**PRIVATE AUTHONOMY IN CROSSBOARDER SUCCESSIONS**

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| In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed. |

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|  | In order to achieve those objectives, the EU Regulation **650/2012** should bring together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the creation of a European Certificate of Succession. |

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|  | The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession. |

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|  | This Regulation should not apply to revenue matters or to administrative matters of a public-law nature. It should therefore be for national law to determine, for instance, how taxes and other liabilities of a public-law nature are calculated and paid, whether these be taxes payable by the deceased at the time of death or any type of succession-related tax to be paid by the estate or the beneficiaries. It should also be for national law to determine whether the release of succession property to beneficiaries under this Regulation or the recording of succession property in a register may be made subject to the payment of taxes. |

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|  | This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation. |

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|  | Accordingly, this Regulation should not apply to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters, and property regimes of relationships deemed to have comparable effects to marriage. The authorities dealing with a given succession under this Regulation should nevertheless, depending on the situation, take into account the winding-up of the matrimonial property regime or similar property regime of the deceased when determining the estate of the deceased and the respective shares of the beneficiaries. |

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|  | Questions relating to the creation, administration and dissolution of trusts should also be excluded from the scope of this Regulation. This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries. |

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|  | Property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, should also be excluded from the scope of this Regulation. However, it should be the law specified by this Regulation as the law applicable to the succession which determines whether gifts or other forms of dispositions *inter vivos* giving rise to a right *in rem* prior to death should be restored or accounted for for the purposes of determining the shares of the beneficiaries in accordance with the law applicable to the succession. |

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|  | This Regulation should allow for the creation or the transfer by succession of a right in immovable or movable property as provided for in the law applicable to the succession. It should, however, not affect the limited number (‘*numerus clausus*’) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law. |

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|  | However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by succession, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right *in rem* under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right *in rem*, the authorities or competent persons of the State whose law applied to the succession may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law. |

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|  | The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation. |

**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**

*Article 21*

**General rule**

1.   Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2.   Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.

*Article 22*

**Choice of law**

1.   A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

2.   The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

3.   The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

4.   Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.