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*Foreign element in legal regulation on succession: the experience of Regulation  
(EU) N° 650/2012*

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# Secção I

## Investigação Científica\*

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Foreign element in legal regulation on succession: the  
experience of Regulation (EU) N° 650/2012  
Elemento estrangeiro na regulação jurídica sucessória: a  
experiência do Regulamento (UE) n.º 650/2012

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**ABSTRACT:** Globalization has affected all spheres of human life, and civil legal relations are no exception. In the light of the expansion of comprehensive ties between states, the issue of the universal character of the legal regulation of inheritance relations is growing. The conflicts of laws in this area further enhance the relevance of this study. This article aims to study and analyze Regulation (EU) N° 650/2012 in terms of the European Certificate of Success as a unified approach to resolving disputes caused by differences in the legal regulation of inheritance. The study found that the rejection of the accepted principle for determining particular legislation according to the criterion of a civil testator will ensure the free movement of human resources within the EU and the development of services in matters of cross-border issues. An analysis of the norms of this document showed that it can eliminate such a problem as the fragmented nature of the inherited property, which makes it almost impossible for a conflict to arise around the inherited property.

**KEYWORDS:** enforcement; hereditary relations; inherited property; European Union; private international law.

**RESUMO:** A globalização afetou todas as esferas da vida humana, e as relações jurídicas civis não são exceção. À luz da ampliação dos laços abrangentes entre os Estados, cresce a questão do caráter universal da regulação jurídica das relações sucessórias. Os conflitos de leis nesta área aumentam ainda mais a relevância deste estudo. Este artigo tem como objetivo estudar e analisar o Regulamento (UE) n.º 650/2012 em termos do Certificado de Sucesso Europeu como uma abordagem unificada para a resolução de litígios causados por diferenças na regulamentação legal da herança. O estudo concluiu que a rejeição do princípio aceite para determinar uma legislação específica de acordo com o critério de um testador civil garantirá a livre

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circulação de recursos humanos na UE e o desenvolvimento de serviços em questões transfronteiriças. Uma análise das normas desse documento mostrou que ele pode eliminar um problema como a natureza fragmentada da propriedade herdada, o que torna quase impossível o surgimento de um conflito em torno da propriedade herdada. **PALAVRAS-chave:** aplicação; relações hereditárias; propriedade herdada; União Europeia, direito internacional privado.

## Introduction

Section IV of the Regulation on Succession is entitled “Recognition, Enforceability and Enforcement of Decisions.” Despite this name, the Regulation on Succession contains only rules on the recognition and enforcement of decisions on inheritance cases, which were made in the territory of one Member State, in the territory of another Member State. The execution of decisions is not regulated by it. The term “decision”, which recognition and enforceability are referred to in Section IV of the Regulation on Succession, is determined by Art. 3(1)(g), whereby it 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. To find out whether the decision itself refers to the issue of “succession”, it is necessary to consider all exceptions from the subject area of the Regulation on Succession, defined in Art. 1(2)<sup>6</sup>.

The broad interpretation of the term “court” in Art. 3(2) of the Regulation on Succession allows commentators to conclude that it covers not only the court as such but also clerks and notaries. The term “decision” covers both interim and final decisions made in action and non-action proceedings. An example of decisions in litigation that can be recognized based on Art. 39 of the Regulation on Succession is a decision on resolving disputes by heirs or legatees regarding the interpretation of the validity of the will. Decisions on special proceedings include, for example, an order on an inventory of inherited property<sup>7</sup>.

At the same time, the “decision”, for which Section IV of the Regulation on Succession provides for the recognition procedure, does not apply to

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<sup>6</sup> THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION. Regulation (EU) No 650/2012 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 [Online]. 2010 [viewed 23 January 2022]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0650>

<sup>7</sup> D'ALESSANDRO, E. Article 39. Recognition. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODESKY P., AND REINHARTZ, B. *The EU Succession Regulation Commentary*. Cambridge: Cambridge University Press, 2016, p. 536.

decisions by which the court approves the agreement of the parties on the issue of succession if it is not approved by the court in a separate decision, but only concluded before it. Such an agreement is denoted by another term – “court settlement” (Art. 3(1)(h) of the Regulation on Succession. The Regulation on Succession does not provide for its recognition, but only Art. 61 regulates the enforceability of such an agreement if it is approved by a court of one Member State (or concluded before it), and its implementation is sought in another Member State. This is because in the case of a “court settlement”, the “contractual element” plays a key role in resolving the issue of succession, while the court, on the contrary, does not take any part in making any decisions a decision on this issue. Therefore, there is no need to recognize and enforce such legal transactions<sup>8</sup>.

Recognition of a foreign decision consists in establishing that it can extend its regulatory legal consequences (other than the possibility of enforcement) in the legal order of the state where such recognition is sought. Per Art. 39(1) of the Regulation on Succession, a decision made in a member state is recognized in another member state without following any special procedure. Therefore, commentators point out that this rule provides for the automatic recognition of decisions<sup>9</sup>. In particular, the following consequences of a decision are automatically recognized: declarative, constituent (i.e., one that establishes, changes or terminates legal relations), and others (except for compulsory execution). Thus, it is not necessary to follow the special procedure provided for by the Regulation on Succession for the recognition of decisions requiring enforcement to enter information about a succession decision made in one Member State in the register of real estate rights in another Member State.

According to the Regulation on Succession, it is necessary to initiate an exequatur procedure (a declaration of the decision enforceability) to recognize decisions subjects to compulsory execution. Depending on the purpose of recognition, the Regulation on Succession distinguishes between principal and

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<sup>8</sup> NIKOLAIDIS, G. Article 3: definitions. In: PAMBOUKIS, H.P. *EU Succession Regulation No. 650/2012*. Oxford: Hart Publishing, 2017, pp. 93-100.

<sup>9</sup> BERGQUIST, U. Article 39: Recognition. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODERSKY P., AND REINHARTZ, B. *EU Regulation on Succession and Wills Commentary*. Köln: Verlag Dr. Otto Schmidt, 2015, p.185.

auxiliary recognition. Principal recognition occurs when it is considered by the court as the principal issue; auxiliary - as an auxiliary issue when considering another case. Article 39(2) of the Regulation on Succession provides that any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedure provided for in Articles 45 to 58, apply for that decision to be recognized. This formulation is the basis for the conclusion that recognition can only be sought when there is a dispute over the recognition of the decision. In another case, the recognition occurs automatically. It is believed that a dispute exists not only when there is a clear refusal to recognize the decisions, but also “in the presence of behavior that is incompatible with the foreign decision.” However, while the dispute must have a certain degree of reality, simple doubts about the possibility of recognition of the decision are not grounds for applying for recognition of the decision to the competent authority.

The first step in the principal recognition procedure is the submission by the interested party to the court or other competent authority of an application for recognition of the decision. The possibility of filing a statement on “non-recognition of the decision” is denied by the majority of commentators with reference to the wording of Art. 39(2) of the Succession Regulation, which provides for the initiation of the issue of “recognition” rather than “non-recognition” of the decision. According to Art. 46 of the Regulation on Succession, the application for recognition of the decision must be accompanied by: - a copy of the decision which satisfies the conditions necessary to establish its authenticity; - the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to Annex 1 to the Regulation on the creation of the forms referred to in the Regulation on Succession. The confirmation should indicate the following information:

- the Member State where the decision was made;
- the court or competent authority which issued the confirmations (if the law of the Member State where the decision was made entrusted the issuance of such confirmations not to the court but another authority);
- the court, which made the decision;
- date, decision number, parties, their role in the process, and status in succession;

- interest payments, costs, and the feasibility of the decision.

At the same time, the translation of documents is carried out if the court requires it. It is carried out by a person qualified to make translations in one of the Member States (Article 47(2) of the Regulation on Succession).

The Regulation on Succession does not specify exactly how the duration of the period set for presenting confirmation should be determined. It is considered that it should be short and such that it does not exceed the duration of the exequatur procedure in the Member State of execution of the judgment<sup>10</sup>. Although the Regulation on Succession provides for the possibility of recognition of a decision in the absence of confirmation, commentators note that failure to provide confirmation will in most cases be grounds for a refusal of recognition<sup>11</sup>. Commentators explain that an “interested party” who can apply for recognition of a decision is a broad concept that encompasses not only the parties to the succession case in the country of origin of the decision but also their heirs or successors.

The court or other competent authority, which in a given Member State has the authority to decide whether a decision made in another Member State is recognized, is determined based on the information that the Member States are obliged to provide to the European Commission in accordance with Art. 78 of the Regulation on Succession. In most Member States, these are the courts of the first instance<sup>12</sup>. Exact information about which authority should be contacted for recognizing a decision in a succession case in a particular Member State can be found on the e-justice portal.

Local jurisdiction is determined by reference to the arguments of the party against whom the enforcement is sought, or the place of enforcement (that is, the location where the requested assets are located). At the same time, it is important that, unlike the articles that define jurisdiction or applicable law and operate with the concept of “habitual residence”, articles relating to the recognition and

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<sup>10</sup> MARAZOPOULOU, V. Article 47: non-production of the attestation. In: PAMBOUKIS, H.P. *EU Succession Regulation No. 650/2012*. Oxford: Hart Publishing, 2017, pp. 490-492.

<sup>11</sup> BERGQUIST, U. Article 47: Non- Production of the Attestation. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODESKY P., AND REINHARTZ, B. *EU Regulation on Succession and Wills Commentary*. Köln: Verlag Dr. Otto Schmidt, 2015, p. 215.

<sup>12</sup> BERGQUIST, U. Article 45: Jurisdiction of local courts. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODESKY P., AND REINHARTZ, B. *EU Regulation on Succession and Wills Commentary*. Köln: Verlag Dr. Otto Schmidt, 2015, p. 211.

enforcement of decisions use the term “domicile”. In accordance with Art. 44 of the Regulation on Succession to determine whether a party is domiciled in a Member State, the court seised shall apply the internal law of that Member State. During the stage of filing an application for recognition and the documents attached to it, the court makes a decision on recognition, reviews the documents received and the decisions are often recognized. If one of the parties does not agree with the recognition of the foreign decision, it can appeal the decision on recognition on the basis of Articles 50, 51 of the Regulation on Succession. In this case, in the recognition process, a second stage is distinguished, in which the court analyzes whether the decisions comply with the requirements of Art. 40 of the Regulation on Succession (which establishes the grounds for refusing to recognize a decision).

The Art. 39(3) of the Regulation on Succession, according to which “if the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question” is the basis for separating out the so-called auxiliary recognition. In particular, the need for such recognition arises when considering a case that is not hereditary, but the solution of which depends on the solution of the previous issue of recognition or non-recognition of a foreign decision on hereditary relations<sup>13</sup>. An example is a case in which the principal issue is establishing the proper owner of the property, and the solution of which depends on the recognition or non-recognition of a certain foreign decision regarding succession relations.

Therefore, Art. 39(3) of the Regulation on Succession grants the court, which is considering a case other than a succession case, the jurisdiction to make a preliminary decision on the recognition or non-recognition of a foreign judgment in a succession case. At the same time, it is important that based on Art. 39(3) of the Regulation on Succession, the court receives subject and territorial jurisdiction to decide the issue of recognition, even if it usually does not have them. It is also considered that when deciding the issue of recognition, the court

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<sup>13</sup> LEVCHENKO, I., DMYTRIIEVA, O., SHEVCHENKO, I., BRITCHENKO, I., KRUILOV, V., AVANESOVA, N., KUDRIAVTSEVA, O., and SOLODOVNIK, O. Development of a method for selected financing of scientific and educational institutions through targeted capital investment in the development of innovative technologies. *Eastern-European Journal of Enterprise Technologies*, 2021, vol. 3, pp. 55-62.

must verify whether it has no grounds for refusing to recognize the decision under Art. 40 of Regulation on Succession, even if neither party asks for it.

The Regulation on Succession does not indicate whether a recognition decision made in an “auxiliary recognition” should have the effect of *res judicata*. According to one stance, the court to which the application for recognition or the application to grant permission for execution was applied is not bound by the decision of another court to grant or refuse auxiliary recognition on the same issue. Other authors deny this position, noting that there is no reason for a recognition decision made in the form of “auxiliary recognition” not to have such an effect<sup>14</sup>. Otherwise, the parties will have to initiate new proceedings to recognize the decision under the principal recognition procedure. In addition to complicating the execution of the decision, this can also lead to the adoption of contradictory decisions on recognition and create obstacles to the free circulation of decisions in the EU.

#### **“Ordinary appeal” as grounds for suspension of recognition of the decision**

Article 39 of the Regulation on Succession does not specify which decisions can be recognized. Therefore, decisions that can be appealed in the state where they were made can also be submitted for recognition<sup>15</sup>. To avoid problems that may arise. The term “ordinary appeal” is interpreted autonomously, concerning the European Court of Justice (ECJ)<sup>16</sup>. Thus, interpreting the Articles of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Cases of September 27, 1968, it was noted that “the term “ordinary appeal” should be understood as an appeal that is part of the ordinary course of legal proceedings, and as such, represents a procedural development that either party should expect. Such development constitutes any appeal related to the law with a certain period in time, which begins to expire according to the

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<sup>14</sup> KOZLOVSKIY, S., BUTYRSKIY, A., POLIAKOV, B., BOBKOVA, A., LAVROV, R., and IVANYUTA, N. Management and comprehensive assessment of the probability of bankruptcy of Ukrainian enterprises based on the methods of fuzzy sets theory. *Problems and Perspectives in Management*, 2019, vol. 17, n. 3, pp. 370-381.

<sup>15</sup> D'ALESSANDRO, E. Article 42. Staying of Recognition Proceedings. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODESKY P., AND REINHARTZ, B. *The EU Succession Regulation Commentary*. Cambridge: Cambridge University Press, 2016, pp. 561-566.

<sup>16</sup> METALLINOS, A. Article 42: staying of recognition proceedings. In: PAMBOUKIS, H.P. *EU Succession Regulation No. 650/2012*. Oxford: Hart Publishing, 2017, pp. 466-48.

final decision, the implementation of which is sought. Consequently, it is impossible to consider an “ordinary appeal”, in particular, appeals that depend on events that were unpredictable at the date of the initial decision, from actions committed by parties that are not relevant to the case, and not related to the period of appeal starting to coincide with the date of the initial decision”. This decision is the basis for the conclusion that the appeal is ordinary if:

1) it could lead to the cancellation or change of the original decision;

2) there is a specified period for appeal, the start of which is determined by the initial decision.

Since Art. 42 of the Regulation on Succession notes that the court may suspend the recognition, commentators rightly conclude that this issue is decided at the discretion of the court. Thus, the court should be able to suspend the proceedings if there are reasonable doubts about the fate of the decision in the state where it was made. However, commentators correctly point out that under the Regulation on Succession, the court that decides the case *pari passu*, in most cases, applies its own law. Therefore, a court considering the recognition of a decision in another Member State must assess the fate of the decision as a result of its appeal based on a law that is foreign to it. Therefore, such an assessment will be very superficial. An example of a case in which the court recognizes a decision, doubts may arise about the fate of such a decision in connection with its “ordinary appeal”, a situation where new facts became known after the original decision was made (for example, a new will was found). In addition, commentators note that since Art. 42 of the Regulation on Succession does not note that the suspension can occur at the request of a party, it can take place at the initiative of the court.

In accordance with Art. 40 of the Regulation on Succession “a decision shall not be recognized:

a) if such recognition is manifestly contrary to public policy (order public) in the Member State in which recognition is sought;

b) where it was given in default of appearance if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;

c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;

d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought”.

It should be emphasized that Art. 40 of Regulation on Succession must be read in conjunction with Art. 41, which notes that under no circumstances should a decision made in another Member State be reconsidered *per se*. The Regulation on Succession does not indicate whose initiative the court considering the issue of recognition should analyze the presence or absence of grounds for refusing to recognize the decision provided in Art. 40 of the Regulation on Succession. According to commentators, the grounds specified in Art. 40(b,c,d) of the Regulation on Succession should not be applied by the court *ex officio* and may be analyzed by it only on the initiative of a party; while ascertaining whether it would not be contrary to the recognition of the decision by the public order of the state, where it is sought, is carried out on the initiative of the court.

As commentators point out, the concept of public policy used in Art. 40(a) of the Succession Regulation, as a ground for non-recognition of decisions, covers both substantive and procedural public order. In addition, everyone agrees that it should be applied in exceptional cases, as evidenced in Art. 40(a) of the Regulation on Succession. At the same time, the content of the material public order referred to in Art. 40(a) of the Regulation on Succession is narrower than the content of the material public order, the inconsistency of which is the basis for refusing to apply foreign law (Art. 35 of the Regulation on Succession).

Public order under Art. 40(a) of the Regulation on Succession is an international public order, which is the national concept of the Member State where recognition of the decision is sought. At the same time, given that the ECJ has established certain limits on the content of public policy in its judgments, it is considered that national courts cannot interpret this concept very differently<sup>17</sup>. The assessment of whether the recognition of the decision would violate public policy is carried out taking into account the fundamental legal values of the

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<sup>17</sup> BUSCHBAUM, M. Die neue eu-erbrechtsverordnung. *Neue Juristische Wochenschrift*, 2012, pp. 2393–2398.

Member State where recognition is sought, the values enshrined in the Charter of Fundamental Rights of the EU, and the European Convention on Human Rights.

There are the following types of decisions that can create consistency problems with the material public order during the recognition of decisions in succession cases:

- decisions made in the Member States based on the rules of the law of an Islamic country, the application of which leads to inequality between heirs, since it treats them differently depending on their gender, religion or status (children born in and out of wedlock);

- decisions on the succession rights of spouses in a polygamous marriage (for example, a second wife);

- decisions granting inheritance rights to the testator's partner, if the testator and the partner are persons of the same sex;

- decisions made in another Member State based on substantive law that does not provide for a mandatory share of the inheritance for some legal heirs, or provides, but uses criteria other than the law of the Member State in which recognition is sought.

Procedural public order requires compliance with the principle of a fair trial, the content of which is fixed in Art. 6 of the Convention on Human Rights and Art. 47(2) Charter of Fundamental Rights of the EU. In particular, one that would be incompatible with the procedural public policy would be a judgment rendered in circumstances where a party did not have access to justice because of demands for payment of too high court costs or because of a ban on filing a claim. At the same time, assessing whether there has been a violation of public order should be carried out in concerto, that is, taking into account the fact that the principle of a fair trial was violated in a particular case.

Under Art. 40 of the Regulation on Succession, the ground for refusing to recognize the decision is its issuance for the failure of the defendant to appear if he or she did not receive the document that initiated the process, or an equivalent document in sufficient time and in such a way that he or she could organize his or her defense, except in cases where the defendant did not enter the process of appealing the decision, although he or she could have done so.

This ground for refusal to recognize the decision is, in fact, one of the guarantees of a fair hearing for the defendant, which could not exist if he or she did not receive the document at the beginning of the process, as a result of which the decision was made in his or her absence. At the same time, the court, considering the issue of recognizing the decision, is not bound by the conclusions of the court, which ruled on the proper delivery of the document at the beginning of the process, therefore, it examines this issue on its own. Commentators point out possible difficulties in applying Article 40 of the Regulation on Succession. These include: the interpretation of the concept of “equivalent document” used in this norm, the meaning of which must be interpreted by the ECJ. However, some commentators believe that the courts can use the ECJ decisions made in relation to Art. 1(2) of the Regulation, since Art. 40 of the Regulation on Succession repeats it.

The analysis of such decisions is the basis for the conclusion that when finding out whether the defendant was notified in time about the beginning of the dispute consideration, the courts should not pay attention to the formal validity of the document that informs about the beginning of the process; instead, they should take into account whether the defendant was indeed entitled to organize the defense in a particular case. At the same time, if the defendant deliberately did not appear in a court of the first instance and did not use his or her right to appeal the decision, despite the fact that he or she was properly informed about the process, the recognition of the decision cannot be denied based on Art. 40 of the Regulation on Succession.

Under Article 40(c,d) of the Regulation on Succession, a foreign decision cannot be recognized if it contradicts a decision taken in a process between the same parties in the Member State in which recognition is sought, or if it is incompatible with an earlier decision made in another Member State or in a third state in a process between the same parties and on the same subject, provided that the previously adopted decision meets the conditions necessary for recognition in the Member State where it is sought. It is obvious that the rule of Article 40(c) of the Regulation on Succession concerns the incompatibility of decisions made between the same parties in general. At the same time, Article 40(d) of the Regulation on Succession also requires that the order be issued in the same dispute. To establish the incompatibility of

decisions, it is necessary to analyze whether they were made between the same parties and whether they did not give rise to mutually exclusive consequences.

### **Declaration of enforceability (exequatur)**

To enforce a decision on a succession case made in one Member State on the territory of another Member State, an exequatur procedure must be initiated. Article 43 of the Regulation on Succession provides that “Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 45 to 58.” The procedure for the exequatur of a decision under the Regulation on Succession is similar to the procedure for the exequatur of a decision under Art. 36 of the Regulation<sup>18</sup>. This gives the commentators grounds to conclude that for the interpretation of Art. 43 it is necessary to use the ECJ practice for the interpretation of the Regulation and the earlier practice of the interpretation of the Brussels Convention<sup>19</sup>. Exequatur provides additional protection to the party against which enforcement is sought, but at the same time, it requires additional costs. That is why, in other, modern sources of European private international law, the exequatur procedure is canceled.

However, its cancellation was considered premature in the Regulation on Succession. Commentators point out several functions of the exequatur. First, it is viewed as a “wheel” with the help of which a foreign decision “enters” into the legal order of the state of execution, i.e., as something that gives the authority to the enforcement authorities to act<sup>20</sup>. It is noted that this function is becoming a thing of the past; and only in those states where the national executive law provides that the court must authorize the execution of enforcement actions, it can be preserved, provided it is uniformly applied by

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<sup>18</sup> BERGQUIST, U. Article 43: Enforceability. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODERSKY P., AND REINHARTZ, B. *EU Regulation on Succession and Wills Commentary*. Köln: Verlag Dr. Otto Schmidt, 2015, p. 207.

<sup>19</sup> BUSCHBAUM, M. Die neue eu-erbrechtsverordnung. *Neue Juristische Wochenschrift*, 2012, pp. 2393–2398.

<sup>20</sup> SCHRAMM, D. Enforcement and the abolition of exequatur under the 2012 Brussels I regulation. *Yearbook of Private International Law*, 2013, vol. 15, p. 147.

national and foreign judicial decisions. Secondly, the exequatur explains to the executors of court decisions how to act.

This is especially important in two situations. First, when the foreign court decision contains insufficient information that needs to be supplemented: for example, to pay interest at a rate that is unknown to the executors of the foreign court decision. Secondly, when a foreign court decision gives the right or obliges to do something that is unknown to the law of the state where the execution is sought (for example, usufruct) and, therefore, needs to be adapted to the law of the state of execution of the decision. Third, the exequatur contributes to the protection of the debtor, providing the ability to appeal against the exequatur decision. In this case, the court verifies the foreign decision for compliance with certain criteria (although when deciding on a declaration of the feasibility of the decision in the first instance, such verification is not performed).

In general, depending on the attitude towards exequatur, all European regulations are usually divided into three groups. The first group includes the so-called traditional regulations, i.e., those that provide for a separate exequatur procedure and a separate recognition procedure and contain grounds for refusing to recognize decisions that can be used to appeal against a decision on exequatur. The second group covers regulations that cancel the exequatur. For example, the regulation that creates the procedure for European payment orders, Article 19 of which provides that a European payment order that is subject to execution in the Member State of origin is recognized and executed in another Member State, does not require a declaration of its validity, without any possibility to object to its recognition<sup>21</sup>. The third group includes regulations that do not provide for an exequatur but establish a procedure for refusing execution using grounds identical to those used to refuse recognition of the decision.

At the same time, although the Regulation on Succession establishes the possibility of exequatur of decisions, commentators note that it will not be necessary in many cases. It would be appropriate to take advantage of the

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<sup>21</sup> INSHYN, M., VAKHONIEVA, T., KOROTKIKH, A., DENYSENKO, A., and DZHURA, K. Transformation of labor legislation in the digital economy. *InterEULawEast*, 2021, Vol. 8, n. 1, pp. 39-56.

acceptance of authentic documents (for example, national certificates of succession) under Art. 59 of the Regulation on Succession or European Certificate of Succession. Taking into account that Art. 43 of the Regulation on Succession is intended only for the exequatur of judgments rendered in the Member States, the exequatur of judgments rendered in third countries takes place based on the national legislation of the Member States. According to Art. 43 of the Regulation on Succession, one of the conditions for obtaining a decision of the executive force in the Member States where its implementation is sought is that it has executive force in the country of origin; which must be confirmed by a special document provided for in Art. 46(2) of the Regulation on Succession. However, the executive power of the decision does not necessarily mean that it cannot be appealed.

A change in the executive power of a decision as a result of its appeal in the state of its issuance will, of course, have consequences in the state where the exequatur is sought. The Regulation on Succession does not specify who exactly are the “stakeholders”, according to which the exequatur procedure can be initiated. To answer this question, commentators suggest analyzing whether the person concerned has a legitimate interest in initiating the exequatur procedure. The analysis of the existence of a legitimate interest is carried out based on the law of the Member State where the decision was made. Once it has been established that the person concerned has a legitimate interest, it must be determined whether he or she meets the criteria of the Regulation on Succession.

For this purpose, it is proposed to interpret the term “stakeholders” broadly. In addition, it is proposed to take into account clauses 4.3.1.7. and clause 4.3.2.7. Annex 1 (Form 1) of the Regulation on the Creation of Forms referred to by the Regulation on Succession, according to which confirmation of the receipt of the executive force of the decision in the state of its issuance must contain the inheritance status of the plaintiff, defendant or another person, who in turn can be determined as the heir consignee, executor, manager or another person. Article 48 of the Regulation on Succession emphasizes that the decision is declared enforceable immediately after the implementation of the formalities provided for in Art. 46 (that is, after submitting an application for a declaration of the feasibility of a decision, a

copy of such a decision, and confirmation (attestation). Confirmation (attestation) is a document, the content of which is set out in Appendix 1 (Form 1) of the Regulation on the creation of forms referred to in the Regulation on Succession).

In particular, it specifies the state of origin of the decision; a court or other competent authority providing evidence; the court that made the decision; date of the decision, parties to the case; whether the decision needs to be enforced; it is assumed that interest will be charged (if yes, the method of their calculation, the currency is noted), if the parties received legal assistance, were exempted from paying court costs). At the same time, Art. 48 of the Regulation on Succession establishes that the review of the decision based on Art. 40 (defines the grounds for a refusal to recognize the decision) is not made. In addition, the party against whom the enforcement is sought is not entitled at this stage of the process to raise any objections to the declaration<sup>22</sup>.

Commentators emphasize that at this stage, the court is not obliged to inform the defendant about the acceptance and consideration of the application regarding the declaration of the enforceability of the decision so that the defendant would not have the opportunity to do something with his or her property to avoid further enforcement measures. The decision regarding this application is promptly communicated to the applicant following the procedure provided for by the law of the Member State where the enforcement is sought. The declaration of the enforceability of the decision is handed over to the party against whom the enforcement is sought, together with the decision, if it has not been previously handed (Art. 49 of the Regulation on Succession).

A decision that allows interim measures to be taken under Art. 54 of the Regulation on Succession should not be such that entered into force in the state, where it was issued<sup>23</sup>. At the same time, Art. 54 of the Regulation on Succession does not indicate whether the decision should be enforceable in that state. In this

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<sup>22</sup> GAUDEMET-TALLON, H. *Compétence et execution des jugements en Europe*. Paris: L.G.D.J., 2010.

<sup>23</sup> PRETELLI, I. Provisional and protective measures in the European civil procedure of the Brussels I system. In: LAZIC, V., and STUJI, S. *Brussels Ibis Regulation. Changes and Challenges on the Renewed Procedural Scheme T. M.C.* Asser Press: The Hague, 2017, p.116.

regard, two points of view were expressed. Supporters of the former insist that the decision should have such force.

Representatives of another point of view rightly point out that the decision may not have enforcement force since Art. 54 of the Regulation on Succession does not establish any restrictions on the adoption of provisional measures even when, for example, the court suspended the proceedings under Art. 53 of the Regulation on Succession. There is no single point of view on the mechanism for taking interim measures under the Regulation on Succession. Thus, according to some authors, in this case, no decision of the courts of the state of execution of the decision is required; that is, interim measures can only be taken based on a foreign judgment *per se*. Other authors point out the riskiness of this approach since in this case, the decision to take interim measures will be taken by employees of the executive service, without involving a court, which may lead to incorrect or arbitrary adoption of such measures<sup>24</sup>. Another point of view is that the adoption of provisional measures should occur based on a decision of the court of the Member State of execution. However, with this approach, there is another debate as to whether the court of the Member State where the judgment will be enforced should decide on the adoption of provisional measures based on its national procedural law, or whether the existence of a foreign decision is sufficient for such measures to be taken.

In support of the second approach (and, accordingly, the refutation of the first), logical arguments are presented that, according to the legislation of the state where the decision must be executed, a foreign decision may not have legal force, or may not provide the right to take provisional measures, not be such, binding for the court to use them. While the purpose of introducing Art. 54(1) of the Regulation on Succession was to facilitate the adoption of provisional measures for a party that has an interest in enforcing a decision issued in another Member State. There are differing opinions as to whether the rules of national law that require an imminent risk or an emergency for provisional measures should be applied; or Art. 54(1) of the Regulation on Succession exempts from the need to establish compliance with such requirements of national law. It is

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<sup>24</sup> CHAIKA, L., and CHAIKA, V. Theoretical and methodological foundations of conflict management studies in tax legal relations. *Journal of International Legal Communication*, 2021, Vol. 1, n. 1, pp. 171-185.

argued that if a foreign decision can be enforced in the state of its origin, Art. 54(1) of the Regulation on Succession does not allow the application of rules of national law requiring the presence of imminent risk or an emergency case for the adoption of provisional measures.

This is because, in most cases, such a decision will be declared enforceable in the Member States where it is sought (since the procedure for issuing a declaration of feasibility does not verify that there are no grounds for refusing to recognize a decision); and under Art. 54(2) of the Regulation on Succession, the declaration of feasibility allows any protective measures to be taken under the law. Thus, it is obvious that protective measures will eventually be taken. Therefore, it is considered that the delay in granting permission for their adoption during the period when the application for the submission of a declaration of feasibility is pending will be contrary to the purpose of Art. 54 of the Regulation on Succession, since it will provide the party against whom the execution is sought, the opportunity to dispose of the property. If the foreign decision is not enforceable in the state of origin, the rules of national law must be applied that require an imminent risk or emergency to be taken for provisional measures since such a decision may never be enforceable.

Article 57 of the Regulation on Succession provides that no security, pledge, deposit, whatever they are called, shall be subject to recovery by a party that in one Member State seeks the recognition, enforceability, or enforcement of a decision made in another Member State because he or she is a foreigner or has no domicile or place of residence in the Member State where the enforcement occurs. At the same time, commentators emphasize that the purpose of Art. 57 of the Regulation on Succession is precisely the prohibition of discrimination against foreigners and persons without registration, where recognition, enforceability, or enforcement of a decision is sought. It does not preclude the collection of collateral or deposits, which are charged regardless of whether the person is a foreigner.

### **The European Certificate of Succession: procedural aspects**

Since August 17, 2015, a law has been in force in the EU countries that changes the rules of inheritance of real estate: earlier, foreigners who own real estate in Europe (not in their country of origin) inherited property under the laws

of the country where the object was located. Under the new rules, the inheritance procedure is done by default in the country where the deceased was at the time of death. Still, the property owner may prefer the law of the country of his or her citizenship, be it an EU country or any other. The law applies in all EU countries, except for the UK, Denmark, and Ireland, where foreigners in such cases will be subject to British, Danish, and Irish laws, respectively<sup>25</sup>.

The EU Succession Regulation is a complex piece of legislation with a “quadruple nature”. After establishing rules on international jurisdiction, on choice of law and on recognition and enforcement of judgments – as many EU Regulations on civil judicial cooperation do it introduces a new EU uniform document, the European Certificate of Succession (hereafter: ECS). Its novelty depends on two elements. Firstly, the EU had never established the use of a uniform certificate for cross-border cases within the civil judicial cooperation before. Rather, other EU Regulations in this area aim at facilitating transnational recognition and enforcement of national judgments and public documents through the use of standard forms or models<sup>26</sup>. In some cases, these are attached to the text of the Regulation concerned in others, as the Succession Regulation, the EU Commission has enacted implementing Regulations containing the form(s)<sup>27</sup>.

Nevertheless, these forms are far from being a unified common European document: they are means in order to simplify mutual recognition of national acts. Secondly, not every Member State envisages the use of certificates for internal successions<sup>28</sup>. The availability of a uniform document (although useful for cross-border cases only) can be perceived as a new legal instrument with which practitioners and private parties need to increase confidence<sup>29</sup>. A decision to transfer inheritance made in one EU country is automatically recognized in all

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<sup>25</sup> KONAYKOV, M. A. Key novelties of Regulation No. 650/2012 (“Rome IV”) and the possibility their application on the territory of the EAEU. *Issues of Russian and International Law*, 2017, vol. 7, n. 7A, pp. 27-35.

<sup>26</sup> CALVO CARAVACA, A., DAVÍ, A. and MANSEL, H. *The EU Succession Regulation. A Commentary*. Cambridge: Cambridge University Press, 2016.

<sup>27</sup> DAVÍ, A. and ZANOBETTI, A. *The new European private international law of succession*. Torino: Giappichelli, 2014.

<sup>28</sup> BONOMI, A. Il regolamento europeo sulle successioni. *Rivista di Diritto Internazionale Privato e Processuale*, 2013, vol. 49, n. 2, pp. 293-324.

<sup>29</sup> MARINO, S. Use of standard forms in EU civil judicial cooperation: The case of the European certificate of succession. *Cuadernos de Derecho Transnacional*, 2020, vol. 12, n. 1, pp. 627-634.

other European Union countries. The European Certificate of Succession (ECS) confirms this<sup>30</sup>.

In the presence of a will, the property is divided according to the instructions of the deceased. If there is no such document, then the property is transferred to relatives following the procedure established by law<sup>31</sup>. In most EU countries, there are several lines of inheritance: as a rule, first, the inheritance is received by the children, parents and wives of the deceased, then by brothers, sisters, grandparents, and then the interests of other relatives are taken into account. For example, there are three degrees of kinship in Germany<sup>32</sup>, and in Finland, there are two categories of heirs: the first includes spouses and children, the second – all the others. Usually, the right to inheritance occurs automatically. There are also terms during which the heir must submit a declaration to the tax authorities: three months in Germany, one year in Italy, six months in Spain and France<sup>33</sup>. There is also a time limit within which the heir can renounce the rights of inheritance. For example, in Germany, this is six weeks after the heir learned about property transfer. In addition to the European law on inheritance, national laws govern the procedure for paying inheritance tax, who has the property right, and what share children and wives must receive.

### **The structure and mechanism of normative resolutions**

Article 62 of the Regulation states that it creates a European Certificate of Succession (ECS) for use in another member state. Consequently, its creation is possible only when the inheritance has a cross-border nature, which is expressed in the fact that the inherited property is located in different member states. However, the residence of the applicant in another member state<sup>34</sup> is not

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<sup>30</sup> CARRASCOSA, G. J. Reglamento sucesorio europeo y actividad notarial. *Cuadernos de Derecho Transnacional*, 2014, vol. 6, n. 1, pp. 5-44.

<sup>31</sup> DUTTA, A. Succession and wills in the conflict of laws on the eve of europeanisation. *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht*, 2009, vol. 73, pp. 547-606.

<sup>32</sup> RÖTHEL, A. Ist unser Erbrecht noch zeitgemäß. Deutscher Juristentag [Online]. 2010 [viewed 23 January 2022]. Available from: <https://beckassets.blob.core.windows.net/product/toc/30645/deutscher-juristentag-e-v-djt-ist-erbrecht-9783406601835.pdf>

<sup>33</sup> BRITCHENKO, I., and SAIENKO, V. The perception movement economy of Ukraine to business. *Ikonomicheski Izsledvania*, 2017, vol. 26, n. 4, pp. 163-181.

<sup>34</sup> KRESSE, B. Article 62: Creation of a European Certificate of Succession. In: BERGQUIST, U., DAMASCELLI, D., FRIMSTON, R., LAGARDE, P., ODESKY P., AND REINHARTZ, B. *The EU Succession Regulation Commentary*. Cambridge: Cambridge University Press, 2016, p. 678.

sufficient for the inheritance to be considered cross-border and, accordingly, a European certificate of succession to be presented. The history of the creation of the Regulation on Succession and its final text indicate that the European certificate of succession is not an authentic or executive document, but it is a document that must be recognized by a state (as a court decision)<sup>35</sup>.

The European Certificate of Succession is created to quickly and easily resolve issues of cross-border inheritance (clause 69 of the preamble of the Regulation on succession), which in turn is possible if the heirs or legatees or executors of wills or inheritance managers have the opportunity to easily prove their status or rights and powers in another member state, for example, where the estate is located<sup>36</sup>. The purpose of the European Certificate of Succession is disclosed in Article 63 of the Regulation on Succession, according to which:

1. The certificate is intended for use by heirs, legatees who have direct inheritance rights, executors of wills, manager of inheritance.

2. The certificate can be used, in particular, to prove one or more of the following status and rights of each heir or, depending on the circumstances of each legatee, with the indication in the certificate of their respective shares in the inheritance, the ownership of a certain asset or certain assets that form part of the inheritance to the heir, or depending on the circumstances of the legatee, the authorized person indicated in the certificate for the execution of the will or the management of the inheritance.

Under Article 62(2) of the Regulation on succession, the use of the European Certificate of Succession is not mandatory. Therefore, it is possible to use other documents to prove inheritance rights. It should be emphasized that the European Certificate of Succession should not replace internal documents that may exist for the same purposes in the member states. In this regard, the doctrine of private international law of the European Union addresses the issue of whether it is possible to issue both a national succession certificate and an ECS concerning the same inheritance property. According to the researchers of the Max Planck Institute for Comparative International Private Law, the legal

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<sup>35</sup> STAMATIADIS, D. Article 22: choice of law. In: PAMBOUKIS, H. P. *EU Succession Regulation No. 650/2012*. Oxford: Hart Publishing, 2017, pp. 230-233.

<sup>36</sup> Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July [Online]. 2012 [viewed 20 January 2022]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0650>

norms of individual member states that prevent the issuance of more than one national inheritance certificate can be used to prevent the issuance of a national inheritance certificate and the ECS for the same inheritance property. However, if the national law of a member state does not contain such provisions, the issue of the possibility of issuing both certificates remain open since the Regulation on succession does not contain an answer to it.

Article 62(3) of the Regulation provides that it does not replace internal documents issued for the same purposes in the member states. However, once issued for use in another member state, the certificate creates the consequences specified in Article 69 of the Regulation in the member states whose authorities issued it<sup>37</sup>. Article 64 defines the issuing Authority. This is a court as determined in Article 3(2)19 or another authority which has competence to deal with succession matters according to national law. The definition is very broad, including not only authorities exercising judicial competences, but any other authority or professional performing any function according to national succession law, in that comprehending notaries<sup>20</sup>, where such figures exist in the Member State concerned. Furthermore, the characterization of authorities and legal professionals as Courts shall not be confined to those contained in the lists arranged by the Member States pursuant to Article 79 of the Succession Regulation.

In the WB judgment the CJEU made it clear that this information has a purely “indicative value” (para. 48)<sup>21</sup>, because the definition of “Court” is that established by Article 3(2), and not by these lists. The proper functioning of the Succession Regulation risks being jeopardized, if each Member State could determine the notion of judicial authority for the purposes of the Regulation itself, including authorities and professionals that do not exercise judicial functions, or, on the opposite, excluding those performing these functions. It follows that the applicant shall pay due attention to the competence and the powers of the authorities and the legal professionals within a Member State, before applying for

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<sup>37</sup> Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession [Online]. 2009 [viewed 11 December 2021]. Available from: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52009PC0154>

an ECS, it not being enough to refer only to the lists communicated by the Member State<sup>38</sup>.

The consequences generated by the ECS are defined in Article 69(2) of the Regulation on Succession. Part one of this article provides that the ECS generates consequences in all member states without the need to follow any other procedure. Under Article 69(2) of the Regulation on succession, the ECS is considered to accurately prove the elements that have been established by the law that applies to inheritance or following any other law applicable to specific elements. Article 69(3) of the Regulation on succession provides that any person who, acting based on information provided by the ECS, makes a payment or transfers property to a person named in the ECS, shall be considered as having entered into a transaction with a person authorized to accept payment or property, unless he or she knows that the content of the ECS is inaccurate or is not aware of such inaccuracy due to gross negligence.

If a person referred to in the ECS as such who is authorized to dispose of the estate disposes of such property in favor of another person, that other person, if acting based on information specified by the ECS, is considered to be the one who entered into a transaction with the person authorized to dispose of property, unless he or she knows that the content of the ECS is inaccurate or does not know about such inaccuracy due to gross negligence. In addition, according to Article 69(5) of the Regulation on succession, the ECS is a valid document for the entry of inheritance property in the relevant register of the member state<sup>39</sup>. The provisions of Article 69 of the Regulation on succession give commentators grounds for concluding that the ECS generates three types of consequences: the presumption of the accuracy of the information recorded in the ECS; public confidence in the ECS; the legality of making entries in the respective registers of the member states in relation to inheritance.

The original ECS is kept by the issuing authority. This authority will issue one or more certified copies to the applicant and any other person who can prove legitimate interest (Article 70(1) of the Regulation on succession. Under Articles

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<sup>38</sup> BERTOLI, P. *Corte di giustizia, integrazione comunitaria e diritto internazionale privato e processuale*. Milano: Giuffrè, 2005.

<sup>39</sup> BUSCHBAUM, M. Die neue eu-erbrechtsverordnung. *Neue Juristische Wochenschrift*, 2012, pp. 2393–2398.

71(3) and 73(2), the authority issuing ECS maintains a register of persons to whom such copies have been issued. Certified copies are valid for a limited period of 6 months, as indicated in the copy by indicating the expiration date. In exceptional, duly justified cases, the body issuing the ECS may, on an exceptional basis, establish a longer validity period. In the event of an error, the body issuing the ECS, at the request of any person who has proven a legitimate interest, on its own initiative, corrects the ECS (Art. 71(1) Regulation on succession). In addition, at the request of any person who has proven a legitimate interest, or, if it is possible under the national law, or at its own initiative, the body issuing the ECS can modify or cancel the ECS if it has been established that the Certificate or its individual elements were inaccurate (Art. 71(2) Regulation on succession).

As noted, the ECS can be issued only in a certain member state for use in another member state. Therefore, the issue of the implementation of the rules governing the issuance of the ECS in the legislation of Ukraine may not appear yet. At the same time, we consider it feasible to study the experience of legal regulation and the use of the ECS to understand how inheritance can occur when the inheritance is located in different member states, as well as to more easily introduce the norms of the Regulation on succession in Ukraine when it becomes an EU member<sup>40</sup>. The stable trend of recent years towards introducing foreign legal constructs<sup>41</sup> into the national legislation leads to the need for in-depth scientific research that allows them to be adapted to Ukrainian realities<sup>42</sup>.

### **Certificate models**

Only a few models concern private parties. They are as follows: Form IV of the said document; Appendix 2 of the Commission Implementing the Regulation (EU) 2017/1105 of 12 June 2017, which establishes the forms referred to in Regulation (EU) 2015/848 of the European Parliament and the Council on insolvency proceedings under the title “Submission of claims”; Appendix 3 to the

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<sup>40</sup> DIKOVSKA, I. A. *International heritage in the EU and Ukraine: directions of adaptation of Ukrainian law to EU law*. Kyiv: Alerta, 2020.

<sup>41</sup> KUKHAREV, O.E. Key issues of adaptation of hereditary legislation of Ukraine to the legislation of the European Union. *European Perspectives*, 2019, vol. 2, pp. 181-187.

<sup>42</sup> KUKHAREV, O.E. On the issue of ensuring the implementation of the inheritance contract after the death of the alienator. *Problems of Legality*, 2016, vol. 134, pp. 37-45.

same Implementing Rules, which is entitled "Objections regarding group coordination procedures"; Appendix 4 to the same Regulation, entitled "Request for access to information"; Appendix 1 to the Regulation (EU) No. 861/2007 on the European Small Position Action Procedure, as amended and supplemented; Appendices 1 and 6 to Regulation (EU) No. 1896/2006 on the European payments.

It is possible to distinguish two groups of these models - optional and mandatory. As for the first group, the legal consequences are the same as described in Appendix 4 to Implementation rules. The models of the second group involve regulations with mandatory words like a must. Therefore, the use of these Forms should be mandatory. Appendix 4 of Commission Implementing Regulation (EU) 2017/1105 can be considered an exception, as it can be completed and submitted on the Internet<sup>43</sup>. The difference between the two groups of Forms depends on their function. Former aims to facilitate the exercise of the right or the protection of individual interests.

Therefore, the EU is doing accessible forms so that any request can be complete and well organized, for clarity and quick results. The latter includes the forms used to enter court proceedings based on written evidence where oral hearing is only potential. These models are integral parts of this production and therefore, they can be formalized, and their use is mandatory. The formalism complained of by the ESS is at least partially diminishing. EU regulations aim to cooperate with the aim of provide the principle of mutual recognition in accordance with mutual trust. From this point of view, the national authorities are the first to be responsible for applying these principles.

Using standard forms can help understanding the work and performance of foreign authorities in order to judge, make decisions and in some volumes of documents can circulate between Member States<sup>44</sup>. The same duty cannot be assigned to private parties that are beneficiaries of the zone of freedom, security and justice. From this point of view, individuals may be required to use the official

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<sup>43</sup> Commission Implementing Regulation (EU) 2017/1105 of 12 June 2017 establishing the forms referred to in Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings [Online]. 2017 [viewed 11 December 2021]. Available from: [https://eur-lex.europa.eu/eli/reg\\_impl/2017/1105/oj](https://eur-lex.europa.eu/eli/reg_impl/2017/1105/oj)

<sup>44</sup> HERTEL, C. European Certificate of Succession - content, issue and effects. *ERA Forum*, 2014, vol. 15, n. 3, pp. 393-407.

forms for official acts, such as filing a claim, but the same is not true when it is a question of concern for private interests. In these cases, the EU refrains from any obligations and provides forms to facilitate the applicant as much as he / she finds are useful to them<sup>45</sup>.

## **Conclusions**

An important novelty of the Regulation is the development of a European Certificate of Succession. The use of this certificate is optional, and it does not supersede or replace similar national documents of the member states of the European Union. At the same time, the ECS is recognized in all EU states (except Denmark, Great Britain, and Ireland) as a document confirming the rights and status of heirs, legatees, executors of the will, and trustees of inherited property. The protocols for the exercise of jurisdiction over the issue under consideration represent one of the essential differences from the provisions of Rome IV. In terms of Art. 4 of the Regulation, jurisdiction for examining the issue under consideration is exercised by the courts of that member state of the European Union in which territory the inheritor is permanently resident at the time of death.

This provision is the significant novelty of European legislation. One of the goals facing the authors of the Regulation is to provide citizens with the opportunity to use the advantages of the domestic market with legal certainty, which is set out in paragraph 37 of the Preamble. To create this possibility, testators and heirs need to know in advance what legislation will be applied to their relations under consideration. To ensure the free movement of human resources on the territory of the EU and the development of services in matters of cross-border research, the authors of Rome IV turned away from the accepted principle of determining certain legislation according to the criterion of a civil testator. Under Rome IV, the principle of permanent residence of the testator is already used. Permanent residence of the testator at the time of death, by virtue of the direct indication in Rome IV, serves for the purposes of determining jurisdiction and the relevant legislation as regards the relation to each particular case under consideration.

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<sup>45</sup> BUSCHBAUM, M. and SIMON, U. *EuErbVO: das europäische nachlasszeugnis*. ZEV, 2012, pp. 525-530.

The second fundamentally new provision of the Regulation provides for a specific goal to ensure legal certainty in cases under consideration and avoid creating a conflict around the inherited property. Consequently, under the Regulation, the inherited property is no longer “fragmented” based on its nature. An example to each specific case in accordance with the provisions of the Regulation, which applies to both movable and immovable property, is such property on the territory of other EU member states or communications outside the European Union. At the same time, it is important to note that the text does not contain its own definition of the concepts of “permanent place of residence”, and the mechanism for determining it is not enshrined.

The obligation to conduct procedures for determining certain permanent places of residence of the testator is regulated by the relevant authorities with such competence. When implementing these procedures, competent public administration officials are guided, among other things, by such criteria as the continuation of the testator’s stay in the relevant state, the regularity of such stays, as well as the conditions and reasons for such stays. The permanent residence according to this scheme must meet the requirement of having a close and permanent connection with the state. At the same time, the close relation of the deceased with a particular state can be decided by many factual circumstances, examples of which are introduced in paragraph 24 of the Preamble. For example, determining a permanent place of residence may be sufficient in a situation where the testator was forced to go abroad for economic or professional reasons, including for a long time. To determine the permanent residence, the Regulation proposes to highlight the presence or absence of a close and permanent link with the state of origin.

European legislation is based on the principle of division of inherited property by its nature. It contains a conflict-of-laws reference to the last permanent place of residence of the testator. The legislation of the member states does not contain provisions in a single document confirming the status and powers of heirs and executors of wills by analogy with the European Certificate of Succession, which, even though there is no indication of mandatory use of the certificate and the coexistence of the certificate on an equal basis with similar national documents, is a significant milestone on the path of pan-European integration. It should be noted that integration processes on the territory of the

European Union are more intense than similar processes in the post-Soviet space. Therefore, we can assume that succession provisions can undergo significant changes.

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