

On 17 August 2015, Regulation (EU) No.650/2012 (the Succession Regulation) came into effect in 25 EU member states (the UK and Ireland chose not to opt in and Denmark is not subject to it). While the regulation represents an important improvement both for beneficiaries and testators in cross-border succession within member states, considerable difficulties arise with regard to residents of countries not bound by the regulation. It is thus important for all parties involved in, or planning, an international succession to understand the principles now governing cross-border succession involving one or

several of the member states where the regulation is applicable.

To the extent a person is a national or a (current or future) resident or domiciliary of a participating member state – or owns assets in the territory of a participating member state – they will have to take the new regulation into consideration.

### WHAT IS THE REGULATION'S AIM?

The Succession Regulation provides conflict-of-laws rules that determine which courts have jurisdiction and which law applies to successions involving one or more participating member states. Moreover, it provides for recognition

and enforcement of decisions and instruments in succession matters. However, the regulation does not in itself harmonise the substantive succession law of the various participating member states. Therefore, the rules relating to forced heirship, the capacity of a testator or the substantive legal validity of transfers, for example, remain governed by the various domestic laws of the member states.

The idea behind the regulation is to avoid situations where a court (or several courts) dealing with an estate is required to apply various laws to distinct assets of an estate, depending on the location and character of the assets or the nationality of the testator. On the contrary, the new regulation aims to ensure that a court – ideally the court of the testator's last 'habitual residence' – rules on the succession as a whole by applying its own domestic law.

## A SIMPLIFIED GUIDE TO THE EU SUCCESSION REGULATION

DOES THE TESTATOR HAVE THEIR HABITUAL RESIDENCE IN A PARTICIPATING MEMBER STATE?

YES

The regulation will apply

The member state's courts are likely to have jurisdiction with regard to the entirety of the estate

The member state's law is likely to be applicable to the entirety of the estate

NO

Does the testator have assets located in a participating member state?

YES

Is the testator a national of the participating member state where the assets are located and/or was their habitual residence in said member state up to five years before the court is seized?

YES

The member state's courts will have jurisdiction for the whole estate/law of last habitual residence, including *renvoi*, is likely to be applicable

NO

The member state's courts will have jurisdiction for a part of the estate/law of last habitual residence, including *renvoi*, is likely to be applicable

NO

Is the testator a national of or domiciled in a participating member state?

YES

The regulation might still apply, depending on the applicable (conflict of laws) rules at the place of residence

NO

The regulation is unlikely to apply