction, it is generally advisable to make sure that the same legal system is used for both the law of succession and the law of matrimonial property.

Review old wills and inheritance contracts

If your situation currently includes a transnational component – or could potentially include one in future – you need to do the following: check the validity of any *disposition of property upon death* you may have already made and ascertain whether your desired objectives can (still) be attained if foreign succession law is applicable.

Imprint

This fact sheet is not intended to replace professional legal advice which a lawyer or notary can provide regarding your individual case, nor can it replace the information offered by a legal advice centre. It merely provides an initial overview of the general topic.

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