



Towards the entry into force of the succession regulation:  
building future uniformity upon past divergencies



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Jurisdiction, competence and application of the EU Regulation 650/2012

# Recognition and Enforcement of Decisions under Regulation 650/2012

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## **Recognition and enforcement of decisions: framing the general issue**

(1) The importance of the “free movement of rights” within the European judicial space.

(2) The path of automatic recognition followed by the EU: what does “automatic recognition” mean?

# What is a “decision” for the purposes of the Succession Regulation?

Key Provision: art. 3 (1) (g) Succession Regulation

- (a) the decision, whatever this may be called, is given by a court or tribunal of a Member State.
- (b) a decision on the determination of costs or expenses by an officer of the court is a judgment and shall move within the European judicial space accordingly.
- (c) decisions issued by other states or non-EU MS?

## ***Court of a Member State bound by the Regulation***

(a) Broad understanding of “*court*”.

(b) Acknowledgment of specificities in succession matters:

- Contentious and non-contentious proceedings (rec. 59);
- Role of the public notaries,
  - If they exercise judicial functions, their outcome is a “decision” that moves across the EU judicial space accordingly.
  - See in particular: art. 3 (2), rec. 22, and rec. 20 recognizing that in many cases, public notaries do not fall within the broad definition of “*court*.”

# The procedure for recognition and enforcement: an overview

1) Principle: automatic recognition

2) Request to a court to judicially recognize the decision (the procedure to request judicial recognition and enforcement is the same)

2.A) Recognition is the principal claim (territorial competence court of domicile of the person against whom recognition is sought: whereas heads of jurisdiction and conflict of laws follow the criterion of habitual residence; cf. difference with, e.g., Brussels IIa Regulation)

2.B) Recognition is preliminary question (decides the court of the main claim)

## The procedure for recognition and enforcement: an overview (2)

### 3) Documents to be produced:

- a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- b) the attestation issued by the court or competent authority of the Member State of origin;
- c) translation of the foreign decision? Are there comparable good/bad practices?

### 4) If documents are in order, recognition/enforcement is granted.

- This is an *inaudita altera parte* procedure (favour towards mutual recognition): requested courts do not check grounds to refuse recognition and enforcement, nor hear the person against whom recognition is sought.

## **The procedure for recognition and enforcement: an overview (3)**

- 5) The party against whom enforcement is sought can appeal the decision of the first court (applicant may appeal refuse to recognize).
  
- 6) This second procedure is adversarial in nature (right to self defence).
  
- 7) Requested courts can take into consideration one of the given grounds to refuse recognition and enforcement (no supplement with domestic grounds). In NO way the court can review the facts assessed by the foreign court.

## The procedure for recognition and enforcement: an overview (4)

8) Grounds to refuse recognition and enforcement (art. 40 SR):

- Public policy (*recognition* is against substantive and procedural PP).
  - how did the case law address such issue before SR? Is it likely to be frequently invoked and frequently applied? Have domestic courts already developed good practices (under their domestic laws)?
- Insufficient time to arrange for a self-defence in the first procedure (unless there is a failure to appeal).
- Inconsistent decisions (internal and from other Member/third States).



## **Are you a public notary exercising non-judicial activities?**

If your “outcome” can be qualified as an *authentic instrument* (see art. 3 (1) (i)) than it will also move across the European judicial space:

- Procedure for acceptance (art. 59)
- Enforcement under the rules for decisions (art. 60), with one significant exception: only public policy applies as a ground for non-enforcement (art. 60 (3)).

Thank you for your attention!  
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