

EU Succession Regulation

Implications for Switzerland

The number of international successions is growing as a consequence of increasing mobility. When a death occurs, this can often give rise to complex questions. In enacting the European Succession Regulation, the EU has taken an important step toward simplifying international successions within the EU. The regulation applies to successions occurring on or after August 17, 2015.

The European regulations on property regimes also came into effect on January 29, 2019. They introduce extensive changes for married couples (Property Regime Regulation) and registered partnerships (Partnership Regulation) in the international context.

All these regulations also have implications for Switzerland.



Purpose of the EU Succession Regulation

The EU Succession Regulation¹ harmonizes the international private law of EU member states² in relation to international successions. In particular, it introduces standardized rules regarding jurisdiction and applicable law. The aim is to ensure that, as a matter of principle, only one official body takes care of the entire estate and that a uniform inheritance law is applied to the estate regardless of where the assets are held and whether movable or immovable assets are involved.

The aim is to avoid parallel proceedings in different member states and conflicting decisions.

¹ EU Regulation No. 650/2012 of July 4, 2012, on the jurisdiction, applicable law, recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. The regulation, which came into force on August 16, 2012, applies immediately in member states without the need for national "transposition laws" and must be observed for all successions occurring on or after August 17, 2015.

² Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden. The following countries made use of their right to opt out: Denmark and Ireland.

Last habitual residence

The testator's habitual residence is now accorded great significance. If the EU Succession Regulation is applicable, the national law of succession which applies depends on the testator's last habitual residence and not their domicile or nationality at the time of death.

Determining the habitual residence (which is not necessarily the same as the last domicile) involves making a general assessment of the testator's life circumstances in the years prior to death and at the time of death. The place in which the testator's life was centered and where they had their most important social contacts (especially family and work contacts) is thus crucial.

As a consequence of the EU Succession Regulation, the national inheritance law of an EU member state could unexpectedly apply to an individual domiciled in Switzerland.

Location of assets in an EU member state

Even if the testator was not habitually resident in a member state, the EU Succession Regulation can provide grounds for subsidiary jurisdiction for European authorities. If, for example, the testator was a citizen of this EU member state or was previously a habitual resident of this state, jurisdiction may extend to include assets held in Switzerland. From a Swiss perspective, these provisions can lead to conflicts.

Geographical scope

The EU Succession Regulation covers all member states with the exception of Denmark and Ireland. In these countries, as in third countries (e.g. Switzerland), the general regulations of private international law will continue to apply.

Substantive and temporal scope

The EU Succession Regulation applies to all provisions containing guidelines on succession for deceased persons, and to successions occurring on or after August 17, 2015. At some point in the future, even pre-existing succession arrangements will be assessed in accordance with the EU Succession Regulation.

The EU Succession Regulation does not apply to inter vivos gifts or issues involving matrimonial property law and company law.

Choice of law; Certificate of Succession

In addition to the question of the applicable law (last habitual residence), the EU Succession Regulation also provides the possibility of choice of law. With a will or inheritance contract, it is possible to choose the inheritance law of the testator's nationality. The EU Succession Regulation also introduced the European Certificate of Succession, an instrument that is valid throughout the EU. This instrument specifies the heirs (certificate of inheritance) as well as the legatees, executors, and administrators.

Purpose of the EU regulations on property regimes

A key component of these regulations is determining the applicable law based on either the choice of law, or the fall-back provision if none is chosen. The regulations also determine international jurisdiction as well as the recognition and enforcement of foreign decisions in matters of property law. However, they do not address matters of the substantive national law, i.e. matters of the matrimonial property regime (e.g. sharing of acquired property, separation of property, or community of property) and how this matrimonial property regime is handled if the marriage or partnership ends.

The regulations for marriages (EU Property Regime Regulation³) and registered partnerships (EU Partnership Regulation⁴) generally apply to unions that were entered into after January 29, 2019. Unions that are older than this can exercise the options of the regulations through choice of law. The impact is not limited only to the end of the union as a result of one partner's death.

The regulations were adopted in 18 countries⁵ in 2016 and can be joined by the EU countries not yet participating. Even as they are, though, their applicability extends far beyond the legal relationships of the participating jurisdictions since each also determines the applicable law for third countries like Switzerland from their own perspectives.

Discrepancies between the Succession Regulation and the regulations on property regimes

Although both sets of regulations are linked to habitual residence, failure to make a choice of law may lead to conflict. What matters for the regulations on property regimes is the first common habitual residence after marriage/establishment of the partnership. For the Succession Regulation, it is the last residence of the testator. If a couple moves to a different country, action is always required in this regard.

Who is actually affected?

In purely domestic matters (e.g. the testator is a Swiss citizen, domiciled and habitually resident in Switzerland, and holding only domestic assets), the situation is unchanged.

However, it may be advisable to discuss a potential action plan if one of the following situations is involved:

- The testator is an EU national.
- Their habitual residence in past years was in an EU member state.
- The first common residence after marriage was in another country.
- They intend to live in an EU member state for a prolonged period of time or to move to an EU member state.
- They have assets (e.g. real estate, bank accounts, holdings) in an EU member state or intend to acquire such assets in the future.

³ Council Regulation (EU) 2016/1103 of June 24, 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

⁴ Council Regulation (EU) 1104/2016 of June 24, 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

⁵ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, and Sweden.

Conclusion

Due to these new and far-reaching regulations, all estate planning that involves foreign countries or the potential for foreign involvement should be carefully reviewed in the light of the EU Succession Regulation – including in Switzerland. The EU Property Regime Regulation and the EU Partnership Regulation must also be considered when advising couples. Existing regulations must also be reviewed. The range of options for couples has increased dramatically. For citizens of EU member states, it may make sense to make arrangements under the law of the individual's country of origin.

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