

## 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 including, for example, which country is responsible for settling the estate and which national law of succession should be applied to the estate. In enacting the European Succession Regulation, the EU has taken an important step toward simplifying international successions within the EU. The regulation comes into force on August 17, 2015, and also has implications for Switzerland.

### Purpose of the Regulation

The new EU Succession Regulation<sup>1</sup> harmonizes the international private law of EU member states<sup>2</sup> in relation to international successions. In particular, this approach introduces standardized rules regarding the jurisdiction and the 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.

### Last Habitual Residence

The deceased'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 his/her domicile or nationality at the time of death.

Determining the habitual residence (which is not necessarily the same as the last domicile) involves coming to an overall judgment 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 he/she had his/her most important social contacts (especially family and work contacts) is therefore of key importance. Ultimately it will be up to the courts to interpret these terms. 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 in the past habitually resident in it, jurisdiction may extend to include assets held in Switzerland. From a Swiss perspective, these provisions can lead to conflicts.

### Geographical Area of Application

The EU Succession Regulation covers all member states with the exception of Denmark, the UK, 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 to the estate of 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 judged in accordance with the EU Succession Regulation.

However, the EU Succession Regulation specifically does not apply to inter vivos gifts and issues involving marital property law and company law.

<sup>1</sup> EU Regulation No. 650/2012 dated July 4, 2012, regarding the jurisdiction, applicable law, recognition and enforcement of decisions and the acceptance and execution of authentic instruments in inheritance matters, and the introduction 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.

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

## 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 will also lead to the introduction of the European Certificate of Succession, an instrument with EU-wide validity. This instrument specifies the heirs (certificate of inheritance) as well as the legatees, executors and administrators.

## 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:

- Testator is an EU national
- There is an intention to live in an EU member state for a prolonged period of time or to relocate to an EU member state
- Habitual residence in past years was in an EU member state
- Assets (e.g. real estate, bank accounts, holdings) in an EU member state or the intention to acquire such assets in the future.

## Conclusion

Due to these new and far-reaching regulations, all estate planning, also in Switzerland, which involves foreign countries or the potential for foreign involvement should be carefully reviewed in the light of the EU Succession Regulation. Existing regulations must also be reviewed. For citizens of EU member states, it may make sense to make arrangements under the law of the individual's domicile.

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